

**Oral History Project
The Historical Society of the
District of Columbia Circuit**

**United States Courts
District of Columbia Circuit**



DAVID CARLINER, ESQUIRE

Interviews conducted by:
Charles Reischel, Esquire

August 12, October 16, December 11, 1997
and March 13, 1998

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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the U.S. Courts of the District of Columbia Circuit, and judges' spouses, lawyers and court staff who played important roles in the history of the Circuit. The Project began in 1991. Most interviews were conducted by volunteers who are members of the Bar of the District of Columbia.

Copies of the transcripts of these and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcripts are available at other locations.

Such original audio tapes of the interviews as exist, as well as the original 3.5" diskettes of the transcripts (in WordPerfect format) are in the custody of the Circuit Executive of the U.S. Courts for the District of Columbia Circuit.

INTERVIEWEE ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of David Carliner

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, David Carliner, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, transcripts and computer diskette of my interviews as described in Schedule A hereto, including literary rights and copyrights. All copies of the tapes, transcripts and diskette are subject to the same restrictions herein provided.

2. I also reserve for myself and to the executor of my estate the right to use the tapes, transcripts and diskette and their content as a resource for any book, pamphlet, article or other writing of which I or my executor may be the author or co-author.

3. I authorize the Society to duplicate, edit, publish, including publication on the internet, or permit the use of said tape recordings, transcripts and diskette in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

David Carliner 12-17-2003
David Carliner Date

SWORN TO AND SUBSCRIBED before me this
____ day of _____, 200__.

Witnessed by
Debra Carliner
12-17-03

Notary Public

My Commission expires _____

ACCEPTED this 27th day of January, 2004, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
Stephen J. Pollak

Schedule A

Tape recording(s) and transcript(s) resulting from 4 interviews of
(Number)
David Carliner on the following dates:
(Interviewee)

<u>Date (Month, Day, Year) & Title</u>	<u>Number of Tapes</u>	<u>Pages of Transcript</u>
August 12, 1997	2	46
October 16, 1997	1	38
December 11, 1997	1	56
March 13, 1998	1	48

The transcripts of the 4 interviews are contained on 1 diskette.

Historical Society of the District of Columbia Circuit

Agreement Respecting Oral History of David Carliner

1. Charles Reischel, having agreed to conduct an oral history interview with David Carliner for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Nancy Stanley, as representative of the estate of Charles Reischel, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings, transcripts and computer diskette of interviews, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society, to duplicate, edit, publish, including publication on the internet, or permit the use of said tape recordings, transcripts and diskette in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

Nancy Stanley 12/2/03
Nancy Stanley Date

SWORN TO AND SUBSCRIBED before me this 2nd day of December, 2003.

Jane M. Quady
Notary Public

My Commission expires April 30, 2004

ACCEPTED this 8th day of December, 2003, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
Stephen J. Pollak

Schedule A

Tape recording(s) and transcript(s) resulting from 4 interviews of
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ORAL HISTORY OF DAVID CARLINER

INTERVIEW NO. 1

August 12, 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 August 27, 1997.

Mr. Reischel: I thought I'd start at the beginning with the fact that you are a local product. You were born here.

Mr. Carliner: Washington, D.C., Sibley Hospital when it was on North Capitol Street. I tell people I woke up and I came out of my mother's stomach and looked at the Capitol and screamed.

Mr. Reischel: But you moved to Virginia at some point.

Mr. Carliner: Well, not really. My father was in the grocery business and his style of business was to buy a grocery store and buy the real estate and stay in the grocery store for a couple of years and then sell the business and keep the real estate. So his income was built up by moving around owning different pieces of property which he rented and sold. My family lived in a number of different places in Washington, but it wasn't until I was in my last year of high school, when I was about 16 years old, that my family moved to Arlington, Virginia.

Mr. Reischel: So you went to D.C. schools?

Mr. Carliner: I went to D.C. schools. I went to McKinley High School. This is not part of my legal history, but McKinley High School was my neighborhood school. My family lived on Bladensburg Road near South Dakota Avenue, so when I was going to McKinley High School – it being a vocational school in the neighborhood – I could take any courses that I

wanted. I was not destined to be a carpenter, a cabinetmaker or tinkerer; I took academic courses. In my last year of high school my family moved to Arlington, Virginia, in Clarendon, until the school told me I was no longer in the neighborhood and that if I wanted to continue to go to McKinley I had to take a vocational course. So like any red-blooded American boy I said, "I want to take automobile repair shop." They said, "No, you can't take that unless you take iron forge and eight other courses."

