

INTERVIEW NO. 3

December 11, 1997

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 December 11, 1997.

Mr. Reischel: Thank you for sending me that Ph.D. dissertation. It allowed me to learn a whole lot more about *Naim*. I take it you even learned or remembered some things that you hadn't remembered about the case or hadn't known.

Mr. Carliner: Some of the things I didn't know. That guy did an exhaustive job. He's getting a Ph.D. in West Virginia. And this article that he wrote is going to be published in some legal journal in a revised form.

Mr. Reischel: There are a couple of small, I think, one error for sure. He has you graduating from Georgetown, and it was GW.

Mr. Carliner: I didn't graduate from either one of them.

Mr. Reischel: Well, you got your degree ultimately.

Mr. Carliner: I went to National University and GW took it over. But to say I graduated from GW sort of overstates it, but the GW Alumni Association thinks I'm a graduate.

Mr. Reischel: Well, they claim, yes. But he's got it Georgetown, not GW.

Mr. Carliner: Well, I haven't gone through it to make suggestions, and I guess I should, but he's having it published in some journal. The guy is a partner with Fried Frank law firm in New York, Leon Sullivan. Sort of an ego gratification thing for him, because I'm not sure what stature he has as a Supreme Court lawyer, but he presides over these functions in Supreme Court chambers. I don't get to many of these lectures, but some of them are interesting.

And he presides over this when they have law professors giving lectures on Supreme Court Justices.

Mr. Reischel: He may be publishing in connection in this area?

Mr. Carliner: The *Supreme Court Historical Review* publishes articles on Supreme Court Justices but also on interesting Supreme Court cases. So it occurred to me that this might be that kind of issue which this guy might want; he's not a lawyer, he has a Ph.D. in Political Science, but he's having it published in something.

[Short break]

Mr. Carliner: I don't know where we left off; I guess I ramble.

Mr. Reischel: Well, I'm the one who rambles, I go back and forth. But why don't we just go over a little bit, some of the points. Let's talk about the *Naim* case again because now I know more about, it and now you've had a chance to learn some things that you didn't know about it. While we're both fresh on it, why not? One of the things that the Ph.D. candidate said in his draft was that you had some run-ins with the Dean of the college down there, Ivy Foreman Lewis?

Mr. Carliner: Ivy Foreman Lewis, yes.

Mr. Reischel: Who apparently thought that you were a rabble-rouser and a left-wing communist or something like that.

Mr. Carliner: Couldn't have been much of a rabble-rouser. The University of Virginia had only 2,700 students.

Mr. Reischel: Well, he knew who you were. I must have missed some of that when I talked with you.

Mr. Carliner: Well, I'm not sure how much of that had to do with my legal work and my role as an undergraduate student.

Mr. Reischel: Well, it's kind of an interesting background to the *Naim* case, I think.

Mr. Carliner: That would have nothing to do with Lewis. The *Naim* case came long after I was at the University of Virginia.

Mr. Reischel: Well, except as this Ph.D. candidate portrays it, the University of Virginia was a bastion of eugenics, and Foreman Lewis was one of the —

Mr. Carliner: He was a Professor of Biology there. I'm sure he believed in racial superiority. There's no question he believed in it.

Mr. Reischel: I think one of the theses of his piece was that the University of Virginia which was educating you at the same time was one of the bastions of eugenics out of which grew this law that you ended up attacking.

Mr. Carliner: I had no exchanges with the Dean of the University of Virginia on eugenics. When I went to the University of Virginia, I was active in very few organizations, and I organized a Virginia youth conference to bring together every youth organization in the State of Virginia, from the Republican Party to the Democratic Party, and what not. And if they called me a communist, there was a Young Communist League I didn't have any involvement with. There may have been communists in these other organizations, but I was not a part of it. We had the Catholic youth organizations, all the religious organizations, and it consumed a lot of the time. Virginia has 100 counties, and I forget how many universities and colleges, about 21, I think, and I spent a fair amount of time one year helping to organize this Virginia youth

conference. There was a lovely guy named Ewell Hall. He was the editor of the college newspaper. There were two great presidents in the student government. There was a guy from Kentucky. People there were more famous than I am, of course. The reason I was in this Virginia youth conference was that we got out a program where we were going to discuss issues of concern to people of our generation and youth. We were not to adopt any resolutions because there were too many points of view, and you couldn't have a resolution and have a consensus of opinion; it wouldn't make much difference, for this was to have an interchange of ideas. So we originally had permission to meet at the University of Virginia in one of the halls there. But three or four days before the conference, the University of Virginia was very concerned about the *Gaines* case. There were a number of cases involving whether black students could be kept out of state law schools and universities. This was in 19 —, whatever it was —

Mr. Reischel: About 1950, wasn't it? Oh no, it was 1940 or 1941.

Mr. Carliner: Anyway, the state university system had a state college for blacks in Petersburg, but they were extremely nervous, and they didn't like the idea of having blacks involved on the campus. I had arranged to have a professor from Howard University speak at the School of Education. He was a black person. This was something I was involved in. I was not regarded as a rabble-rouser; I may not have been regarded as anything, but I was involved in interracial activities. And black organizations were to take part in this Virginia youth conference. They came from Hampton Institute and Virginia State College and Petersburg and places like that. Well, three or four days before the conference was to be held, they revoked our permission to meet there.

Mr. Reischel: Because of the interracial nature of the group and the speakers?

Mr. Carliner: We weren't going to adopt any resolutions. They didn't know how the publicity would sit. This group proposed a resolution that blacks should be admitted to school. We couldn't do that.

Mr. Reischel: They were afraid they were going to do it anyway?

Mr. Carliner: Pretty much. Anyway, so we met at the University Baptist Church which was next door to the grounds of the University. We didn't have the aura, meaning the University of Virginia type of buildings, but we met nearby.

Mr. Reischel: And did you adopt those resolutions?

Mr. Carliner: We didn't adopt any resolutions.

Mr. Reischel: You didn't?

Mr. Carliner: No. We weren't adopting resolutions. I can't remember the turnout, but we had a large turnout from these people. I'm not sure how historic it was, but, nonetheless, there were these groups from every college in the State of Virginia, including the black colleges. So, there is no question I made Ivy Foreman Lewis nervous.

Mr. Reischel: Yes, you did indeed. Because this Ph.D. candidate had gone back into his papers, and he noted it.

Mr. Carliner: He came to see me, and I don't know what I did with him, but he gave me stuff that indicated I was —

Mr. Reischel: He also mentioned, and I think you mentioned to me earlier too, John Leslie Powell who was at the University of Virginia.

Mr. Carliner: No, Powell, that's not his name. He was a composer.

Mr. Reischel: He was a professor.

Mr. Carliner: Professor? I don't recall.

Mr. Reischel: Yes, that's what the piece says.

Mr. Carliner: Trouble is, I don't think that's right. I'll have to reread it. Powell was a composer in the 1920s, and he was a white supremacist.

Mr. Reischel: Very much so.

Mr. Carliner: But his musical themes were derived from black music.

Mr. Reischel: Oh my, one of the ironies.

Mr. Carliner: He wasn't a contemporary of mine. I don't think he was at the University. I think that he was simply, I'm not sure he was even in Charlottesville.

Mr. Reischel: Was he related to Justice Powell at all?

Mr. Carliner: Not that I know of.

Mr. Reischel: I was just wondering. The piece that this non-lawyer Ph.D. candidate, well, you can read part of the piece as an implicit criticism of your handling of the *Naim* case for not challenging racial classifications as being irrational.

