

INTERVIEW NO. 4

March 13, 1998

This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is David Carliner and the interviewer is Charles Reischel. The interview took place on March 13, 1998.

Mr. Reischel: Did you have any cases that were particularly emotional for you?

Mr. Carliner: There was this case with a Greek Orthodox priest in Upper Michigan. I can't remember the town – a famous town – there's a murder mystery there. There was a great deal of doubt, too, about the testimony of the priest, that this guy was born in West Virginia or wherever he said he was born. Nevertheless, we won the case, and Elias, who was a major gambling figure in West Virginia, was found to have been born here. There was an emotional scene in court when the judge ruled in his favor.

Mr. Reischel: And why was there a question about whether he had been born in this country?

Mr. Carliner: The Immigration Service, I believe, had no proof of his birth in the United States.

Mr. Reischel: Had he lived abroad?

Mr. Carliner: Well, except for his birth certificate, which had been a delayed birth certificate issued by the State of West Virginia seven years after his birth. The only other evidence of his birth in the United States were statements by Greek Orthodox priests that he was born here. But there was some credibility issue regarding the testimony of these priests.

Mr. Reischel: Well, had he lived for a long time in this country?

Mr. Carliner: He'd lived here most of his life.

Mr. Reischel: In Greece?

Mr. Carliner: No. He lived in the United States most of his life. It may have been that he was born in Greece and came here as an infant or was born in the United States and in time grew up here.

That's not the case I was trying to remember. There is one. It was a citizenship case which we won, and the man's family was in court. That was an emotional scene when the judge's ruling was favorable. There's pleasure in that case on an individual basis. It's not a historic case or a precedential case. It's a case where you feel good because of other people.

Mr. Reischel: Have you had the other kind of experience, too, where it was a real heartbreaker because you couldn't get the courts to go along and the consequences were really harsh?

Mr. Carliner: I don't recall one of those. I must have, but perhaps the *Joya Martinez* case.

Mr. Reischel: Which one?

Mr. Carliner: *Joya Martinez*. Did I talk about it?

Mr. Reischel: I don't think we've talked about it.

Mr. Carliner: Joya Martinez was a member of the death squad through El Salvador.

Mr. Reischel: So this is recent?

Mr. Carliner: Well, in the last ten years or so.

Mr. Reischel: No, I don't think we did talk about it.

Mr. Carliner: He was a member of the death squads, and I was asked to take his

case. He was the most despicable person I've ever represented, and I was asked to represent him because it was believed by the various people that the death squads in El Salvador were financed by the CIA and that Joya Martinez was just another guy killing people. And, Joya Martinez was such a person. He admitted to killing 72 people.

Mr. Reischel: Seventy-two?

Mr. Carliner: Yes. He was really the most despicable person I've ever had occasion to represent. I represented many people in criminal cases, but he botched a killing in El Salvador and because he botched it he realized that he, himself, was marked for being killed because there should be no botching; it calls public attention. So he left El Salvador, and he arranged to get into Mexico. In Mexico, he met a man who was an American diplomat who was opposed to the United States financing the war in El Salvador. Either he suggested somebody or had himself arranged for Martinez to come into the United States. Once he got him in the United States, they would see to it he got legal representation. They got him in the United States. He came across the border to Texas. Subsequently, he was represented first by somebody else, but then he came to me to represent him.

Mr. Reischel: Seeking asylum?

Mr. Carliner: Seeking asylum, yes, on the theory that he would be persecuted and murdered in El Salvador if he went back there because of his role and because of his linkage with CIA. So I took his case and not because I gave a damn for him at all. This guy had his office in the same room where U.S. government people were, who were CIA. He claimed he had notes and what not to show CIA complicity and activities in the death squads in El Salvador.

Mr. Reischel: And that's what you were interested in.

Mr. Carliner: That's what we were interested in. But he never produced anything, and I told him, I believe, this was not a freak case. I was retained by a very wealthy woman, Schlumberger, who comes from a family which is in the Schlumberger Corporation.

Mr. Reischel: From Texas, I think. I think that's a big Texas corporation.

Mr. Carliner: Well, it's an international one. This woman was a very devout Catholic, and she was part of the Catholic liberation movement. She was in her 80s and she felt this guy was innocent. But I did not prove he was innocent at all. Anyway, I had huge problems with him. She financed my representation of this fellow and wouldn't hear anything to suggest that he was other than innocent, a responsibility a lawyer usually has. Her name was de Menil. It's a rather well-known society name. She has financed art galleries in Houston, Texas, and she has a daughter who lives in the Hamptons. They are socially prominent in New York high society, and she is very rich. So I represented this guy because she wanted to help that cause. We had hearings before the immigration judge. This immigration judge retired the other day, and they had his farewell party for him at the courthouse. He remembered this case.

Mr. Reischel: Oh, my goodness.

Mr. Carliner: I was there doing my best on behalf of the client.

Mr. Reischel: Sure, you had to once accepting representation.

Mr. Carliner: Anyway, the case was tried, and there was the subject of persecution – persecution to death; it would be persecution if he was sent back to El Salvador. We had very protracted hearings, long hearings, before this judge and a huge record. I think that while the case was pending, he ruled against me. Of course, while the appeal was pending, the question was made to have my client extradited, sent back to El Salvador. The war had ended in

El Salvador by that time. So he was going to be extradited to stand trial for his crimes there. I was initially involved in the extradition proceedings, but I was subsequently displaced. There was another lawyer who was involved in the case, whose name I can't remember right now, but he practices in Fairfax County, and I took a great dislike to him. He spent a lot of time (for which he was paid) on freedom of information requests, getting policy papers, getting us information that we didn't need to know.

Mr. Reischel: Sure, stall things, I guess. It would have the effect of delaying things perhaps.

Mr. Carliner: It didn't delay anything because the immigration case was proceeding apace anyway. He was extradited. He went back to El Salvador, and one of my good friends, a fellow named Tom Buergenthal – I don't know if that name is familiar to you – he was appointed to the American Human Relations Corps, or something which was looking to see what was happening in El Salvador after all this. I was curious as matter of my own interest to see what happened to Martinez when he went back to El Salvador. I don't think anything happened to him. He was just there. He was not prosecuted for his conduct. That was a case that I was, how should I describe it, involved in intellectually. I asked this guy, "Did you have any feelings?" Because he admitted taking a knife and slitting the throats of 72 people. Did he have any feelings or reactions to this? He said, "No, not really." I wanted to have psychiatric testimony on the mind-set of the person who was a callous, cold murderer, but he would not cooperate with them.