Mr. Reischel: They had prerequisites to automobile repair?

Mr. Carliner: Yes, for automobile repair. They would have to let me stay in high school for four more years to take automobile repair shop. I didn't want to do that. So I asked if I could I take some other vocational course. They said, "Yes, which one?" I said, "What about cooking?" They said, "Yes, you can take cooking if you can get three other guys to sit around the kitchen stove with you." So I got three other guys. The four of us sat around the kitchen stove and I was able to take cooking in high school. I was the first class at McKinley of boys that ever took cooking. It came to be very useful, as a matter of fact, because I learned how to read recipes, and I know how to cook. It was fortunate that when my wife died several years ago that I was able to do my own cooking. I didn't do much cooking when she was living.

Mr. Reischel: The four of you were the only guys in the cooking class?

Mr. Carliner: They didn't want to have a boy sitting next to girls around a kitchen stove. They weren't quite that integrated. Anyway, the point of this is I didn't move into Virginia, but my family did when I was 16 years old and then subsequently I finished school in Washington. At one stage my family moved out to Silver Spring, but I was no longer really living with them. I was going to college at the University of Virginia in Charlottesville, but my

domicile was Silver Spring, off Dale Drive. Basically, I'm a Washingtonian. After I got out of the Army, I lived in Fillmore Gardens over in Virginia and that was in 1945, 1946.

Mr. Reischel: So you went to one year of high school in Virginia?

Mr. Carliner: No, I didn't go to high school in Virginia, I went to high school in Washington, D.C., while living in Virginia.

Mr. Reischel: I see, then you went to AU.

Mr. Carliner: I went to American University for a year and after that year I transferred to the University of Virginia.

Mr. Reischel: Undergraduate?

Mr. Carliner: Undergraduate.

Mr. Reischel: Is your undergraduate degree an AU degree or UVA degree?

Mr. Carliner: What happened was that you could switch from an undergraduate school by going to law school and getting credit for undergraduate work, but I did not take the required courses to get an AB degree even though I had a law school education there. So I did not get an AB degree from the University of Virginia. Nor did I get a law degree from the University of Virginia. I went to the University of Virginia law school for two years. In my last year of law school I moved to Washington, D.C. I had been called up for the draft and while I was in Washington I completed college at what was then National University. It became George Washington University, and I was pretentiously offered a Doctor of Jurisprudence degree issued by George Washington University law school. I did not go to George Washington. I went to National University, and I did not get a Doctor of Jurisprudence, I got an LLB. So I don't have either an AB degree or a degree as a Doctor of Jurisprudence.

Mr. Reischel: Was there an arrangement whereby you would finish your third year and then go into J.A.G.?

Mr. Carliner: No, I finished my third year and I went into the Army as a private, as an enlisted man, and I never went into J.A.G. as an enlisted person or officer in the Army. I went to work for J.A.G. after I was discharged from the Army. I was a Tech-Sergeant, Tech III, non-commissioned officer, as my highest rank in the Army, as an enlisted person. After I got discharged from the Army in 1945, I worked for six months for the Judge Advocate General's office. It had a group of people who were working under the nominal supervision of Justice Owen Roberts. How he got involved in it I don't remember. But they had a dozen or so people reviewing court-martial procedures during World War II for general courts-martial and summary courts-martial. There are three levels of courts-martial procedures and we reviewed all those, I don't remember how many, but at least 30,000, more than that for people who were court-martialed for one thing or another, to decide whether, while they were still serving time in a military prison, whether the military should remit their sentences or whatever to reduce the sentence to give clemency to them.

Mr. Reischel: So you were a civilian?

Mr. Carliner: A civilian employee

Mr. Reischel: Working for the Department of Defense?

Mr. Carliner: That's right. The Judge Advocate General's Office, although it was the Department of the Army then and I was there for about six or seven months. After that, I went to work for an organization called the New Council of American Business. That was in 1946, and I worked for it for a year. It was a small business organization which was rather

anomalously against the grain of the times. It tried to keep price control at OPA. Very few businessmen were in favor of that. That job lasted for about a year.

Mr. Reischel: They were in favor of it or they were fighting it?

Mr. Carliner: They were in favor of it.

Mr. Reischel: They were in favor of it? What sorts of businesses were they?

Mr. Carliner: They were running against the mainstream. They thought that price controls were needed in order to keep down inflation and make things more competitive.

Mr. Reischel: What kinds of companies were in it? Do you recall? Couldn't have been very many.

Mr. Carliner: No, it wasn't very many. They were small businesses. A guy named Pennypacker was the head of it. That sounds like a Philadelphia name. I have materials on this.