Mr. Carliner: I remembered that in the piece. I don't recall now, but this particular state's was unconstitutional, and on the rational basis I would hesitate to give to a state authority which is sort of his rational basis for believing something if you had tests which said that blacks had lower IQ scores.

Mr. Reischel: The bell curve and all of that.

Mr. Carliner: I would avoid that kind of finding by a court. Of course, in *Brown v. Board of Education* the Court did rely on Myrdal's book, *The American Dilemma*.

Mr. Reischel: They did in part, and they also relied in part on the sociological

studies that showed that blacks' self-image was impaired by segregation. In fact, one of the criticisms of *Brown I* is that it relied on sociological data.

Mr. Carliner: I know there's much criticism of *Brown I* where they were relying on Gunnar Myrdal.

Mr. Reischel: Sure. But I think you were pretty farsighted in avoiding those sorts of debates by saying the Constitution just precludes, absolutely precludes, this sort of line drawing.

Mr. Carliner: Well, I haven't reviewed the subject since then, I must confess. But I would like to avoid areas where there are these subjective grounds for deciding one way or the other strictly how, the American Law Institute's black-line drawing, a clear line division, without having reason the grounds one discretionary or factual basis for doing it. I may be wrong about that. The so-called Brandeis briefs which have grown into the economic basis and knocking down laws.

Mr. Reischel: Well, the problem is the nature-nurture problem. How in the world do you ever separate out all the various sociological causes that go way back in history from the physiological or other? Seems to me that is impossible.

Mr. Carliner: It becomes a maze. Wasn't Moynihan involved in something about the black family?

Mr. Reischel: Oh sure. It's been as recent as the bell curve. One can take various data and ascribe differences to race when, in fact, it's almost impossible to abstract from history as to education and all sorts of other things. In fact, I was surprised, I haven't ever studied much about eugenics and some of the —

Mr. Carliner: Well, there was that Supreme Court decision of three generations of idiots are enough to justify sterilization. That was a Holmes decision I thought.

Mr. Reischel: Yes. I think it was the eugenists' finest hour. They thought that decision was wonderful. Some of the data that he recites in the piece indicate that Asian and Jews scored low on the Stanford-Benet test when it first came out. Of course, now on all standardized tests, the problem isn't that. I think, in terms of groupings, Jews and Asians do extremely well.

Mr. Carliner: The Chinese, I'm told by people who do brainwaves, sonograms or something, that the rate of the brain activity is the highest of any group. Whether that makes them superior, I don't know.

Mr. Reischel: Well, I think it was a shrewd judgment to avoid that stuff. Those sorts of battles in that day, I think, were losing battles anyway.

Mr. Carliner: It's somewhat ugly to have to go and argue these cases on that kind of ground.

Mr. Reischel: I think, yes, I understand that. What did you learn about the expediency that you hadn't known before? Did you have some inklings about what was happening at conference and how they were avoiding your appeal?

Mr. Carliner: I did not know the details of the judicial conferences there. I didn't have access to them. I don't think anyone had access to them, though I knew from the outside how they were doing it. The maneuvering that Frankfurter went through. I didn't know the intimate details of that. I may have mentioned to you a guy in the Solicitor General's office.

Mr. Reischel: Phil Elman?

Mr. Carliner: Phil Elman, that's right. He did a piece in the *Harvard Law Review* a couple years ago, which I think was my first awareness of that. But, anyway, Elman had been a law clerk to Justice Frankfurter.

Mr. Reischel: I think he was in the SG's office.

Mr. Carliner: He was an ex-Frankfurter law clerk, and he had maintained a continuing personal relationship with Frankfurter. Frankfurter had a very warm relationship with his law clerks. I knew some of them. One was a guy named Abe Chayes. Anyway, he had this very close relationship with law clerks, and I guess he used them, they used him, or whatever it was, but Elman reveals things which one did know.

Mr. Reischel: It seems from the various clerks' memos that Frankfurter was, in fact, leading the charge not to take *Naim*, to avoid it at all costs. I wonder. This piece is entitled "Expediency in Principle." I wonder how you look at it now in terms of whether or not, not as lawyers, whether or not it was a correct thing for them to duck an appeal the way they did with you, and whether it proved to be a wise thing in terms of the way the law developed.

Mr. Carliner: As a lawyer for *Naim*, of course, he was relying on me, on how to do the decision, but I am a "damn the torpedoes straight ahead" person, I think. The expedient thing to do, which I think I have mentioned before – Phil Elman and others said, "Don't file a notice of appeal because they will deny it. It's a decision on the merits. File a petition for *certiorari*; if they deny it, it's not an adjudication of the issue." I said, "Thank you very much," and we got another denial. So I wanted to put it on the strongest legal basis for doing it, and since an appeal presented the constitutional issue in state court, I exercised that, but Frankfurter was able to outfox that.

Mr. Reischel: He did, but one would wonder. I think it's a very hard question in a democracy where you have a court functioning whether or not it's a proper role for them to do something like that where really the law required that they take the case.

Mr. Carliner: Well, that's one of the issues that's been debated. I must have mentioned before a professor at Columbia Law School who gave a lecture on this. I only know about it contemporaneously, and I forget his name. Anyway, he gave a lecture on the *Naim* case itself and how it was handled by the Supreme Court. It was some time later and I didn't have a lot of time to spend on what had happened in the case.

Mr. Reischel: No, you were a practicing lawyer, that's right. But now looking back on it, I wonder what would have happened had they taken it. I wonder whether the history of race relations in this country would have been adversely impacted. Obviously, that's what he was getting at.

Mr. Carliner: Do you know the story about Vinson and Frankfurter going against *Brown v. Board of Education*? When it first came before the Supreme Court, Vinson was the Chief Justice. You've heard this, I guess.

Mr. Reischel: I think I have, but I don't know if we've talked about it.

Mr. Carliner: Anyway, the case came before the Supreme Court. I'm not sure how it got there jurisdictionally for the Court to decide. Vinson believed that separate but equal was still constitutional on that day. What happened, by the time the case came up for decision, Vinson had died, and Warren had become the Chief Justice, and Frankfurter was quoted as saying, "Now, I know there's a God." You've heard that.

Mr. Reischel: Yes, I have heard it. So Frankfurter was, as one would expect him

to be, in favor of integration.

Mr. Carliner: Sure. He would be opposed to segregation, you could put it that way.

Mr. Reischel: But he was afraid that *Naim* and interracial marriage was just too hot to handle.

Mr. Carliner: Yes, no doubt. Cloud the issue.

Mr. Reischel: We'll talk a little bit. I know you've done a lot of traveling and seen other societies, including South Africa, trying to grapple with their pasts. I wonder how lucky we have been to manage the transition from a segregated society to one that certainly isn't — where segregation is considered to be morally reprehensible. And we traversed that ground, oh for sure, in 30 years. But the public ethic changed completely, it seems to me. Were we fortunate in that, and more to the point, did their ducking the hard questions for a while contribute to the fact that we were able to make that transition without real violence? You must have thought of that when you've gone to other societies that are trying to go the same route.

Mr. Carliner: Well, I think that one has and can oppose legal segregation, requiring groups to separate and segregating the schools, and so on and so forth, as unconstitutional. But to say that we've eliminated segregation, you'd have to blink your eyes and —

Mr. Reischel: Oh sure, but I think the public morality is that —

Mr. Carliner: It is no longer acceptable.

Mr. Reischel: Yes, it's unacceptable. In polite company, no one can say I'm in favor of segregation in the United States anymore. You have to be in groups that are not within

the consensus mainstream.