Mr. Reischel: So that was the most difficult of your representations?

Mr. Carliner: Most distasteful case I ever had.

Mr. Reischel: I guess in private practice, since I've never been in private practice, I've always been a government lawyer, but I guess one of the big pitfalls is once you accept representation, it's not all that easy to get out of it.

Mr. Carliner: It usually isn't. I don't have to accept representation, but here I was accepting representation with my eyes open. I've had requests by people – I was asked by a guy who was – he was Russian or Polish, or something. There was a question whether he was involved in killing Jews during the Holocaust. He had an issue regarding the testimony that was taken from Russian authorities. And he came to see me, and I had this gut feeling that he was a son-of-a-bitch and had been involved in that. He had an issue as to whether they should have relied on the evidence given by the communists of the Soviet Union because, naturally, they'd be against him, and the testimony and evidence were incredible. He wanted me to file a petition for *certiorari* in the Supreme Court on his behalf. I said, "I don't think you'd win anyway, and I won't represent you." So some cases I declined.

Mr. Reischel: But you represented some pretty tough characters in your time that they were seeking to deport. But you say the guy from El Salvador was the toughest and meanest of the bunch?

Mr. Carliner: He was probably the worst. I don't think I've ever represented anybody who admitted to killing 72 people.

Mr. Reischel: No. Who was the one that you had all the litigation on who was suspected by the government of being a gangster?

Mr. Carliner: Well, there's Marcello.

Mr. Reischel: They thought he was a mob guy, I take it.

Mr. Carliner: He was more into gambling.

Mr. Reischel: Colombo or one of those families?

Mr. Carliner: Yes, Trafficante. Well, there was the guy who was present when this murder was committed in that hotel. The guy who was accused of having committed that murder in the hotel was acquitted because they had evidence by a fellow accomplice that had to be corroborated by somebody else. They couldn't take the accomplice's testimony against the fellow standing alone. They needed to have testimony by someone who was independent. Well, this one guy in the barber shop who was very near-sighted and couldn't see very well, says, "I'm almost positive he's the one who did it." But the court found that that independent testimony wasn't sufficient.

Mr. Reischel: Since he was so near-sighted?

Mr. Carliner: Because his testimony conflicted with that of the three other guys. So this guy was acquitted of that particular murder, and he was in one of the rackets involved. He was subsequently engaged in manufacturing something in Pennsylvania, and he was in jail and there was a deportation proceeding against him. I was one of his lawyers, quite possibly his primary lawyer. He had a guy who was working for him who would come to Washington once a month to pay the fee for our services. I took him into the Mayflower Hotel. I remember we had a case pending in the Supreme Court, which bordered on the same issue that was involved in this case. And he asked us, "What'd you'se guys think it would cost to pay the Supreme Court to rule the other way?" [Laughter] So that's the mind-set.

Mr. Reischel: [Laughing] Well, they had a very elemental view of the court system, I take it.

Mr. Carliner: That's ludicrous, but not disgusting, but in any case, all these people are outside the stream of thinking of ordinary people.

Mr. Reischel: Well, I wanted to ask you over your long career about the various memorable characters that you have run into, and apparently this guy was one of them.

Mr. Carliner: I don't know if he is number one, but he is a another word for vignette. Dim varieties of human beings.

Mr. Reischel: Right, almost a caricature of the gangster.

Mr. Carliner: Right.

Mr. Reischel: In your wide range of activities, you were litigating in the Supreme Court, and you were on the ACLU Board, and you were doing home rule activities here and you were bringing cases against eminent public figures now and again, Bobby Baker among them. I take it, people that you would run into on a recurrent basis, either as allies or opponents – or I suppose you had allies at least in the ACLU – were any of them particularly memorable folk? Or particularly valuable allies?

Mr. Carliner: Well, Ed Ennis, he was the head of the ACLU and a memorable person. He practiced law in New York. He was involved in some immigration cases. Leonard Boudin, I can't say he was an ally. He was a very aggressive, competitive fellow, but he always got there first.

Mr. Reischel: Did he operate basically out of New York?

Mr. Carliner: Yes, I'm damn grateful.

Mr. Reischel: Very flamboyant.

Mr. Carliner: We had cases on the same issues. One had to do with passports,

and I represented people who were Quakers. One guy did not have a passport because, there were four people having returned actually, and he was in some Middle Eastern country, Syria or something. He said things that were critical relating to foreign policy. Frances Knight was in charge of the passport office and she didn't think that Americans who went to Syria and said obnoxious things about our policy should be given passports. And so I had a lawsuit pending in the court on that. These are in the Supreme Court. But Boudin represented, I think, the editor of *The Daily Worker* or some communist publication. And the Solicitor General's office in the Department of Justice preferred to have that case in the Supreme Court.

Mr. Reischel: Yes, I imagine so. The Quakers are tougher opponents.

Mr. Carliner: So he got there first, and that was the case that denied the power of the State Department to deny passports which was a case that I was very much involved in and —

Mr. Reischel: Is that one of the Dulles cases, is that *Service v. Dulles*?

Mr. Carliner: *Service v. Dulles*. I think it was an employee discharge case, and it held that the State Department had to follow its regulations when it fired an employee. It was quoted over and over again to show that it's usual norm in the United States to have done that. But on the right to travel case, I'm not sure that it's kosher or not, I represented a fellow by the name of Lynd who was the son of a famous father whose name is – well, anyway, he was denied a passport because he had gone to communist China or someplace, and the State Department didn't want to give him a passport. I challenged the denial of the passport because of that. The Court of Appeals held that they could not deny a passport. What is the right to travel was the underlying question. If they're willing to deny a passport, then it's up to them to keep you, but if

he's able to travel without a passport, which he could because many countries do not require a passport, they couldn't prevent his travel on that ground. So I won that case in the Court of Appeals. The government did not take *cert*. So that was a binding decision. *Lynd v. Rusk* had the effect on a lot of people if they could travel without a passport and there are situations in which people do travel without American passports.

Mr. Reischel: Didn't some people used to go to Cuba that way?