Mr. Reischel: I'm wondering if they were dependent upon suppliers and were afraid that the prices of what they had to buy would go up.

Mr. Carliner: There was an issue there. When I left that job I thought I would get business with the Federal Trade Commission or the Antitrust Division. There was a case involving Curtiss Candy Company and vending machine operators and the way their business was handled. I was retained on that case, and I worked for Curtiss Candy. I gather – I don't remember who the people were, this was in 1945-46 – and I thought that as a spin-off of that I might get business in antitrust at the Federal Trade Commission, but I didn't get anything out of it. It happened that a lawyer named Edward Howrey was working on that case. His firm became a very prominent one, Howrey & Simon.

Mr. Reischel: Sure.

Mr. Carliner: Howrey must be dead now. I was involved in a case having to do with the Federal Trade Commission. There was a complaint filed against the Curtiss Candy by someone in the vending machine business.

Mr. Reischel: Filed with the FTC?

Mr. Carliner: FTC. There was a lawyer named Austin Forkner who I remember quite well at the Federal Trade Commission working on this. I was working collaboratively with him in order to support the FTC proceedings. Howrey became Chairman of the Federal Trade Commission.

Mr. Reischel: Not good for your prospects.

Mr. Carliner: The first thing Howrey did was try to fire the people from the Federal Trade Commission who were handling this case. One of them fought it, and he was absolved and held his position. Howrey then appointed somebody over him and so his job became surplus. So this person went to court to challenge his discharge and he won. That was the end of my Federal Trade Commission practice.

Mr. Reischel: And you were then in a small law firm or you had opened your own office?

Mr. Carliner: I was the only one in the "law firm." I was an independent lawyer. I had my office at 1737 H Street. That was a rather interesting, fun case, but I didn't get any business out of it or establish a reputation or make any contacts.

Mr. Reischel: I know and we will talk later some time about your work on behalf of home rule. Do you think that was at all influenced by the fact of your growing up here?

Mr. Carliner: Sure. Absolutely. One thing I grew up with among the other things in high school, was an interest in a D.C. city college, a free college, just as New York City has a free city college. One of the things I supported as a student during high school, not that I was planning to go there, but I thought there should be a free city college and home rule. I didn't get involved in home rule. Then, subsequently, I did. But not early in my life.

Mr. Reischel: But it was in the air I take it? I take it, notions of the unfairness —

Mr. Carliner: Voting representation was in the air, as was an amendment to have Washington, D.C. vote for President, in presidential elections.

Mr. Reischel: Even prior to the Second World War?

Mr. Carliner: Yes, there was a group organized and it came out of a rather elite society group in Georgetown. Gerald Van Arkle and Al Friendly and a group of people who were mainly white and mainly a chic group —

Mr. Reischel: Upper class and money.

Mr. Carliner: Intellectuals and whatnot, and businessmen who formed the D.C. Home Rule Committee. It had some blacks in it. Walter Washington was in it and there were a number of others who were in it. I came into that, and I have to find a date on it. I became active and more committed. This is somewhat later, I became the chairman of it in the 1960s. In 1961, I became the chairman and the founding member of the American Civil Liberties Union in Washington. The person who was really the first chairman, but he was just acting chairman, was

Charles Horsky, whom you undoubtedly know.

Mr. Reischel: Certainly.

Mr. Carliner: Charles was a wonderful person. Many community activities.

Mr. Reischel: You went into the service as a private even though you had a law degree?

Mr. Carliner: Yes.

Mr. Reischel: Was that common in those days?

Mr. Carliner: Yes, it was common, because when I served in the Army there were a number of lawyers.

Mr. Reischel: Did they try to make you an artillery man or something that would use your education?

Mr. Carliner: I was in the Antiaircraft Artillery Corps at the later stage, and some people who were lawyers got transferred over to JAG, and I think most of them ended up in a different kind of position. But I was overseas for a year and came back to the United States.

Mr. Reischel: Which theater were you in?

Mr. Carliner: Well, to call it a theater would be an overstatement. We were sent from Charleston, South Carolina, to the Southwest Pacific. The island we went to is called Bora Bora and it's in the Society Islands. No one had ever heard of Bora Bora then, but it has become well known now. We were on a route to New Zealand. We were in Bora Bora with anti-aircraft artillery and seacoast artillery in case the Japanese were going to reach Australia and knock off New Caledonia, and other areas there. I have two battle stars, one for being 2500 miles away from the battle of Coral Sea. There were two battles, I don't remember the other one, but it was

for being 3500 miles away from another battle. We were on the alert for a couple of days and nights.