Mr. Carliner: Yes, not in the mainstream, but it's been said that the most segregated institutions in the United States are churches on Sunday morning. I'm sure you've heard that since church-going is a major activity on Sunday morning, especially around Christmas time. Not many churches are integrated. The churches are still mainstream churches and black churches. So, after all, President Clinton is conducting discussions on race around the country.

Mr. Reischel: Oh sure, and I'd be the last one to say that there aren't severe problems still, but nevertheless —

Mr. Carliner: Even so, discrimination against blacks is much reduced.

Mr. Reischel: And the public ethic about it. Maybe I'm naive, but I think the public ethic has changed 180 degrees since before World War II.

Mr. Carliner: Sure, no question. The Army did a great deal of it too. Eliminated it.

Mr. Reischel: Yes, and Truman's desegregation of the armed services. Was that all caused by the fact that we were fighting the Nazis and their racial doctrines, or were the times already shifting?

Mr. Carliner: I don't think it's the fact that we were fighting the Nazis. It happened to be while I was in the Army, an I & E person. They posted a bulletin every month dealing with issues to aid morale and education. One of the issues tells of the oppression of prejudice. The Army had a fellow named Julius Schreiber who was a psychiatrist and lived in Washington. They had these sessions where soldiers would meet, and I led discussions now and

then on issues such as prejudice and other things. These were white units.

Mr. Reischel: Sure, the Army itself was segregated.

Mr. Carliner: Truman was the one who brought about the desegregation of the Army, which Roosevelt could not do. But what I'm saying is that officially it's been changed, but socially it hasn't been. I think that the greatest change in terms of attitudes against groups which were not liked is towards homosexuals. I think the attitude toward homosexuals has sea-changed. The other day somebody got elected to the City Council as an avowed homosexual. Of course, there was a seven percent turnout vote.

Mr. Reischel: That's between 1970 essentially and 1985 or so. In terms of the social change, at least among urban populations. I don't know if it's the same everywhere in the country, but at least it seems to be where there are large concentrations. In most urban places.

Mr. Carliner: Yes, most urban areas. Even the religious community, the Catholic Church is torn apart on this issue. Maybe no one knows the problem, but the priests are sometimes homosexuals, and there's a problem there. I think that in terms of public attitudes, it is hard for me to make a comparison whether the avoidance of homosexuals is greater than the avoidance of blacks. I think that homosexuals tend to meet with each other and blacks, I think, even blacks tend to socialize with each other. I have a number of blacks who are close friends. My wife and I would entertain people who are black in our house from time to time. We very rarely would see a return invitation from a black family. What the reason for that was I can't say.

Mr. Reischel: But the public attitude, do you think that the public attitudes were changed in large part because of the law, or do you think that the law reflected the social changes?

Mr. Carliner: I think the law reflected the social changes. The law is not going to prevent you from engaging in obvious and egregious discrimination, but, I think, in working relationships in offices that black and whites are very friendly; no racial prejudice there.

Mr. Reischel: I've heard it argued that the Warren Court's saying that racial segregation is unconstitutional and is, in fact, illegal state-sponsored discrimination, had a considerable moral effect in the country in terms of bringing people around to seeing that it was wrong or should be considered as a wrong.

Mr. Carliner: I think that's true. It's the Supreme Court of the United States speaking as the force that changes public opinion.

Mr. Reischel: Of course, I've seen it more clearly with respect to homosexuality. The Court there is clearly following instead of leading. In 1986, in that Georgia case upholding the sodomy statute, Justice White's language was quite strong in condemnation of homosexuality. Whereas, I think it was last year or the year before, finally in the Colorado case where Colorado had precluded localities from adopting gay protective ordinances. The Court was very, very different. Its language was quite a lot different. But there, at least with respect to that, I was a mature lawyer while that change went on, and the Court was definitely following. Do you think that was happening at the same time with respect to race or were the courts leading more with respect to race back in *Brown* and at the time *Naim* was pending?

Mr. Carliner: There was proposed civil rights legislation and desegregation of the Army.

Mr. Reischel: Well, desegregation of the Army was done by Executive Order, and Truman must have had some political backing for doing that and some confidence that it wouldn't do him in. So there was something. But civil rights legislation went nowhere until

1950, until Eisenhower's second term. The year 1957 was the first time that civil rights legislation actually got enacted.

Mr. Carliner: Yes, well even stronger legislation came in Johnson's administration.

Mr. Reischel: Yes, but that's 20 years, 10 years.

Mr. Carliner: These things, well they changed, but in terms of social change, that hasn't come about.

Mr. Reischel: No it hasn't. But all this was kind of my background thinking about whether or not — As a lawyer I can't say that what Frankfurter did was the right thing in *Naim*, but he was trying to be a statesman in saying —

Mr. Carliner: Well, he was trying to be a politico and preserve —

Mr. Reischel: To keep *Brown* going without shattering the consensus —

Mr. Carliner: Have the Supreme Court go too far.

Mr. Reischel: I'm wondering if he was right, or if he was wrong as a statesman.

I can certainly understand why he thought it was politically explosive.

Mr. Carliner: As an attorney representing a particular point of view, I think that my responsibility was to push for what I thought in the interest of the goal was right. The Justice of the Supreme Court has a larger frame of reference to decide what is right. I'm about to say one can't fault him for that, but lawyers always do find faults.

Mr. Reischel: [Laughs] No litigator I've ever known likes to lose.

Mr. Carliner: He was right really, but —

Mr. Reischel: Anyway, I thought the whole piece was quite interesting. I was

also quite interested to see that Simon Sobeloff, later judge on the Fourth Circuit, was the Solicitor General at this time. Of course, later on, on the Fourth Circuit, he was one of the most liberal judges, circuit court judges in the country. He wasn't real anxious for *Naim* to be taken either.

Mr. Carliner: I don't remember. That article is sort of a redline item that is fascinating; better than going to a psychoanalyst to feel better. An ego-gratifying thing to read this, so lavish on me, but I don't remember what his role was.

Mr. Reischel: Well, he said Sobeloff was afraid of the case. He really didn't want it to be decided by the Court.

Mr. Carliner: I didn't remember that.

Mr. Reischel: And that Elman had talked to him before he had talked to you or before he got back to you.

Mr. Carliner: Sobeloff was there in the Republican administration. No Republican or Democrat would have made much difference on this issue.

Mr. Reischel: I'm sure, that was after Eisenhower was in. Sobeloff would have been the Solicitor General. Anyhow, your case had an awful lot of people doing an awful lot of soul-searching at the time. And still, as to whether or not they acted correctly?

Mr. Carliner: I guess my taxpayer's dollars were being paid for.

Mr. Reischel: Well, you had a lot of people working. You were putting them to work for your taxpayer dollars.

Mr. Carliner: As a lawyer, people have asked me how many lawsuits I worked on. My favorite lawsuits in all of my time were against the Attorney General and Secretary of

State. I enjoyed suing those people.

Mr. Reischel: Well, you like frying big fish.

Mr. Carliner: Well, they were just the named defendants; they were not really at issue.

Mr. Reischel: Speaking of the homosexuality cases, I did go back and looked at your *Scott v. Macy* cases. I didn't realize that you were up to the circuit twice. Speaking about the revolution. You were on the leading edge of that one too. The first of those cases was in 1965. I just glanced at them this morning again.

Mr. Carliner: That didn't come back in court did it?

Mr. Reischel: Yes, the first time it went up, you got a remand on a decision written by Chief Judge Bazelon, and on that one they had kept him out because of immorality. Basically, there was a remand back to, I guess it was, the Civil Service Commission.