Mr. Carliner: Yes, they go to Cuba or they go to the Middle East and North Vietnam. They would need some identifying document, but they could not use a passport in those countries, a U.S. passport.

Mr. Reischel: So when you present yourself back at the borders of the United States?

Mr. Carliner: Nobody can use your passport to come back in, of course, it's a free world. But they couldn't keep you out because you had gone to a forbidden country.

Mr. Reischel: And that's what they had tried to do in the case that you had – "You go where we don't want you, and we won't let you come back." [Laughs]

Mr. Carliner: That right-to-travel case was a rather important case because they didn't seek *certiorari*.

Mr. Reischel: Was it later tested in the Supreme Court?

Mr. Carliner: My case didn't go to the Supreme Court.

Mr. Reischel: Not yours, but the principle.

Mr. Carliner: The right to travel case, I don't remember.

Mr. Reischel: Because it sounds like something that they would have shopped

around to find a case to test the principle.

Mr. Carliner: Well, the *Lynd* case is one case in which I take a great deal of satisfaction because it was to help people traveling to countries which the U.S. disapproved of.

Mr. Reischel: Was it a '60s case?

Mr. Carliner: It was probably in the '60s.

Mr. Reischel: It was before our relations with China got better in the '70s, no doubt. Did you have any opponents that were particularly daunting? Particularly hard to beat? Or would you get different ones every time, and it depended on the case?

Mr. Carliner: Well, when you're filing a petition for *certiorari* in the Supreme Court, the respondents are always people in the Solicitor General's Office. I had the exclusionary rule issue which I had litigated quite often administratively, and the Department of Justice always represents the agency. There was a woman named Bea Rosenberg who was an attorney in the Criminal Division.

Mr. Reischel: Yes, I knew Bea very well. I worked with Bea for six or seven years.

Mr. Carliner: Well, she was a very competent lawyer. She did her job but her politics were much more liberal than her role.

Mr. Reischel: Oh yes. I worked with her at the EEOC. She left the Justice Department to go to the EEOC to do civil rights law after she retired from Justice. Her retirement, her fun, was doing civil rights. So you found her a fairly formidable opponent?

Mr. Carliner: Chuck Richey whom you now know —

Mr. Reischel: Yes, unfortunately now the late Judge Richey. I'm sorry that he's

gone.

Mr. Carliner: He was a very independent judge.

Mr. Reischel: [Laughing] Yes, I'll say. Yes.

Mr. Carliner: He had terrible immigration cases every once in a while when he was in private practice. He disliked the Immigration Service, and he couldn't stand Bea Rosenberg.

Mr. Reischel: I didn't know that.

Mr. Carliner: [Laughing] I told him that Bea Rosenberg had gone to the EEOC, and she redeemed herself. "Well I don't care," he said. He didn't care for her.

Mr. Reischel: I had a number of long conversations with Judge Richey because there was a big affirmative action case that he handled for years here concerning the D.C. Fire Department. I had handled it on appeal three or four times, and he and I would talk about some of the legal issues. He wrote a book on Title VII law, among other things that he wrote. He really liked civil rights law. I would have loved to have talked to him about Bea.

Mr. Carliner: Richey was appointed by a Republican, wasn't he?

Mr. Reischel: He was a Nixon appointee.

Mr. Carliner: But Agnew supported him.

Mr. Reischel: That's right, that's right. But, he was quite an independent-minded man.

Mr. Carliner: The local bar saw the Agnew-Nixon thing and didn't realize really what a basic due process sort of attorney he was.

Mr. Reischel: Yes, he had a real civil libertarian streak in him.

Mr. Carliner: Another judge who turned out to be a surprise, and still is, is Judge Sporkin. Have you dealt with him?

Mr. Reischel: Oh my goodness, yes. Yes, he gives me a lot of business.

Mr. Carliner: I saw him at a Supreme Court function before Richey died, and Sporkin and Richey and, I think, Bill Bryant were standing together; the three were talking, all quite independent people in terms of government actions.

Mr. Reischel: Oh my yes. Now Judge Bryant, I haven't had that much of his business because he, I think, went senior about ten years ago.

Mr. Carliner: Yes, he's senior. I saw him the other day, as a matter of fact. He was very sad – his wife died about four months ago.

Mr. Reischel: I'm sorry to hear that.

Mr. Carliner: She was sick for a long time. He still sits, but I'm not sure he hears any cases.

Mr. Reischel: He's got the D.C. jail case. He's had it since 1970-something, 1974, I think. He's still got it, and he still makes rulings. But I think that's the only active case that I know he has. That's the only time I see his rulings. He's a wise man though, I think.

Mr. Carliner: He is a very wise, very noble man. Anyway, there was this program at the court for the immigration judge who retired. All the immigration judges were there to take part in this, and so I also went to it. It was starting at 4:00 p.m. and lasted until about 6:00 p.m. Afterwards I didn't think he would be in his office, but I was in the court, and I went back in his chambers, and there he was. We had dinner. He comes to the court every day at

1:00 p.m. and he works until 7:00 p.m. and then goes home and goes to sleep. So he lives a very lonely life. He had a long marriage.

Mr. Reischel: Oh, that's a shame. Well, he must still derive satisfaction from his work.

Mr. Carliner: Yes, he does, of course.

Mr. Reischel: I know he's a tough judge to reverse because I've tried it.

Mr. Carliner: He had two law clerks who were going off to Columbia University, Columbia Law School. They were so delighted that he was there. So he keeps them busy, I guess.

Mr. Reischel: So you found Bea a difficult opponent.

Mr. Carliner: Nothing personal.

Mr. Reischel: No, no, in terms of her arguments. Was she the one who was basically arguing against you when you had these exclusionary rule cases?

Mr. Carliner: Well, we never got to the Supreme Court on those cases in terms of merits cases.

Mr. Reischel: Well, was she writing the oppositions?

Mr. Carliner: Her name was on the brief. One of the people whose name was on the brief I didn't know at the time – Patricia Roberts Harris. She was in the Criminal Division at the Department of Justice. Is that name familiar to you?

Mr. Reischel: Oh yes. Unfortunately she died about seven or eight years ago.

Mr. Carliner: She became a close friend of mine and my wife's. I didn't know her when she was at the Department of Justice, but she left it and she became a professor at

Howard University Law School. I got to know her there, and I was chairman of the ACLU at the time and having gotten to know her there, I asked her to serve on the Board of the ACLU in Washington, which she did, and so we became very close personal friends, family friends.