Mr. Reischel: So you didn't have a chance to shoot at any Japanese airplanes or anything?

Mr. Carliner: No. I was sent back to the United States, but my unit went to the Philippines and it ultimately did go in. Many of the soldiers went ultimately into combat against the Japanese, but I was back in the United States.

Mr. Reischel: Were you among those many who were scheduled for the invasion of Japan?

Mr. Carliner: No. I was sent back long before the invasion of Japan. I went overseas in January 1942 and came back in September or October of 1942. I was at the Anti-Aircraft Artillery School, which was originally at Camp Davis, North Carolina, and then I was transferred. I'm not sure whether the school itself was moved, but it was at Camp Davis. I was transferred ultimately to Fort Bliss to the Anti-Aircraft Artillery School. While I was there, I was in the Information Education Unit giving talks on why we were fighting the war. I was there until the end of the war. I was at Camp Davis until 1943 for a while and then at El Paso until 1945.

Mr. Reischel: When you were originally admitted to the Bar, you were admitted in Virginia.

Mr. Carliner: Yes. You could take the Bar in Virginia after you had completed two years of law school. So I took the Bar after two years of law school in Virginia. That became relevant to me because after I was discharged from the Army and was back in

Washington, D.C., effectively, I was living in Virginia where my wife and I had an apartment. I was going to take the D.C. Bar and they said that I had to take the D.C. Bar examination and couldn't waive in because when I took the Virginia Bar, I only had two years of law school and to be a member of the D.C. Bar you had to have had three years of law school at the time you take your examination. So I studied for the Bar, but two weeks or so before I was to take the Bar examination, they changed the rule in Washington so that they would allow people like me who had not had two years before they took the Bar, but had actually had three years of law school, to waive in without taking the examination.

Mr. Reischel: So you did.

Mr. Carliner: No. It cost \$500 to do that, and it took more time so I said, "Well, I studied for it, I'll chance it." I had these courses that you study what they are going to give you on the Bar examination. So I studied for it and the luck of the draw was that the examination I got was the same one they had given the year before.

Mr. Reischel: And, you had studied for it? (laughing)

Mr. Carliner: Yes, I had studied for it. (laughing)

Mr. Reischel: Well, then you did quite well. (laughing)

Mr. Carliner: I don't know how they graded one way or another because you pass or fail, but I passed it on the first try.

Mr. Reischel: \$500 in those days was an awful lot of money.

Mr. Carliner: Yes, it was a lot of money. I might have done it if I had not spent all my emotions and my time studying for the examination and I figured, "What did I study for if I'm going to waive in." So I took a chance and made it.

Mr. Reischel: So you were married before you went into the Service?

Mr. Carliner: No, I got married while I was in the Army. I met my wife before I went into the Army and we corresponded with each other while I was in Bora Bora. Our mail was censored and so I wrote these passionate letters for the censors, a very nice guy from New Jersey to read my letters. I'm not sure I wasn't writing it more for him than I was for my girlfriend.

Mr. Reischel: Were they intelligible at all when she got them?

Mr. Carliner: I'm not sure, I didn't have a typewriter. I was a clerk in the company and I never had a typewriter. I don't remember.

Mr. Reischel: I was just wondering what the censors censored.

Mr. Carliner: They were interested in military information, not other kinds of information. I was quite conscious that somebody else was going to read them besides my girlfriend. Anyway, I got back to the United States and I was at Camp Davis and my wife was in Washington. She was going to George Washington University at the time. Maybe she had finished school. Anyway, I would come from Camp Davis to Washington on the weekends and we got married.

Mr. Reischel: Was she also from this area?

Mr. Carliner: No she was born in Germany. She came to the United States. Her father died in 1923. A younger brother, her mother, and she came to the United States in 1936 when she was 15 years old. She went to Woodrow Wilson High School at the age of 15. She left Germany, having completed what would be the equivalent of an eighth grade education in the United States; but she was in her last year of high school and she got her high school diploma

based on her German education and one year of high school. She missed the French Revolution, all the things that kids learn through three years of high school, but she subsequently learned what's what. She went to GWU after she graduated from high school.

Mr. Reischel: So you came back from the Service and worked for the Army for a while and then you went out on your own and opened an office and took on —

Mr. Carliner: I represented a small business organization for about year.

Mr. Reischel: Right, then how did you get acquainted with — how did they become your client?

Mr. Carliner: It wasn't a client exactly. I wasn't their representative in court. I was doing lobbying and legislative work and I guess I must have known somebody who was connected with it. I can't remember who they were, but I got it through knowing somebody. I didn't apply through an advertisement or anything like that; it was a contact.