Mr. Carliner: It was a Civil Service case which goes to a district court, and it can't go back to the Civil Service Commission directly.

Mr. Reischel: The agency had to clarify "immorality." It was too vague. That was the '65 decision. Then they clarified in '68, and you took it back up. And you got another decision. This one was written by, not by Bazelon, but by the third judge.

Mr. Carliner: The one from Illinois.

Mr. Reischel: His name escapes me right now. But there they held – The second time you won that one too, because what the Civil Service Commission had done, apparently, was they had said something about homosexuality, but then they tried to hang him on the fact that he hadn't cooperated. Basically, the opinion skewered them because they hadn't made it

clear which ground that they were resting on. And so they didn't have a firm and clear basis, despite the remand, for keeping him out. So you won it the second time. But neither one of them squarely held that the Civil Service Commission couldn't, although there were intimations, especially the second opinion, that the Civil Service Commission couldn't penalize someone for a homosexual past. They conceded that current homosexual acts which were illegal would be enough to disqualify someone —

Mr. Carliner: I remember making the distinction between “being a homosexual”— someone could be a virgin homosexual or often engaged in homosexual conduct. But I don't think they ever showed that Scott engaged in homosexual conduct.

Mr. Reischel: No, he asked them to presume that he was a homosexual.

Mr. Carliner: Gay.

Mr. Reischel: A homosexual, that's right. They avoided somehow the procedural posture, avoided allowing a finding, and that's ultimately how the case was won.

Mr. Carliner: Well, thank you for refreshing my memory on this. I have not looked at those briefs and records, which I still have.

Mr. Reischel: But, boy you were way out front on that too, because I know that as late as 1970 the general societal ethos was that homosexuality was a deviance of some sort.

Mr. Carliner: It wasn't only way out from general society, but, to my chagrin, in the American Civil Liberties Union. I'm not sure I mentioned this to you, but, I was the chairman of the ACLU chapter in Washington, and as chairman I usually didn't take cases, but no one among the volunteer lawyers would take the case. He's a homosexual.

Mr. Reischel: The Scott case?

Mr. Carliner: Yes.

Mr. Reischel: So you had to take it yourself?

Mr. Carliner: I had to take it myself. Bruce Scott, who happened to be working in the ACLU office, was the plaintiff. It was a big case, of course. I remember being on the national board of the ACLU at the time, and one of the other people on the Board was Patricia Roberts Harris. She was professor of constitutional law at Howard University then. She hadn't gone to her subsequent positions of high importance. She supported the rights of homosexuals. There was one guy, a management professor, I think, at Columbia University who said he wouldn't want his daughter to be taught by a homosexual, or his son, because of the effect it might have. I rejoined that most of the problems between professors and students were between male professors and girl students, it was heterosexual activity, not homosexual activity (laughs).

Mr. Reischel: Would be a lot safer perhaps for her to be taught.

Mr. Carliner: The ACLU adopted this, but it was very controversial.

Mr. Reischel: The National ACLU adopted the position that you advocated?

Mr. Carliner: Yes, but it was not free from controversy. Anyway, the ACLU doesn't always do things by unanimous vote.

Mr. Reischel: I know there are always disputes within the ACLU. A contentious, more opinionated group is hard to find, but I take it that this was even more heated than most.

Mr. Carliner: It went through, but it was controversial.

Mr. Reischel: You also had a Supreme Court immigration case on homosexuality?

Mr. Carliner: Yes. *Cert.* was always denied in those cases. We never won.

The issue came up in the immigration cases we had because there was a phrase in the immigration law regarding homosexuals as being psychopathic. That was the language.

Mr. Reischel: *Boutilier*, I think was the name of the case?

Mr. Carliner: Yes, you're right. I do remember the case. The guy was convicted of disorderly conduct, which is a petty offense. But when they arrested someone who was engaged, basically soliciting on the street, and there was a disorderly conduct (sexual pervert) that indicated the nature of the disorderly conduct action, that colored the decision. If he was just arrested for disorderly conduct, that would not be a ground for denying anyone permanent residence or any other kind of becoming a citizen. But when you say "sexual pervert" that raises all kinds of issues. But the Supreme Court never took those cases. I don't think so.

Mr. Reischel: I thought it did.

Mr. Carliner: There may have been one. There was one in which one of the opinions, it may have been Frankfurter, whoever it was, took judicial notice of high officials in the State Department being homosexuals. It wasn't quite that clear. They were talking about Sumner Wells.

Mr. Reischel: It looked like, I think you were *amicus curiae* in the case for a group to reform the laws concerning homosexuality, or something like that, and it looked like there was a challenge to the law on the ground that there was no consensus in the psychological community that homosexuality was, in fact, a disease.

Mr. Carliner: Yes. I remember writing a brief in which I went over all the factors which may or not have made a person a homosexual. I don't remember those now,

whether it was genetic or social or because you didn't like your father, or different grounds.

Mr. Reischel: At one point homosexuality was, in fact, accepted among the psychiatric profession as being an abnormal condition, and then they changed at some point.

Mr. Carliner: That became very controversial to regard it as "abnormal."

Mr. Reischel: Right. At some point they changed, and I think this case was before then, but not before a real movement had built within the psychiatric profession to change it. But the Supreme Court, and I think it was the Supreme Court, just blew past it all by saying, "We don't care what the professionals think about this; what we care about is what Congress thought about it, and Congress clearly meant to use this term." The legislative history is absolutely clear to bar people who are homosexual, and that was the end of the matter.

Mr. Carliner: Well, if that language has psychopathic personality in it, that became a challengeable term because of its vagueness.

Mr. Reischel: So ultimately you say it was changed?

Mr. Carliner: I think that that statute was changed to eliminate that.

Mr. Reischel: Is homosexuality now a grounds for excluding people?

Mr. Carliner: No. When I was coming up, people had to be referred to a psychiatrist, and a psychiatrist only knows what a patient tells them, and no homosexual patient would tell a psychiatrist in this context that he was a homosexual. The psychiatrist couldn't determine if someone was homosexual.

Mr. Reischel: Were they referred to government psychiatrists or government-contracted independent psychiatrists during this period for probing of that issue? In the particular case it looked like there had been an independent evaluation by somebody connected with

Immigration.

Mr. Carliner: I think that was the Public Health Service. I remember going to the office of someone on 12th and L Streets, someone who was working in the Public Health Service. They wouldn't let you go to your own psychiatrist.

Mr. Reischel: Of course, your own psychiatrist wouldn't testify anyway.

Mr. Carliner: That's true, yes. You'd have to go to a U.S. Public Health Service person. But that was always a waste of time as far as the government was concerned, because the psychiatrist was not comfortable playing this role, even those working for the government. They have a squeamishness about doing that.

Mr. Reischel: So being a homosexual was even worse than being a communist in those days, I take it.

Mr. Carliner: No, I'm not sure. The communists, they held a very broad definition. You could have subscribed to the *Daily Worker*. You may subscribe to the communist newspaper because you were just interested in seeing what it had to say, but subscribing to the *Daily Worker* would be grounds for banning you. There's that phrase that defined who a communist is and being a member of the Communist Party was not necessarily required because associating with them or identifying and believing in their doctrines was enough to —

Mr. Reischel: To exclude you?

Mr. Carliner: Yes. So that was a ground that caught lots of people.

Mr. Reischel: Oh my.

Mr. Carliner: I have to do more research on this, though. My memory of it is

not precise enough.

Mr. Reischel: Well, what's absolutely clear is you saw, with respect to homosexuality, what you saw with respect to race. And you saw it before most people did, that you deal with people and not with stereotypes. Not with generalizations. So you were out ahead of the curve on that one.