Mr. Reischel: I heard she was a very intellectually intimidating woman from a number of sources.

Mr. Carliner: Yes, she was a rather arrogant person. She didn't establish close personal relationships. She ran for Mayor in Washington.

Mr. Reischel: I remember, in 1984, was it?

Mr. Carliner: I was co-chairman of her election committee.

Mr. Reischel: But she would have died in mid-term. Did she die about 1986?

Mr. Carliner: Yes, if she had been elected she —

Mr. Reischel: She would have died in service.

Mr. Carliner: She and her husband were very close. Her husband was in constant attendance on her. She never learned how to drive. Her husband used to drive her wherever she had to go.

Mr. Reischel: Was she a New Yorker then?

Mr. Carliner: No, she came from Chicago.

Mr. Reischel: Most of the time the people who can't drive are people who grew up in Manhattan.

Mr. Carliner: She was born in Chicago. Her father was a Pullman porter, and she had an older brother, and there was a difference between her and her older brother. He matured with time, but he never quite got out of the working class. But she was a year or two

later. She got to the University of Chicago and graduated from there and came to Washington and she got a law degree at George Washington University. She was number one in her class. At Chicago she was top of her class. She told Howard University, have I already told this to you, one of my repertoire of stories, I was head of the ACLU, and I got a telephone call from a student at the University who wanted us to bring a lawsuit against her and Howard University because they discriminated against him and he said, "I thought that was a ground of discrimination because I failed the tests." [Laughter] I didn't take his contract, but talking to him on the phone I said because he failed the test, that's a reasonable basis for discriminating; I don't think we can take that case. But she was very tough.

Mr. Reischel: And very smart, I hear.

Mr. Carliner: Very, very smart. I'm not sure she'd believed in affirmative action because she succeeded without affirmative action.

Mr. Reischel: I see, sure.

Mr. Carliner: She and her husband were close friends of mine and my wife's. She became the Ambassador to Luxembourg. She told stories about how she was chosen. I'm not sure how Lyndon Johnson got to know her, but he was supposed to speak at Howard University so Johnson, President Johnson, had her come to the White House so he could drive over to Howard University with her in the White House limousine. They were sitting in the back of the limousine with Lyndon Johnson, sitting in the middle, and Pat Harris was sitting on the right-hand side, and Lady Bird was sitting on the left-hand side of Lyndon Johnson. When they got in the car, Lyndon Johnson put his hand on Pat Harris' thigh above the knee, higher up than one should do it, if it all. His wife reached over and took his hand off. He repeated it. Pat told

me this story. It didn't sit well. Sexual behavior of the President is renowned, I guess.

Mr. Reischel: And she was Secretary —

Mr. Carliner: Of HEW and HHS. Yes, Johnson made her Ambassador to Luxembourg.

Mr. Reischel: Was she Secretary of HEW under Johnson or under Carter?

Mr. Carliner: Under who?

Mr. Reischel: Carter would be the next Democrat.

Mr. Carliner: My wife was working for the Department of Education which was part of HEW, and they're so split up at HEW. Pat put my wife in charge of women's action programs at HEW. So that was, I guess, a friendship appointment that was for my wife.

Mr. Reischel: Yes, I think Judge Tatel was her general counsel for a while.

Mr. Carliner: Could be. She did not like Tatel for some reason.

Mr. Reischel: Really? I find that interesting.

Mr. Carliner: There were lots of people she didn't like. She hated Joe Rauh.

Joe Rauh was an idol of liberals in Washington.

Mr. Reischel: And what was the source? Was it personality?

Mr. Carliner: Tatel? I knew nothing.

Mr. Reischel: Well, no Tatel, I don't think it could be. He's so mild mannered, but Rauh I hear is a different story.

Mr. Carliner: Rauh was a very different person, yes.

Mr. Reischel: Quite a driving, dramatic personality himself.

Mr. Carliner: Overbearing. I mean Rauh never had a conversation with

anybody. It was always a one-way dialogue with him.

Mr. Reischel: But David Tatel is quiet —

Mr. Carliner: Well, I think with Tatel I think there's some problem on desegregation in a matter in Prince George's County.

Mr. Reischel: Oh, arising out of an issue. Because he's now sitting on the Circuit. And a fine judge.

Mr. Carliner: I'm sure. I don't really know him. He's a fine person, although I've never been before him, but he has a very good reputation. I've not had much personal contact with him.

Mr. Reischel: At least in arguments he's very mild mannered. He's tough intellectually, but he's very low-key about how he goes about questioning you. He's very nice to you in manner but not necessarily in method.

Mr. Carliner: I just pass that injudicious gossip along. We used to have lunch together quite often, and she and her husband came to our house for dinner and vice versa.

Mr. Reischel: Oh, it was a real shame that she — she died at a fairly young age. I think she was in her early 60s or something.

Mr. Carliner: I don't quite remember. Then there's another woman I knew who died at the age of 59; her name was Jane Ickes. She was Harold Ickes' wife, second wife. I remember Pat's death at age 59. I don't remember how, probably had cancer of the breast. That was some years ago, and then subsequently she had cancer in the second breast.

Mr. Reischel: What a shame.

Mr. Carliner: One of Pat's closest friends was Sharon Pratt.

Mr. Reischel: Sure. Who became Mayor.

Mr. Carliner: Subsequently became Mayor. Sharon worked for PEPCO, and when Pat was in GW Hospital, Sharon used to come by the hospital in the morning before she went to work and in the afternoon when she left. She was an extremely devoted person. They used to live about a block or two from each other up on 16th Street. Sharon ran for Mayor, and I supported her, but she wasn't a very good Mayor.

Mr. Reischel: Well, I had the impression she was a very shy person, while she was an excellent, excellent public speaker. I think she found it difficult to interact with people in small meetings if she didn't trust the people. I think that was the source of some of her difficulties in running the government.

Mr. Carliner: I had the feeling that she didn't really run the job in a directive way.

Mr. Reischel: What I think happened was she had a very small group of people whom she was comfortable with and basically tried to run the government through these few people. The only one of them that had real stature and standing was my boss, John Payton, who was a very, very fine lawyer.