Mr. Reischel: And you were doing general practice at the time?

Mr. Carliner: I can't call it that. I wasn't going to court; I wasn't handling cases for them. It was lobbying and legislative work, public relations work, that sort of thing. I wouldn't describe it as practicing law, but later when I left that I began to practice law.

Mr. Reischel: Well, the FTC proceeding itself was a proceeding although —

Mr. Carliner: The FTC, yes I guess that one was.

Mr. Reischel: But not a court type.

Mr. Carliner: They must have been an amicus curiae — that might not be the right word to use — supporting what the FTC was attempting to do.

Mr. Reischel: Sure. Then you stayed in private practice by yourself for a while?

Mr. Carliner: Yes, I was at 1737 H Street for a while and then I moved out.

There was a lawyer in the Barr Building, who had been retained, interestingly, by an organization which has since become very influential and important, the American Enterprise Institute. He brought me in because he was really getting a lot of money then for representing them and wanted to use me to supplement his work. What they were doing was quite interesting to me because it had economic and political issues involved, But, he didn't get the work, and from one day to the next I had to leave his office. I was there in the expectation that he would have that representation and was involved with them for a while. I was on H Street practicing law – I'm not quite sure the sequence of this, but I was at H Street and then in the Barr Building. I was beginning to practice law, general practice. After a while I moved to the Warner Building at 13th and E. I was renting space there on the ninth floor. There was a lawyer in that building named Jack Wasserman, who had been on the Board of Immigration Appeals during WWII. He was temporarily filling the job for somebody who was in the Army. That guy came back and Wasserman lost the work, so he went into private practice. He had an office in the same building, the Warner Building. I went into his office around 1950, on a space-for-work basis. I did work for him in return for doing my own work in the office. That lasted for about 10 or 15 years. After a while I became a one-third partner in his firm. Subsequently I was producing more than one-third of the income and wanted to up my portion of the business but he refused to do it. So I left him. With some misgivings, I went off to establish my own firm.

Mr. Reischel: That was in the '60s, I take it?

Mr. Carliner: That was in 1965.

Mr. Reischel: And the firm that you established is the present firm?

Mr. Carliner: Well, then it was just David Carliner, but I had the space arrangements moved over into the Pennsylvania Building at 13th and Pennsylvania Avenue. Oscar Chapman was in the law firm. Chapman, Duff & Lenzini was the name of the firm. I took over an office in their space, and I was "of counsel." "Of counsel" didn't mean that I was doing any counseling; it was just an honorific to show my association with them.

Mr. Reischel: A loose association, it meant, in practice, I take it.

Mr. Carliner: "Of counsel" means all kinds of things I've discovered. So I was at Chapman, Duff & Lenzini doing my own immigration work and I paid them rent, but I didn't do any work for them except that I had an interesting time because Oscar Chapman was a very interesting man during World War I. At that time he was as old as I am now and he was doing all the reminiscing. So he reminisced, a charming fellow. I stayed at that firm a while. I formed a partnership with Charles Gordon. He had been the General Counsel at the Immigration Service. He retired from the Immigration Service and he and I formed a partnership which lasted for a number of years and then the firm was Carliner and Gordon. He has retired. He's in his 90's now. I have to look up Martindale-Hubbell to see what I said about myself. My son-in-law, Robert Remes joined me when I was with Gordon, and we are now partners.

Mr. Reischel: Your entire career, then, has been in relatively very small firms, just a few lawyers.

Mr. Carliner: I was never in a big firm.

Mr. Reischel: Never in a big firm, not much for the government after the beginning, and taking cases of all kinds originally?

Mr. Carliner: Originally, I was in general practice, but I went out of general

practice a long time ago. Someone referred to me a case of a woman with a malpractice claim against a doctor and I had an open and shut case I thought. Without going into all the details, the doctor was giving her treatment which was contraindicated for her illness. She had osteoporosis. Her physician was giving her something, which was contributing to her osteoporosis, I was told. It was referred to me by somebody at the National Institutes of Health, that this woman had gone for treatment and they told me very passionately that the doctor treating her didn't know what she was doing. So, I brought this lawsuit against her for malpractice. I discovered through a subpoena of her medical records and a handwriting examination I had made of them that the logs were written all at the same time, after her treatment of the patient. The explanation for it was that she had a flood in the basement of the doctor's office and in order to have these records, she transcribed them all over a period of days with the same pen ten years later.

Mr. Reischel: A great target for cross-examination.