One of the cases you mentioned to me the last time we talked was – came out of your immigration practice – was the Justice Powell decision saying that a school could require citizenship as a condition of employment. So I went back and I glanced at that too. You must have found it terribly ironic for Powell to be arguing that the public schools are schools for democracy, and you've been involved in all this effort to get the United States to give you and others in the District a vote?

Mr. Carliner: One thing about that case irritated me. I was heavily involved in the case, but the attorney who was chosen to argue, I had no control of it, was a fellow who worked for the ACLU. And he said he had to argue because the case came from the client who wanted him to argue, which was a lot of baloney because the case was one that was really arranged by the ACLU; it could be anybody. One of the issues that came up was whether the teacher is a role model for these students. Powell took the position that they were role models, and it was quite proper for the state to require that teachers be citizens, because how could you be a role model to urge people to have loyalty to the United States and have civic obligations and certain duties? I knew, but the guy who argued the case didn't know, that Powell was the Chairman of the Board of Education in the State of Virginia, and he had a long history in this sort of thing. The question of being a role model, I think, could have been answered, may not have

been answered persuasively, but you do not have to be an American citizen to be a role model in terms of extolling American democracy. Or if you're teacher of physical education you only have to be a person who knows how to teach physical education, and you're not teaching democracy. Or if you're teaching French, what difference does it make if you're a U.S. citizen? A French citizen might be better teaching on that assignment. That's a detail, so it might not have made a difference, but I was miffed that I didn't have the opportunity to have an exchange with Powell, being aware that he was the Chairman of the Board of Education, the State Board of Education in Virginia, and had a particular sensitivity to it.

Mr. Reischel: I'm sure you could have found lots of role models who were not citizens that Justice Powell would have had to agree were worth emulation, starting with Lafayette.

Mr. Carliner: One of the common anomaly of things that people frequently know, but recent immigrants to the United States are much more patriotic than people who are born here, because they have come here —

Mr. Reischel: Sure, as converts are generally more devout.

Mr. Carliner: Yes, that's right.

Mr. Reischel: It's a very strange opinion.

Mr. Carliner: It's a slippery kind of argument.

Mr. Reischel: And an unusual case. Lawyers don't have to be citizens. Police officers can be required to be, and teachers. But I guess lawyers were viewed as inherently subversive anyway.

Mr. Carliner: Well, better not coercive effect as policemen do, assuming a

citizen should not be subject to arrest by some alien (laughing).

Mr. Reischel: [Laughs] Doesn't seem to make a whole lot of sense. You also mentioned to me last time, and I glanced at a little bit, your local law practice and your acupuncturist case. Frederick Douglas Lewis was his name – the doctor's name who was your client was Dr. Frederick Douglas Lewis – who got suspended for three years because he wasn't closely enough supervising acupuncture going on in his office.

Mr. Carliner: Was that my case? I remember there was a woman, who I think was a psychiatrist, who organized this group of former acupuncturists. She did a business venture. But Lewis, I don't remember that name.

Mr. Reischel: Well, you argued it, according to the reports to the D.C. Court of Appeals, and won it and got it thrown out.

Mr. Carliner: Well, the Court in the original jurisdiction was a judge, a rather short judge. I'm sure you know him.

Mr. Reischel: Ted Newman?

Mr. Carliner: No it wasn't Newman. Newman was on the Court of Appeals.

Mr. Reischel: Oh, Ugast was the General Sessions Court judge who subsequently became Chief Judge of the Superior Court.

Mr. Carliner: Yes, a lovely fellow. He was the judge before when I argued the case in the Superior Court, or whatever it was, and he ruled in my favor.

Mr. Reischel: And so did Newman in the Court of Appeals. In fact, the Court of Appeals was unanimous in your favor. You had wonderful facts though. The medical society basically took away the doctor's license for three years, which is pretty strong medicine, because

some people he had employed had engaged in acupuncture when he was in Europe on vacation, and when he got back and found out about it, he fired them.

Mr. Carliner: He was supposed to supervise them, and you can't supervise them if you're in Europe.

Mr. Reischel: Well, they weren't supposed to be doing it when he was in Europe. Ted Newman subsequently wrote another opinion going after the medical profession's exclusion of naturopaths. He clearly saw this effort and, maybe from your case, the medical society as being a guild effort and not one that was too much interested in the welfare of the patients. You mentioned to me, too, a number of St. Elizabeth's cases that you were appointed to as well.

Mr. Carliner: Yes, there was a case of a guy named Millard. I was appointed by the court. Millard was arrested for exposing himself, and that was a petty offense, and you would go to jail for ninety days. He did it three or four times, and so he was committed to St. Elizabeth's Hospital as a sexual psychopath, or something like that.

Mr. Reischel: So the commitment was indefinite.

Mr. Carliner: Yes, it was indefinite at St. Elizabeth's, and he was getting a treatment course by being there, just with people. Whatever it is that causes somebody to masturbate in public, I had to explain that maybe someone else did that. The impression was that he was a danger to anyone.

Mr. Reischel: Danger to himself or others. Right.

Mr. Carliner: Anyway, the judge who was hearing this case came out of the Court of Customs and Patent Appeals, I forget his name. I had Richard Dabney, who was a

psychiatrist at St. Elizabeth's Hospital, and the question was whether a woman who saw this act, was she endangered? Have I told you this? This is funny, a collection of anecdotes. Dabney said, "No she wouldn't feel endangered. She might tell her husband about it that night and some women might even enjoy seeing it." At which point the judge sat bolt upright in his chair and said, "I would find that any woman who said she enjoyed herself was mentally ill." So, (laughs) that was a rather sharp intuitive conclusion based on this behavior. I lost that bid before him, but it went to the Court of Appeals, and there was a case there simultaneously, two cases were argued together, and Bazelon was the judge sitting on the court, and the issue was whether – one of the issues was whether confining a man who committed these offenses indefinitely with no treatment while he was being kept in prison in effect, in confinement with no treatment — The position of the psychiatrist was that being in the hospital was treatment.

Mr. Reischel: Regardless of whether or not anything is going on that's beneficial to you?

Mr. Carliner: And Bazelon was very heavily involved in issues relating to mental health, as you know, of course.

Mr. Reischel: He was fascinated by psychiatric problems in the law.

Mr. Carliner: So there's an opinion in which the *Millard* case was included. It wasn't the leading decision; the one with it was. Bazelon held that confining people at St. Elizabeth's was – I'm not sure it was unconstitutional – not within the statutory basis. Cameron, is that the person's name with this hospital?

Mr. Reischel: Maybe, I didn't find it, but we spoke about it.

Mr. Carliner: The lawyer who handled that case happened to be a friend of

Bazelon's, and he was pursuing this issue there, a military hero, that was a leading case on keeping people in the St. Elizabeth's Hospital indefinitely without treatment.

Mr. Reischel: I think it led to the Ervin Act, congressional legislation, which is still in effect today, which requires reviews every six months or every year. I think it's every year. No one can be kept in without constant review and a finding each time that they are still a danger to themselves or others.

Mr. Carliner: Well, there's another effect of this which may have had harmful results. St. Elizabeth's Hospital couldn't keep people unless they were treating them, or something, and so they released a lot of people from St. E's who were mentally ill. So you had the streets full of such people.

Mr. Reischel: Who couldn't take care of themselves?

Mr. Carliner: Who couldn't take care of themselves, were no danger.

Mr. Reischel: Dangerous to themselves?

Mr. Carliner: I'm not sure that they were a danger in the sense they were suicidal, but they were just homeless.