Mr. Carliner: There were two people. One was Charles Duncan and another was a fellow whose face I see before me.

Mr. Reischel: I know Charles Duncan. I got to know him over the years. Wonderful fellow, I'm sure you know him. Just a wonderful guy, prince of a guy. When Kelly was coming in, he had been involved in her campaign. I had lunch with him, and I said, "Charlie, you got to tell her we've got to have a real lawyer, not a politician, we need a real

lawyer to run the Office of Corporation Counsel,” and he just said, “Don’t worry about it.” And, we got a good lawyer. We got John Payton from Wilmer, Cutler, who’s a fine lawyer.

Mr. Carliner: Duncan was not practicing law.

Mr. Reischel: He’s sailing mostly now.

Mr. Carliner: Is he?

Mr. Reischel: I know he always used to like to sail.

Mr. Carliner: I don’t recall that, but he serves on boards of directors, and he must like it because these are all blue-chip corporations, and you get so much money for being on the board of directors, coming to a meeting, reading briefing papers, and you get another \$5,000 for going to committee meetings. So he could make \$200,000 a year without writing a brief or doing anything, for keeping informed about the activity of the corporation. He used to live, well his mother lived, at 1612 Upshur Street; her name was Alice Duncan. I think his mother must have money.

Mr. Reischel: Did he ever tell you the story about the riots? The '68 riots when he was Corporation Counsel, and Lyndon Johnson called him up and said, “I’ve got to invoke a state of emergency, Charlie, draw me the documents I need.” So he said, he told me, he went up to the library himself and did a little research, and then took pen in hand and wrote up the order and they took it to the White House and Johnson signed it.

Mr. Carliner: One of the stories about those riots was a black judge who was sitting in court all day hearing cases of people who were picked up for being arrested for taking part in the riots. He was working until 7:00 p.m. at night, and he was driving home from the courthouse. He lived in Upper Northwest Washington, above Blagden.

Mr. Reischel: The flower streets.

Mr. Carliner: He got stopped by the police. They saw this black guy in this white neighborhood.

Mr. Reischel: That's one thing I don't know if we've covered enough of. We kind of ran out of time last time when we were talking about your International Human Rights efforts. We talked a little bit about the time you were in Russia in 1989 when they were having the first real election, and when the Ambassador was very pleased with the election.

Mr. Carliner: That understates it. The words I use are "like a Chicago boss would be up all night taking the returns in Chicago." I've never seen anybody so excited about the election returns to say they would be better off.

Mr. Reischel: Well, it was the birth of real democracy. It was truly historic and it's amazing that it happened.

Mr. Carliner: There's a cliché that says "something is out of the bottle."

Mr. Reischel: And you met Sakharov at the time?

Mr. Carliner: I met Sakharov, yes.

Mr. Reischel: The Russian human rights paragon. And you were there to monitor the election itself?

Mr. Carliner: Yes, we had a group of people who worked there, five of us, who went to observe the election and the arrangements before the election to have different points of view and one of the people along, I think I may have mentioned, was Ambassador Kennan's daughter, Grace Kennan, who was fluent in Russian. She happened to be born in Lithuania, or someplace, when her father was an ambassador there. So she knew Russian quite well.

Mr. Reischel: So did you go around to the polling places?

Mr. Carliner: Yes, we went to the polling places. There were five of us. One was a professor of law at the Vienna Law School, myself and, I don't know, I could fish out the names, but there were five of us who went there for the International Human Rights Law Group, of which I was chairman. We had one or two in Moscow. We chose different places where there were people being elected. We got there before the elections and we were checking into what access people had to get out their materials because you had the newspapers controlled by the government Communist Party and a mimeograph machine in those days.

Mr. Reischel: Samizdat.

Mr. Carliner: What?

Mr. Reischel: Was "Samizdat" what they called the informal publications?  
That's how they campaigned?

Mr. Carliner: Yes. There were mimeograph machines to turn out communist material. Access to mimeograph machines and to paper was very restricted. So the people who were running against the Communist Party were having a hard time reaching out. Also, radio was controlled by the communists. What we did was to meet with people who were in the opposition, and we learned from them what problems they were having and saw the newsletters they were trying to get out; this was three or four days before the election. We met with different people. We met with Yeltsin. It was a completely different situation with Yeltsin. We went to a rally where Yeltsin spoke. We didn't meet him personally, but we were there.

Mr. Reischel: Was he part of the opposition? Very much so, wasn't he?

Mr. Carliner: Yes. He was. There was a section in Moscow which was the

working class district. Because Moscow had working class districts and other kinds of districts, we were interested in the housing. The apparatchiks, the people who were white collar people, professionals, lived in certain neighborhoods with other people who knew them. The kind of school, that sort of thing, was important because of the neighborhood that you have. I met with quite a few refusniks who were from Moscow, Jews, and they were virtually all professionals. If I remember, we were in a certain neighborhood where, I think, the normal people live, and I spoke to a guy who was a Communist Party organizer and he says, "Well, we'll let them win this election, but when we need to take power again, we will."

Mr. Reischel: Well, they tried that two years later.

Mr. Carliner: So anyway, they were sort of relaxed about this, because, I guess, they must have known that they were going to lose.

Mr. Reischel: That they were going to lose.

Mr. Carliner: Yeltsin carried the place by 75 percent of the voters, I recall.

Then, many people we met reflected Yeltsin's very demagogic views. He had a kind of populist following, and among Jews in Russia that kind of populism's sort of associated ultimately with anti-semitism. So there were certain misgivings about him that, nonetheless, weren't borne out.

Mr. Reischel: No, I think the government has been fine on anti-semitism under him.

Mr. Carliner: Not in the rural minorities of anti-semitic groups in Russia. I don't have a name, but they're not influential. In any event, in Moscow, where we did this too, we would travel around to visit with the people to see what kind of access they had to getting out to the public. On the day of the election we went to different polls to see how people were voting

and whether people were going to the polls. You couldn't take anybody with you to go in, but they hadn't voted in their entire lives, so people wondered where you check, how you choose people, all these questions, and how you do this. You couldn't take anybody into the polling place with you. Sometimes husbands thought they should go in with their wives.

Mr. Reischel: Yeah, right. Cast two votes.

Mr. Carliner: They had private secret voting, and we saw how it was done. We were there when they were counting the votes. They would pull them out all over the table with everybody seeing that there was no sleight of hand.