Mr. Carliner: Since the medical witnesses we were planning to use regarding the defendant's malpractice were my witnesses, I didn't bother to take her deposition, of course, and the other side who happened to retain a very good lawyer in Washington, Jake Stein, didn't take her deposition either. He came in rather late. He – there was an insurance company for her – he said, "Well, the insurance company shouldn't encounter this because she did not provide proper assistance to the insurance company." And, defending the case, I said, "Well, she didn't, how should I put this, she gave better assistance because she created these records." (Laugh) However, we were ready to go to trial and I called up my witnesses the day before to make sure that they were there and to go over with them the critical part of their testimony, which was that

the treatment that the doctor gave to the patient was one that amounted to malpractice because instead of treating her, they added to her illness and that the treatment was the cause of her problem. So, "No we couldn't say that that was the cause of it. It may have been, but we couldn't say definitively that it was." And, so you can't say it was the cause, although it may have been? I can't get this case to the jury. I was up the creek without a paddle. And I learned this the day before this examination. I must say I was just thunderstruck. That's an understatement in the nature of this case because I'd asked for substantial damage in what I thought was a surefire case with this testimony from NIH doctors who were objective and so on. Jake Stein and I worked out a settlement. I was better off getting a settlement. It was not insubstantial, but not as substantial as I thought it would be. So after that, the reason I am telling you all this is that I decided that general practice required more than I knew.

Mr. Reischel: So you decided to focus on your immigration cases.

Mr. Carliner: Yes, because if you're going to do a malpractice and general practice you're not only going to have to know a lot more, but a one-person law firm can't handle cases of major dimensions. I think you could handle a malpractice case maybe, but it took more than I was capable of at that time. I had developed an immigration specialty.

Mr. Reischel: A specialty.

Mr. Carliner: So, then and there I decided not to take any other cases. I hated divorce cases because all that people were arguing about was money; fighting over the children as a pretext for that. The general negligence cases, you could take one here and there, but no major cases.

Mr. Reischel: I noticed your first Supreme Court case was a workers' comp.

case. Your first argument in the Supreme Court, if I remember it correctly, was about the definition of a widow.

Mr. Carliner: Whether a widow was entitled to compensation. That was referred to me by somebody. Henry Glassie, who was a well-known lawyer in Washington, referred that to me. That was my case in the Supreme Court.

Mr. Reischel: At what level was it referred to you? At the Supreme Court?

Mr. Carliner: At the Supreme Court level.

Mr. Reischel: Oh.

Mr. Carliner: To file a petition for *certiorari* to get it to the Supreme Court.

Mr. Reischel: And how did he think that you would be a good person to do that?

Mr. Carliner: He probably thought that it was a loser and that I was a sucker.

Mr. Reischel: (Laugh) Well, you won it, didn't you?

Mr. Carliner: I remember having a colloquy with Justice Frankfurter where I came out second best to him.

Mr. Reischel: In that case?

Mr. Carliner: I remember a colloquy in which I gave an answer to Frankfurter that he didn't like at all. They do have transcripts of that, or did they that long ago?

Mr. Reischel: Oh, I think they still have them.

Mr. Carliner: I've never gone to the Supreme Court to look up the history of my cases. The cases I'm most interested in are cases involving the exclusionary rule where I thought there was a valid ground for the Supreme Court to review. I happened to know people who were law clerks of Supreme Court Justices, either through my son or otherwise, and I knew that these

cases troubled people on the Supreme Court, but not four of them, enough to get *certiorari*.

Mr. Reischel: The exclusionary rule started way back with *Wolf*, back in the late '40s in the federal courts and then the question was would they apply it to the states. And you wanted to apply it in your immigration cases, I believe. Did you ultimately succeed on that?

Mr. Carliner: No. The position was that no matter how they got the evidence, the immigration officers, possibly investigators, may or may not have told the truth about circumstances under which they arrested people.

Mr. Reischel: Well, it would be a very problematic area of proof, I suppose, what with witnesses.

Mr. Carliner: Well, in administrative law you're stuck with findings. If an immigration agent says whatever, and the immigration judge who is hearing the case believes them, which they always do because at one time the people who work in the government did not have to be sworn to tell the truth. They just assumed they were telling the truth because they worked in the government. And, of course, we've come to know that most people tell the truth anyway. But, it was hard to win.

Mr. Reischel: About the same time that you did your first Supreme Court argument you got involved in a *Naim* case as well.