Mr. Reischel: Right, in a sense that they couldn't sustain themselves.

Mr. Carliner: There was a little controversy about St. Elizabeth's Hospital people who needed care to be on the streets. They were no danger, they were just, as you said, unable to take care of themselves. So the net effect of it may not have been socially useful.

Mr. Reischel: Well, actually what happened subsequently was, there's a provision of the Ervin Act that says that the government has to provide treatment in the least restrictive environment. And a group of activists in this area brought a class action, I think,

before Aubrey Robinson many years ago. The case was settled by the District government. Their theory was that this meant that the District government couldn't put everybody in St. Elizabeth's. That if people were capable of more freedom in a less restrictive environment —

Mr. Carliner: Then they set them up in halfway houses.

Mr. Reischel: Yes, exactly. They had to establish a whole range of different kinds of facilities which would give greater and greater freedom and put people in those and, in fact, the case was settled, and there was some agreement to that effect. Ultimately, that's what has happened to our mental health system.

Mr. Carliner: People weren't just let out on the streets.

Mr. Reischel: Originally they were, but then this action was brought, and the result of the action was a whole lot of other institutions were created for people who had other sorts of, but lesser, problems. In the long run it worked, in any event, because the immediate problem it created also obviously required somebody to take care of them.

Mr. Carliner: Even so, one sees a lot of people in the street who don't seem to have a place to live and —

Mr. Reischel: And, who also seem to have mental problems.

Mr. Carliner: Yes.

Mr. Reischel: Well, there's still a tension between libertarianism on the one hand and coercive treatment. Under the Ervin Act, for those people who really object, and who seem to be functional enough so that if services are provided to them on the streets they can live, the District government, has to provide services on the street. There are mobile vans that go around with medical people to check on these people who are in various places.

Mr. Carliner: A lot of these people don't ever go in the houses. They think they are going to be abused by people.

Mr. Reischel: They're afraid. They don't trust anybody. So even the results of that haven't been as deleterious as they were originally. I'd like to talk a little bit about your *Baker* cases. Your two *Bobby Baker* cases.

Mr. Carliner: The *Baker* case. It came to me from a guy named Ralph Hill, who'd been a page at the Capitol. I'm not quite sure what the posture of it had been, but then Baker was a very powerful figure in the Senate.

Mr. Reischel: Well, he was Lyndon Johnson's right-hand man before, when Johnson was Majority Leader, right?

Mr. Carliner: Yes. Ralph Hill was a page and sort of grew up in the ambience of Congress at Page School. He was in the vending machine business and had a contract in Waterview, or some place. Bobby Baker took it away from him because he was in business moonlighting for that. We brought a lawsuit against Baker, and there's a paragraph 16 in my complaint in which I made sensational allegations, and I hauled the case into court. It was unusual that I had a case which had newsworthy aspects to it. I dropped a copy of the complaint off to the press room at the courthouse, and for several days nothing happened. But then a magazine in St. Louis, I think, published a story about it. At that point it became public somewhere in that Ted Patrick could pick it up without – usually he wouldn't cover a case which made serious allegations, not when the complaint was filed, but when there had been pleadings in court. In theory, then, it was a judicial action that was privileged and subject to suit. But when this was published by this magazine in St. Louis, the newspapers picked it up and it became a

front page newspaper story in Washington.

Mr. Reischel: And this was while Lyndon Johnson was President, right?

Mr. Carliner: No, he wasn't President then, I don't think. Maybe he was, could have been.

Mr. Reischel: I'll check.

Mr. Carliner: He may very well have been President. I've got a lot of clippings on this somewhere. But anyway, the — hit the fan. I was taking depositions on this from Senator Cannon and Senator Byrd and various other people, all the people involved in this thing.

Mr. Reischel: Because they were chairs of committees?

Mr. Carliner: They were involved in various goings-on. There was a celebrated house at 316 A Street which Baker maintained for Senators who wanted to go sleep with women and not waste time courting them; much quicker that way.

Mr. Reischel: This wasn't one of your sensational allegations.

Mr. Carliner: No, it was a spin-off from it.

Mr. Reischel: I take it your sensational allegations were that Baker was himself —

Mr. Carliner: Was engaged in, what he did was to interfere with this contract —

Mr. Reischel: He was profiting personally?

Mr. Carliner: Profiting personally. There was a major vending machine company that was involved in it. Baker was taking a contract away from this guy, Ralph Hill.

Mr. Reischel: Was he a principal in it, or was he just getting a kickback?

Mr. Carliner: Well, Baker was one of the defendants in the case.

Mr. Reischel: Right, no, but what was his relationship to the vending machine company? Do you recall?

Mr. Carliner: Baker's relationship to the vending machine company was he was getting a percentage of the business.

Mr. Reischel: Oh, a kickback type of arrangement you thought?

Mr. Carliner: I guess the complaint itself is on file in the District Court. I doubt I have files on this, but in any event, that generated an enormous press interest. That firm kept its public relations person busy, but I handled all the telephone calls. They'd conduct press conferences on it, and I'd talk to newspaper people about it, and so this case went on for some time. Edward Bennett Williams represented Baker.

Mr. Reischel: And you had Judge Holtzoff. There are two published decisions in it. Both on your attempts to obtain discovery. One against the Attorney General of the United States in which you had apparently issued a subpoena *duces tecum* to the Attorney General of the United States seeking the Justice Department's files on Baker.

Mr. Carliner: Who was the Attorney General then, do you know?

Mr. Reischel: That I'm not sure of.

Mr. Carliner: So would Bobby Kennedy still be Attorney General? The Deputy Attorney General was Katzenbach.

Mr. Reischel: That's right. Didn't he succeed Bobby Kennedy too?

Mr. Carliner: Katzenbach is somebody I had dealings with, and I learned that Katzenbach was under instructions to keep Lyndon Johnson informed on a day-by-day basis about what was happening in the *Baker* case. So Johnson had a personal interest. Katzenbach

was on the spot on that. This wasn't the suit in which the government was involved.

Mr. Reischel: Right. But you were seeking government documents with your —

Mr. Carliner: Yes, and seeking depositions. At any rate, the suit went on for a while and I was going to take a deposition of Senator Cannon, of Robert Byrd, all these people who were involved in dealings with Baker, and I thought the testimony would be prejudicial to Baker. Anyway, we got a settlement. Edward Bennett Williams came to my office. I remember I settled it for too low, I think, but nonetheless, we met in the men's room in the building and negotiated it. Carol Tyler was a woman involved in the case. Anyway, I hadn't prepared for this review, but I've got lots of clippings and materials on it.

Mr. Reischel: Well, there are two published decisions by Judge Holtzoff.

Mr. Carliner: I think Holtzoff.

Mr. Reischel: I meant Holtzoff. One of them was on the subpoena to the Attorney General and he said essentially, "Those are criminal investigation files. You can't get those." He dropped some remark about whether or not you were seriously interested in them. Questioned how seriously you were interested in it, and then there was a subpoena against the Director of National Aeronautics (NASA).

Mr. Carliner: I think one of these vending machines was at a facility of NASA.

Mr. Reischel: Yes. There were actually interrogatories to them, and you moved to compel, I believe, and Judge Holtzoff denied it with some salty comment about if you were really seriously pursuing it, he thought you were basically using the action, from these two decisions, it seems, that he thought that you were using the action as a public relations gimmick to leverage a settlement for your client. And he wasn't too subtle about making it clear that

that's what he thought.

Mr. Carliner: Well, there's no question that we were trying to get Senator Byrd to testify, Senator Cannon to testify, people like that.