Mr. Reischel: So they ran a straight election?

Mr. Carliner: So it was a straight election.

Mr. Reischel: Greater than some elections in this country.

Mr. Carliner: Anyway, by happenstance, I was interviewed, and I was on television in the United States on some broadcast because I was the chair of this delegation. I gave a short one-minute interview on television. But the results of the elections are not like in the United States where they come out immediately. They didn't come until three days later. The election was on Sunday, and the results came in, because they had to come from all over the country, they came in on Wednesday morning, and that was the day we had an interview.

Mr. Reischel: I think it's the genie that's out of the bottle.

Mr. Carliner: That's right; the genie is out of the bottle.

Mr. Reischel: And you can't get it back in once it's out.

Mr. Carliner: There was a meeting we had with Matlock and, so as I said, he was full of excitement. I don't know what he is doing now, but he's around, I guess he's retired.

Mr. Reischel: Probably. Did he write a book? I thought that he did.

Mr. Carliner: He's probably in some think tank in Washington. I see his name occasionally.

Mr. Reischel: Was this international law group a group that had existed that you joined, or was it a group that you founded?

Mr. Carliner: I didn't found it. It was founded by a professor at University of Virginia, Richard Lillich, and it was called Procedural Aspects of International Law, or something else. They had a bifurcated program and Willop had asked me to become the chairman of it, which I did.

Mr. Reischel: Had he been the chairman before?

Mr. Carliner: He had organized it.

Mr. Reischel: He organized it, and he asked you to be its first chairman.

Mr. Carliner: I went on as chairman. The Procedural Aspects of International Law was something the international law professors were interested in doing, international law research. A fellow by the name of Hearst Tannem, who was a professor at Tufts University, sort of took over. They had this approach on procedural questions and other matters of law. The other part had to do with the substantive questions that related to freedom of speech and due process rights, and so on.

Mr. Reischel: When was that founded? In the 1980s sometime or earlier?

Mr. Carliner: It would have been, I think, in the '80s. I could get out my materials on it. One of the people I brought on to it was John Shattuck. He was a Washington representative of the American Civil Liberties Union. I knew him through that connection, and I

invited him to become a member of the International Law Group. That was his first contact with human rights because he's now the Assistant Secretary for Human Rights in the Department of State. He left Washington. He had been the Washington ACLU representative, and he became Harvard University's representative on governmental issues.

Mr. Reischel: Kennedy School?

Mr. Carliner: I think it was Harvard University.

Mr. Reischel: School of International Relations?

Mr. Carliner: It was a question of getting contracts for work; it wasn't a research study thing. But, anyway, he got to know the Clintons, Bill and Hillary, through someone. They went to Yale. Anyway, he got to know them, and now he has this position at the assistant secretary level.

Mr. Reischel: Well, Hillary Clinton was always very active in various children's rights organizations, and they may have intersected that way.

Mr. Carliner: Hillary Clinton – Edelman —

Mr. Reischel: Marion Wright Edelman. Yes.

Mr. Carliner: Marion Wright Edelman is the head of the Children's Defense Fund.

Mr. Reischel: And Hillary Clinton was on her board.

Mr. Carliner: Yes, that's right.

Mr. Reischel: Well, you didn't get Neier involved in your international organization?

Mr. Carliner: Neier did not get involved in that. Neier and I had never gotten

along very well. When I was on the ACLU board, we had a problem with something happening in Canada in which somebody was sent somewhere, and the Canadian organization wanted financial help from the ACLU in the United States. That came before the national board of the ACLU, and there was some controversy about it because it was argued that we are here to protect civil liberties in the United States, and we're not concerned about Canada. I was one of the moving forces on the board to say that the birds fly down from Canada, and all kinds of things. We can't ignore this. And the ACLU adopted a —

Mr. Reischel: You believed America involved more than the United States.

Mr. Carliner: So we got the ACLU to give a \$5,000 grant to someone who is a Canadian on this issue. It went further than that. I drafted, together with a guy from the ACLU in San Francisco, a resolution that the ACLU should take positions on the violations of human rights in other countries where it could be shown that the violations were, in part, affected by U.S. government activities. They had a program for bringing military officers from various South American countries up to a school over in Virginia where they were trained how to beat people up without marks showing on their faces, and so on. I may have overstated but —

Mr. Reischel: Oh, I understand. The School of the Americas, or something like that?

Mr. Carliner: This was a U.S. military facility that was training military officers there.

Mr. Reischel: Quantico?

Mr. Carliner: Quantico. This particular training program there. Anyway, they crafted a resolution dealing with what role the ACLU could take where the U.S. government was

financing activities which were deleterious to soldiers in other countries.

Mr. Reischel: So the idea was the American government shouldn't be allowed to suppress civil liberties elsewhere.

Mr. Carliner: Yes. It wasn't so broad as to say that the United States government should not give aid to countries which suppressed civil liberties because we may want to give aid for federal policy or other reasons. That would be too hard to achieve. It was designed specifically for U.S. government programs which were training individuals who would go back and, instead of shooting people, would beat them up with instruments that didn't show torture. Anyway, that passed, the ACLU never implemented it. Aryeh Neier said there was nobody at the ACLU who had the ability to do it. It happens that one of the main leaders in this area was a lawyer in San Francisco who was very much involved in this very issue, and there were other people around then, but after they adopted this resolution, the National Office of the ACLU did nothing to push it. When Neier left the ACLU, he picked up that very issue.

Mr. Reischel: Well, he founded the Human Rights Watch.

Mr. Carliner: Yes. He did that, and so he has pursued that activity, but he's done this independently. Well, he's no longer with the ACLU.

Mr. Reischel: Sure. He's no longer with Human Rights Watch. He left that about two years ago.

Mr. Carliner: Was he with Soros?

Mr. Reischel: Yes, I think he is. That's right.

Mr. Carliner: I remember when I had a meeting with the Secretary of State when Reagan was President. I think when Reagan was shot, and this guy was going to take over

the presidency.

Mr. Reischel: Oh, Haig, Alexander Haig.