Mr. Carliner: The *Naim* case was 1954 and I remember that date because it was contemporaneous with *Brown v. Board of Education*. One of the reasons the *Naim* case never got to the Supreme Court was that Justice Frankfurter, some of this is printed in *Harvard Law Review*, Frankfurter had a relationship with a lawyer [Philip Elman] – his face is before me, a man who was a Deputy Solicitor General in the Department of Justice with Oscar Davis, and the

two of them had been in contact rather unusually. He maintained a relationship with Frankfurter while he was in the SG's office which was not on particular cases, I'm sure, but social, not to discuss who got married to whom among the law clerks, but talking about legal issues. I have somewhere in my house a *Harvard Law Review* article which has an exchange regarding, I'm embarrassed not to remember his name, but, in any event, between Frankfurter and this individual, about *Brown v. Board of Education*, and, as you remember, that came down with a unanimous decision because Earl Warren got control of the case.

Mr. Reischel: Thought it was very important as a matter of fact.

Mr. Carliner: And there was some question as to whether Frankfurter was going to go along with it. If he didn't, other people might have spun off. So you would have this decision with three or four opinions and may have lost its major historic impact. So anyway, this was an article in the *Harvard Law Review* which has an exchange in it, which I can dig out. That's not part of my history, but is potentially part of my history.

Mr. Reischel: The *Naim* case is very much part of your history.

Mr. Carliner: Well, the *Naim* case came to my attention as a case having to do with Supreme Court procedure. I may have told you this before – I didn't know about it contemporaneously, but a professor at Columbia Law School, Rutledge, gave a speech at Harvard Law School, I think, on the *Naim* case on how the Supreme Court did not behave in an appropriate judicial way in the way it disposed of that case and so that made the *Naim* case significant in terms of judicial manipulation.

Mr. Reischel: Well, it was significant for all sorts of reasons though. At what level did you get involved in it? I know you had it at the Virginia Supreme Court.

Mr. Carliner: At the very first, I was representing a Chinese crewman, who was in the United States who was married to an American citizen, to help him become a permanent resident based on his marriage to a U.S. citizen. One day the man who was married to this woman went to North Carolina to get married because they could not get married in Virginia. Virginia had miscegenation laws which banned marriages between Chinese and Caucasians and various kinds of non-Caucasians not Chinese. North Carolina had barred intermarriage between blacks and certain kinds of Indians. Some Indians in North Carolina had a lot of black blood so they could not intermarry whites, an interesting footnote; but, in any event, these people who had been married – forever – got married in North Carolina, which was legal, but during the course of my effort to make him a permanent resident she filed an action for either divorce or annulment in Portsmouth. I appeared before a judge named Bang, and I jumped at the opportunity to handle that because I went to the University of Virginia and there was a fellow named John Powell who was a composer and his wife. His wife, interestingly, and his music was based very much on black music, but he was a white supremacist and he helped to lobby a bill in the Virginia legislature which meant stricter standards against intermarriages. I forget what the original prohibition was, but the one that he got through in the 1920s banned intermarriages between Caucasians and anyone who had more than 1/16th non-Caucasian blood. And that 1/16th was to take care of the descendants of Pocahontas.

Mr. Reischel: Right.

Mr. Carliner: I thought that was an interesting development. Somebody has written a separate article on this particular issue. Anyway, having known about that since I had gone to the University of Virginia, I just jumped at the opportunity to challenge the

miscegenation laws in Virginia. Have I told you this before?

Mr. Reischel: You have, but I think it is absolutely fascinating and it's extraordinarily important.

Mr. Carliner: Anyway, I jumped at the opportunity and I went down to try this divorce/annulment case. The judge granted an annulment because he said the marriage was illegal in the state of Virginia and these people could not be married because of this miscegenation law.

Mr. Reischel: It was while he was trying to become naturalized that the court decided to annul?

Mr. Carliner: Not to become naturalized, to legally become a permanent resident. I got into it because he was an immigration client, not because I was a divorce lawyer. I didn't really practice in Norfolk, but he was there.

Mr. Reischel: But, I'm just wondering what the human dynamics between them was. Here he's trying to find a home here and then she's —

Mr. Carliner: Well, the human dynamic when two people want a divorce is the dynamic goes the opposite direction. They had no children and what kind of a marriage it was, I don't know. But anyway, the judge granted the annulment and I took an appeal to the Virginia Supreme Court of Appeals. I don't think they had *certiorari* jurisdiction. I think they had a wider appeal in the Virginia Supreme Court of Appeals. So anyway, I wrote an appeal to this decision challenging the law under which this annulment was granted as being unconstitutional.

Mr. Reischel: No lawyer for her showed up, right?