Mr. Reischel: Nevertheless, you had a cause of action.

Mr. Carliner: Yes.

Mr. Reischel: That's right. You were perfectly within your rights.

Mr. Carliner: Baker was highly placed, and Baker continued to maintain a close relationship with Lyndon Johnson. I know that Johnson was kept informed. One of my friends was Steve Pollak, who was a White House person on District of Columbia affairs. The original person was Horsky, and Johnson did not like Horsky. He was from when Kennedy was president and Horsky —

Mr. Reischel: That was disqualifying.

Mr. Carliner: It was disqualifying. Steve Pollak, who had been an Assistant Attorney General on Civil Rights, or something, became the White House advisor. He was a much milder person than Horsky.

Mr. Reischel: Steve's such a straight arrow. I would imagine that he wasn't entirely comfortable with Bobby Baker's shenanigans either.

Mr. Carliner: Well, he wasn't involved in the shenanigans, but —

Mr. Reischel: No, no, no. But in seeing them.

Mr. Carliner: One of my activities was changing the nature of the government in Washington, D.C., which I guess I've gone into through this Reorganization Plan. And the Reorganization Plan was sent forth by Johnson to Congress, and so we were celebrating it, and I

was invited to the White House to take part in the celebration. Johnson, I had never met him before, but I was presented to him and I had the feeling he had looked me over. That might have been because —

Mr. Reischel: [Laughs] That he knew exactly who you were.

Mr. Carliner: I know when the Reorganization Plan went through for the D.C. Government, Pollak suggested my name as being one of the people to be appointed to be Chairman of the City Council, but that didn't go anywhere because Johnson remembered.

Mr. Reischel: This was the appointed, the Presidentially-appointed City Council.

Mr. Carliner: And Johnson wasn't about to appoint somebody who brought a lawsuit against Bobby Baker.

Mr. Reischel: I take it the particular shenanigans that were involved as a subject of your suit were not part of what ultimately led to Baker's downfall. Or were they?

Mr. Carliner: I think what led to his downfall was paying taxes. There was another guy who was a neighbor of his. He was a backdoor neighbor of Lyndon Johnson's, I think. He was prosecuted for income tax evasion.

Mr. Reischel: I think that's right, ultimately. I think that's right.

Mr. Carliner: It was mustered against Baker who I've been told resulted in his paying out some money. But it wasn't a big settlement really.

Mr. Reischel: But it might have been some of the activity; if it really was illegal kickbacks, he probably wasn't reporting his income on it either.

Mr. Carliner: Well, I don't know if Baker ever was, was Baker ever prosecuted criminally? I don't remember.

Mr. Reischel: I think, ultimately, he was.

Mr. Carliner: Well, I know that he was involved over in Ocean City in building motels or hotels or something.

Mr. Reischel: I wanted to talk briefly about your international activities, which I discovered the last time I talked to you. Did they start with the man from India?

Mr. Carliner: I showed you this trip article to advise you. I guess it started with that. The USIA has this circle in parts program with an American participant where they send people who give talks on issues. This was initiated in India where – I didn't get to USIA on my own, but I had befriended, I think I must have told you this, a woman, Lola Fernandez, whose husband was a head of the railroad workers union in India. He was head of the Socialist Party. Her name was Helbere, and she was the daughter of a man who was Minister of Education who's name was Havelik. She has a granddaughter who is a professor and physician at the University of Virginia. So one way or the other she got steered to me. When I helped her, her husband had been put in jail by Indira Gandhi, who was in a dictatorial mode, and her husband Fernandez was a person who was opposed to Indira Gandhi.

Mr. Reischel: I think you and I just touched on it last time.

Mr. Carliner: I arranged for her to testify before a House or Senate committee on the repression going on in India at the time. I helped her stay in the United States. She had a small child at the time and, in any event, she was able to stay here. Well, Indira Gandhi called the election, and she got defeated. And Desai became the head of the government, and Fernandez, who had been in jail, was released from jail, and he became first the cabinet person in charge of labor. Then he became Minister of Industry. He arranged for me to be invited to India

to talk about human rights in the United States. So I went to India where I was a more important person than I ever was in Washington, D.C. They had a function for me. A man named Rom, something like that, president of the Indian Bar Association, and it was a function held in a palatial gathering. I was given great honors. I not only went to India, but I went to Pakistan. It was a time when Bhutto was executed.

Mr. Reischel: Benazir's father.

Mr. Carliner: Yes. I met the judge who sentenced him to death. Interesting experience. Anyway, I had this trip where I met Desai and various other people. I spoke to organizations and people on human rights in the United States. We had a two-day conference where I talked about human rights and immigration law. People then were commonly sued, deprecated. Free speech in the United States, I think economic rights, were more important there. I pointed out that in order to determine what economic rights were, you had to have a free discussion. Anyway, I had this wonderful experience there. I was in Calcutta. Calcutta is a city that most Americans can't stand because it looks like Dickens' nineteenth century London. There's poverty on the street and it's just terrible. Calcutta was built to accommodate 250,000 people, and it has about 15 million people living there. But it has a University, and it has 250,000 going to school.

Mr. Reischel: 250,000 people in a university?

Mr. Carliner: When I was there.

Mr. Reischel: That was 20 years ago, almost.

Mr. Carliner: The people there are Bengali, and the Bengalese have a very rich tradition of poetry and literature. It's a wonderful community in terms of intellectual things, and

the people I met with there were extremely well-informed about American literature. They would raise many questions with me from the audience, and I generally had a response for them.

Mr. Reischel: In the English debating style?

Mr. Carliner: Yes. I always admitted the faults that the United States had, but never had a problem with that. I was in Kenya one year, and Joe Louis, or somebody, was sent to Kenya in order to encourage Kenya not to take part in the Olympics. The people in Kenya thought, in the audience, that I came there in order to persuade Kenyans not to go to Russia for the Olympics. I had nothing to do with that. Some American woman was there and said that I was there in order to do something for American imperialism. One of the things I said during the course of my remarks, that I remember, was that it took a civil war to end slavery in the United States, and it took 100 years after that to secure equal legal rights for blacks, and we still don't know economic equality or social equality. This woman said I was just coming to Kenya in order to justify Americans. This was giving blacks the opportunity to get jobs to have them opt out, fighting against discrimination by applying the law. So you have all kinds of points of view. The reason I'm mentioning this is I gave these speeches on human rights in the United States where I greatly enjoyed the encounters with people who have hostility towards the United States.

Mr. Reischel: Was the Indian experience the beginning of your —

Mr. Carliner: That was the beginning of it. With that, the year after was for the USIA. I went to a half a dozen other countries. I was in Romania, which is an interesting experience.

Mr. Reischel: Back in the bad old days of the dictatorship.

Mr. Carliner: I'm really amazed. It was a terrible country. There I spoke to a

group of diplomats, and they were all communists, and they talked about the principle, the Communist Party, so forth, of democratic centralism in which theoretically you chose the leaders of the governmental party democratically but all the decision were made centrally.

Mr. Reischel: And then they told you what to do.

Mr. Carliner: Right. But, they said, this was truly democracy. I described how decisions in the United States were made – not through democratic centralism, but by having issues over zoning or issues over what members' rights are, or issues on anything. This is the role of American organizations in influencing policy, not only elections, but they could have exchanges of views and presentations and issues on any issue. It was done by a process of democracy on each of these issues, and I made some reference to it. I asked them a question; I don't remember what the frame of the question was, and they said, "Well, we're not here to answer your questions."

Mr. Reischel: Not much of an interchange there.

Mr. Carliner: So I enjoyed the experiences very much.