Mr. Carliner: Alexander Haig. We had a meeting in the State Department where I put together a group of people, including Neier, to go with Father Drinan and various other people. The State Department wanted to eliminate the Bureau of Human Rights in the State Department. Publishing the Human Rights Report was a statutory requirement, and they wanted to eliminate that too. So we met with Haig and the State Department to urge that they continue this business with a statutory mandate. There was this issue when the Reagan administration was going to carry over on this. We were successful, in any event. But Neier participated in that, but he was very standoffish. I don't put him down for his lack of ability.

Mr. Reischel: Were you involved in all the Salvadoran battles with the Reagan White House on international human rights? Who was it? It was Elliott? What was the guy's name?

Mr. Carliner: Abrams? Elliott Abrams?

Mr. Reischel: Yes. He was their so-called human rights person.

Mr. Carliner: He was Assistant Secretary for Human Rights. I met with him with members of the law group. Abrams is, to put it mildly, a feisty fellow.

Mr. Reischel: He's a very acerbic fellow. I've heard him on the radio. But do you say that because of the positions he took or because he was disagreeable to deal with, or both?

Mr. Carliner: I don't know if he was disagreeable to deal with. His positions were not truly involved, but he was very political. Didn't he run for Assistant Secretary for Latin

America?

Mr. Reischel: That's right.

Mr. Carliner: So he had a political agenda. Interestingly, Abrams' father was an immigration lawyer in New York. Hyman Abrams.

Mr. Reischel: Oh really. And had you known him?

Mr. Carliner: Yes, I know him, casually. Abrams came to Washington. He originally worked for Moynihan.

Mr. Reischel: Really? I didn't know that.

Mr. Carliner: Moynihan worked for the Nixon White House.

Mr. Reischel: Yes he did.

Mr. Carliner: Nixon was much more liberal on domestic policy than the Republicans have turned out to be.

Mr. Reischel: Yes, he was, and he did not get full credit for being so.

Mr. Carliner: Moynihan was one of the people with the program in the White House. I don't know how any of the figures have come out, but nonetheless, Abrams is an apologist for U.S. policy in Central and South America.

Mr. Reischel: There were those who said that it was really an insult to the whole cause of human rights to have him acting as Secretary of Human Rights.

Mr. Carliner: That's true.

Mr. Reischel: You agree with that.

Mr. Carliner: There was somebody else who had been nominated, but he was left hanging high and dry.

Mr. Reischel: Did your international group get involved in the South African situation at all?

Mr. Carliner: Yes, we did. I was in the minority then. The International Human Rights Law Group was in favor of sanctions against South Africa, and Richard Lillich had done work involving sanctions having to do with Zimbabwe. I think sanctions were placed against Zimbabwe. Unfortunately, the sanctions against Zimbabwe were frustrated because some American company was exporting things to Zimbabwe, and they are brokered from South Africa and Willard had that as one of his major interests, and he pursued that. I've been to South Africa for the State Department.

Mr. Reischel: The U.S. Information Agency?

Mr. Carliner: Yes, U.S. Information Agency. I traveled all over South Africa, to all parts of it. When I was there, there was a Sullivan Plan in Philadelphia which was to give assistance to companies, to encourage companies to appoint blacks and coloreds and to, I shall not be precise, but not to have sanctions against South Africa, to encourage this development of employment for blacks and coloreds in South Africa by having companies bring business to their minority people. And because of that, I think there was a general consensus, and maybe an understanding among liberals in the United States, that everyone should support the Sullivan Plan. At one stage the policy changed. It was understood to be more beneficial to blacks than a boycott would. I became personally turned around on it because my view was that everyone should cooperate with the programs which would ameliorate the lack of opportunities for blacks there. At one stage the blacks in South Africa thought that they weren't getting anything out of it, despite the sanctions, that they should be opposed anyway because that would be a way of

putting pressure on the South African government. It was analogous to people going out on strike where they would lose money by going, and whether they recovered it after the strike was over, who knows, but none of the workers going on strike would make that sacrifice. So the blacks in South Africa were to endure the consequences of sanctions. Anyway, within the International Human Rights Law Group, I opposed sanctions. I'm not quite sure of the timing of it. I thought that the sanctions would be more punitive and were not likely to bring a change in the South African government. But the Law Group didn't agree with my position. I wasn't a domineering chairman. I tried to proceed by consensus, so they supported sanctions. Subsequently I got to know several ambassadors from South Africa to the United States. One was a guy named Schwarz, who was an Ambassador in the Netherlands. Later, as I learned, one of the sanctions that made the most difference was the monetary currency control. The ability of South African banks to convert their currency and conduct international trade, and so on, was pitiful. The boycotts and other things didn't make much difference, but the currency control was pivotal to the operation of the government. It was that sanction that brought about change on the part of the South African lower class. So there was this change in South Africa, but it was attributed to that specific type of recovery.

Mr. Reischel: Interesting, interesting. I remember the Sullivan Plan and I think you're right. There was a kind of liberal consensus that that was the way to go and I thought that the big difference in opinion was when Desmond Tutu said, "This is not a question of economics, it's a question of morality."

Mr. Carliner: Yes, Desmond Tutu came to the United States quite often, and we became very close. It may have been a number of times. One of the people who knew him best,

was Nancy Folger. I'm not quite sure if she was on the Human Rights Law Group Board or not, but, do you know her?

Mr. Reischel: No, I don't.

Mr. Carliner: She's a sort of high society person in Washington and there's a bank, a stockbrokerage firm, Folger's, etcetera., etcetera. That's her former husband's firm. She was a woman who knew Desmond Tutu. Anyhow, he spoke at a sermon at the National Cathedral one year. He was a very eloquent speaker.

Mr. Reischel: Yes, very persuasive man.

Mr. Carliner: So, I was sort of on the fringes of that. There were people who played a role. There was a Randall Robinson – is that his name – the guy who picketed the South African Embassy, and then went on a hunger strike?

Mr. Reischel: Randall Robinson.

Mr. Carliner: Randall Robinson, yes.

Mr. Reischel: Trans-Africa.

Mr. Carliner: Yes. Trans-Africa. I think they probably had more impact on public opinion by the picket line in front of the South African Embassy than any law had. The Human Rights Law Group got involved with picketing and hunger strikes.

Mr. Reischel: We got involved in that too, because of all those demonstrations. There was the old 1930 statute about demonstrating in front of an embassy.

Mr. Carliner: 500 feet, or about that.

Mr. Reischel: Yes, we ended up taking that to the Supreme Court. I had a chance to argue that case.

Mr. Carliner: Well, I was involved in that also, but I'm not quite sure what my role was.

Mr. Reischel: Did you file an *amicus* brief in that case?

Mr. Carliner: I don't know, I may have.

Mr. Reischel: You may have. We had to defend that. I refused to argue that case. I didn't want to defend the statute. The part of it that really upset me was the second part of the statute which said that a police officer, if he gave an order within 500 feet to disperse, if you didn't disperse you could be arrested. I never thought a police officer should be vested with law-making capacity. I found that very offensive, so I didn't. One of my staff members argued.

Mr. Carliner: That was one of the issues in Chicago when the American Civil Liberties Union took a beating because they sought to defend the right of the Nazis to march —

Mr. Reischel: Skokie.

Mr. Carliner: The *Skokie* case. And they say, especially, but other people too.

Mr. Reischel: Well, didn't Eleanor Norton argue that case?

Mr. Carliner: If that case was ever argued, I'm not sure about Eleanor Norton, I'm not sure whether it was argued.

Mr. Reischel: She argued one of them, and I thought it was one of them that had to do with the Nazis. I thought it might be the Chicago case.

Mr. Carliner: It could be; I don't recall her being in it, but, in any event, the ACLU lost lots of members on account of this.

Mr. Reischel: Oh yes, I'm sure.

Mr. Carliner: My position, I urged people, was that we were defending the right,

we were defending the right of the Nazis to have a march and what not, but the critical issue was it gave the police department the power to decide who should march and who should not march, and when you said you don't think the police should have the power to say disperse, it's the same business here of having the police say who could march.

Mr. Reischel: That's right, exactly so. Now the Supreme Court in the *Boos* case which is the one that went up on the 500-foot embassy ban, the Supreme Court said – well it's clear in context what they meant: a police officer couldn't just say disperse, it had to be almost breach of the peace. And it was perfectly clear to the Supreme Court that this is what it meant. The only problem was, it meant something different to the police. It meant something still different to the prosecutors. It meant something still different from all those to the district court judge. It meant something still different to the majority of the court of appeals. And a fifth thing different to the dissenter. So there were five different views of what it meant below, and the Supreme Court adopted a sixth view and said it was absolutely clear.

Mr. Carliner: That's why a few of the clarities of Supreme Court opinions mean you haven't read it. [Laughs]

Mr. Reischel: Right. Well, is there anything else that we should talk about?

Mr. Carliner: Well, you touched on my international areas. I was fortunate to have the USIA send me outside the country to the ones I mentioned.

Mr. Reischel: India, Angola.

Mr. Carliner: Angola, no.

Mr. Reischel: No? Was I wrong about that? I thought it was.

Mr. Carliner: I was in South Africa. And not all were for the State Department.

I went to Russia for the election, that was with the Law Group. I went to Bulgaria.

Mr. Reischel: Who was in charge in Bulgaria when you were there? This was in the '70s or early '80s?

Mr. Carliner: The communists got defeated in the election.

Mr. Reischel: Oh, so that was probably the late '80s then.

Mr. Carliner: I remember walking into a big football stadium with thousands of people accompanying the speaker. People cheering and cheering, and I was being cheered too, of course.

Mr. Reischel: Was that with the International Law Group or with the State Department?

Mr. Carliner: That was the International Law Group. The State Department wasn't involved in that. They sent me to Romania.

Mr. Reischel: Under Ceausescu?

Mr. Carliner: Yes. I went to Denmark, which was a very civil visit.

Mr. Reischel: Not too many civil liberties problems in Denmark I wouldn't imagine.

Mr. Carliner: No. There weren't many, but there was an interesting question, an economic one. Denmark had a policy that if you graduated from high school and couldn't find a job, you got 90 percent of the payment that you would have gotten if you found a job. So there wasn't a great deal of incentive to bother people who were high school graduates to go and look for work if you got 90 percent of what you were going to earn. It costs money to work. So they had a high rate of unemployment.

Mr. Reischel: I'll bet.

Mr. Carliner: The ambassador to Denmark, American ambassador, came out of a prominent American family. He got relieved or something. He was a spokesperson for human rights as a matter of fact.

Mr. Reischel: But your international law stuff didn't take you much into the Central American conflicts other than your negotiation with the State Department?

Mr. Carliner: Well, I went to Guatemala but not for the law Group. I just went there on a vacation that my wife and I took. We met people. There is a beautiful lake there. One of the most beautiful lakes in the world.

Mr. Reischel: Oh, I didn't know that.

Mr. Carliner: There was also a lake between Chile and Argentina which Theodore Roosevelt liked. Take your choice. But those were private trips. But, as I started to say, when I travel I just look at lakes and mountains and try to meet with people.

Mr. Reischel: So you met with some of the human rights activists in Guatemala?

Mr. Carliner: Yes. I guess so.

Mr. Reischel: You must have been there during that long, long struggle that was just brought, we hope, brought to an end.

Mr. Carliner: Well, the president of Guatemala, whose name began with a "C" Guatemala, of course, had a history in which the CIA and the U.S. government – were involved.

Mr. Reischel: 1954.

Mr. Carliner: Yes. The elections they had after that always elected somebody who could always be tolerated by the military, and they had one person who was elected whom I

was able to meet; I must have been there in some official capacity that I would meet with him. He was more interested in sleeping with women for which there were no penalties – it's just part of the office – than he was in running the country. His real accomplishment was being able to survive the military for four years. He completed his term, but he did because he didn't do anything to threaten the military, and he gave beautiful speeches, and I tended to take them at face value. I guess giving good speeches is better than not giving good speeches. Cerezo? There was a report done. A woman named Peg Roggensack in Washington from, I think, Arnold & Porter. Anyway, we did a report on Guatemala, so it wasn't just a vacation trip. Joe Aldridge – does name mean anything to you?

Mr. Reischel: That one doesn't, no.

Mr. Carliner: He's a minister. He's now at American University. He is a clergyman by occupation, but he's heavily involved with human rights issues. So we had a committee of five people who went to Guatemala, and we were preparing a report. I tended to be more tolerant of this elected president, Cerezo, than others were. The major issue was his land reform, and that was not an issue that had ever been touched, and the other was, of course, the military.

Mr. Reischel: Well, it's getting late.