Mr. Reischel: And this was the International Communications Association.

Mr. Carliner: No. This was the United States Information Agency. It sent in parties from abroad, and I went over for them. I must say it's a lovely way to travel. I didn't need the money to do it, but they pay your travel expenses, and for each day you're abroad you get \$100. But better than that, although the money is beneficial when you arrive at the airport, you're met by somebody with an automobile. You didn't have to hassle to get a taxi cab or anything.

Mr. Reischel: Somebody who knows their way around.

Mr. Carliner: You missed all that hassle. You are taken to the hotel, and the best part of it is that when you're there, you meet people who you can talk to. I did this in China, I did it in Russia, but not for the USIA. I had other contacts and issues.

Mr. Reischel: When were you in China?

Mr. Carliner: Well, I've been there twice. I think the first time I was there I was going to meet with somebody in Beijing, but I was a day late, and the meeting never took place. I was there mainly as a tourist. But the second time I was there, I was there for the USIA, and I met with people who were involved with government activities.

Mr. Reischel: This was in the Deng regime?

Mr. Carliner: This was 1993.

Mr. Reischel: Yes, that would have been Deng, long after Mao.

Mr. Carliner: Long after Mao. So anyway, that was a chapter in my life that was very interesting and I was able to meet lots of people.

Mr. Reischel: USIA got interested in you because of the Indian —

Mr. Carliner: Because of the Indian experience. The Indian branch of the USIA, through Fernandez, requested that I be sent there. That opened the door to it. Through that I went to India and Pakistan that time, and those subsequent trips, it was our initiative but locally.

Mr. Reischel: But you've also been involved in international human rights efforts, have you not?

Mr. Carliner: Yes. I was chairman of the International Human Rights Law Group. They had a project which was very modest. A guy named Larry Garber wrote the guidelines for how to conduct elections and how to determine whether they were fair elections.

Mr. Reischel: Was this prior to the time you started traveling in India?

Mr. Carliner: It was after. I didn't do much traveling for the Human Rights Law Group. I went on one trip for them to Bulgaria. But generally, since I was president of the organization, I didn't think it was proper for me to use that position to go for them, but other people went. I went to Bulgaria for them and Serbia, I think. A group of us went to the Soviet Union in March of 1989 when they had the first elections since the Russian revolution anniversary.

Mr. Reischel: Was this for USIA or for your international —

Mr. Carliner: This was not for the USIA, but the Human Rights Law Group. And there were five of us out. The professor and dean of Yale Law School, Leon Lipson, who was a specialist in Russian law, a woman named Grace Warnke, who was the daughter of Paul Warnke. She happened to have been born in Lithuania someplace while her father was in the foreign service.

Mr. Reischel: Were you there on official business?

Mr. Carliner: Not government. It was a Law Group.

Mr. Reischel: At the invitation of the Russian government?

Mr. Carliner: No. We were just there on our own to observe the election campaign because access to the ballots was very important. One question was about the use of Pravda, Isvestia, radio/tv, distributing handbills and meeting up with people.

Mr. Reischel: So you went as self-appointed monitors, really.

Mr. Carliner: I guess our group was self-appointed. We were not representing any official body of the United States, but we were a human rights organization to insure free

elections.

Mr. Reischel: And you went to, and you actually went with the purpose of monitoring what was happening in Russia?

Mr. Carliner: We observed the campaigning procedures, access to the public, which was very important because how you get to the electorate, to radio and TV, through propaganda one way or the other. And we also observed the election. The date was in March of 1989, and we went to different polls in Moscow to see how the elections were being conducted. In the evening we were present when they opened the ballot boxes to count the votes. It was about a week that we were there, both before the election and after the election. I remember the election was on a Sunday, and the results came in. They're not quick like they are here, but they came in on a Tuesday. I remember Ambassador Matlock was the U.S. Ambassador to the Soviet Union. Early in the morning on Wednesday morning – he'd been up all night —

Mr. Reischel: [Laughing] Sweating the election.

Mr. Carliner: Yes, I suppose he was. I've never seen a man so excited, as if he were a Chicago political boss, when he was handed the returns. He said, "The genie is out of the bottle." I never will forget that phrase.

Mr. Reischel: This was Gorbachev?

Mr. Carliner: No this was Matlock. This was the election of Gorbachev and Yeltsin.

[TAPE ENDS]

Mr. Reischel: That's fine and we only have a few minutes, but you were right in the middle of a sentence, and I didn't want to miss it if I could. You were saying that

Ambassador Matlock was extremely excited.

Mr. Carliner: Very excited about the results. Said the genie was out of the bottle, and we sort of laughed at it, but he was right. I remember we were in a section of Moscow which had the Omar Building, a heavily working-class neighborhood. I was talking to a guy who was a Stalinist and he said, “Well, we’ll let them carry this district, but we need to carry control, we’ll get back control.” Well, he was wrong.

Mr. Reischel: And Matlock was right.

Mr. Carliner: Matlock was right, but this Communist Party functionary — But in any event, that was a fascinating experience being there. I met Sakharov when we were there.

Mr. Reischel: The nationalist, the ultra-nationalist?

Mr. Carliner: I wouldn’t call him the ultra-nationalist, Sakharov?

Mr. Reischel: I may have the name mixed up.

Mr. Carliner: Well, he won the Nobel prize for something.

Mr. Reischel: Oh. The physicist.

Mr. Carliner: The physicist, yes.

Mr. Reischel: A great advocate of democracy.

Mr. Carliner: Advocate of democracy and an advocate of —

Mr. Reischel: Human rights.

Mr. Carliner: I forget the phrase, but the principle, the communist principles and democracy converged, or some phrase which described the convergence of the three economies.

Mr. Reischel: Socialist Humanism or something like that.

Mr. Carliner: There’s another phrase. Socialist Humanism is an oxymoron. In

any event, there was a concept that Sakharov was pushing, the productivity, I guess. Socialist Humanism might be the concept of the productivity of a capitalist society which merged with the needs of the society to take care of the least among us. In any event, we met with Sakharov, who had an apartment in Moscow.

Mr. Reischel: I think he has since died.

Mr. Carliner: Yes, I think he has. He was a wonderful human being.

Mr. Reischel: I think you were very fortunate to have met him.

Mr. Carliner: It happened that he spoke German fluently, and my wife, who was part of this group, spoke German with him. Whenever we had anything important to say, we'd write it on a slate because it was all being listened to by others. But he was open to all people who had grievances against the Soviet government, and he had people who were from Ukraine who wanted assistance to leave Russia. They wanted to take Ukraine with them. [Laugh]

Mr. Reischel: [Laughing] Right, and they ultimately did.

Mr. Carliner: It happened that his wife's name was Yelena Bonner, and the day before we were there, Bonner's son got married. They had the wedding in that apartment. Sakharov was a very high-status person, so he had a two-bedroom apartment. They had this very proud apartment, but he met in his kitchen. It was just a wonderful experience.

Mr. Reischel: Well, he must have been very happy at the time with the first experiment in democracy proving to be successful.

Mr. Carliner: Well, I'm sure at that particular moment they knew what the results would be.

Mr. Reischel: Oh, you might have seen him in between the election and the

results?

Mr. Carliner: Communism was disappearing, so, well not completely, but in a lot of ways. I had this observation a couple of years ago: there hasn't been so much stealing as there has been in the Soviet Union since Henry VIII stole all the property from the Catholic Church in England. So you have these communists who are in control of factories and banks and industry in the Soviet Union privatizing, and they took all the state-owned property to own it themselves. Corruption was extensive.