Mr. Carliner: Probably not. I don't recall another lawyer being there.

Mr. Reischel: I think it was just the Virginia Attorney General's office and you.

Mr. Carliner: Well, the Virginia Attorney General was defending the statute, but that's all she needed.

Mr. Reischel: Sure, that was standard.

Mr. Carliner: I don't have a vivid recollection of who the other attorney was. I do have a vivid recollection of the oral argument. There were nine white men on that court and this fellow was Chinese not black, but it didn't make any difference to them. I don't think I've ever been treated with more hostility by judges.

Mr. Reischel: In the courtroom?

Mr. Carliner: In the courtroom, I was treated as if I were a piece of dirt. It was really – ah, I can't say I'm used to it, but nonetheless I just sensed this enormous hostility toward me as an individual in handling this case. I don't remember the colloquy in the oral argument, but I do remember the decision that was issued and this is in print. It said, "Police power of the state of Virginia," and maybe even said it in court, I don't know, "exists to prevent the mongrelization of the races."

Mr. Reischel: It's the last paragraph of the opinion.

Mr. Carliner: Anyway, I had a dog who was a mongrel. I turned to him and said, "It appears the Supreme Court of Appeals doesn't like you."

Mr. Reischel: Yes, some flavor of their feeling seeps out there.

Mr. Carliner: As you know, there are two ways of getting to the Supreme Court. One is to file a petition for *certiorari* and the other is to file a notice of appeal. You file a notice of appeal, and you raise a constitutional question. I knew people in the Solicitor General's office

at the time and they are all decent people and they do not support a law like this. They would think it not constitutional. Apart from being decent, they were good lawyers. But, I remember speaking to, maybe it was Oscar Davis, who was a friend of mine. There were two people in the SG's office; they divided up the pending cases to see if the Department of Justice would support this appeal. They said, "No, we'd never do that. We suggest that what you do is file a petition for *certiorari* because when they turn down your petition for *certiorari*, they are not making a decision on the merits. If you file a notice of appeal and they turn it down, they are saying you don't have an issue on the merits". I said, "Well, thank you very much. I don't want to be turned down on a petition for *certiorari*." "When they turn it down then do it on that ground or whatever ground they want." I declined their suggestion to file a *cert.* petition and filed a notice of appeal. Well, that's where the *Naim* case gets interesting in terms of Frankfurter being a maneuverer, because his issue was that I didn't bring all the constitutional issues to the court that should have been brought. Namely, giving full faith and credit to the rules of North Carolina.

Mr. Reischel: Oh, my goodness.

Mr. Carliner: And so I wasn't really interested in the full faith and credit argument. That would have been the argument perhaps if I were a lawyer more attuned to all the issues that should be brought to the Supreme Court, but I thought it was clear that the law was unconstitutional on its face, rather than sideways as to full faith and credit.

Mr. Reischel: The Supreme Court sent it back, didn't it?

Mr. Carliner: The Supreme Court sent the case back to the Virginia Supreme Court of Appeals to reconsider its decision in the light of something or other. But the Virginia Supreme Court of Appeals said, "We have rendered our decision. We have no occasion to

reconsider it," and they denied the request to reconsider and so I went back to the Supreme Court to tell them to issue the appeal but the appeal was dismissed for want of – I forget what it was.

Mr. Reischel: I see. And they were really just ducking the issue because they didn't think the country was yet ready for that step.

Mr. Carliner: Well, I think that they didn't want, I'm not sure – that would have raised a much more emotional and inflammatory issue. There's this joke told about some guy out in Chicago who has some issue raised in the Chicago courts as to his right to go to school and they said this thing will lead to intermarriage between people and the guy says, "I don't care about going to bed with white women, all I want to do is go to school." And going to school was an inflammatory issue too at that time.

Mr. Reischel: Sure.

Mr. Carliner: Anyway, that was the end of that case, but years later a fellow by the name of Loving came to someone who referred him to Phil Hirschkop who practices law in Virginia. Phil Hirschkop accepted the case. I think it was for the ACLU.

Mr. Reischel: I think so, too.

Mr. Carliner: He took the case and Phil was very gracious, because I had written all the briefs on that in the *Naim* case and there wasn't much more to do because there hadn't been any new action since then judicially. And so he brought a challenge to the miscegenation law in the *Loving* case and he put my name on his brief.

Mr. Reischel: Yes he did.

Mr. Carliner: On his brief as co-counsel, of counsel, or something. So I guess the record has my name on it too. But, I wasn't involved in the case in arguing it and doing

briefing except that I'd briefed it before.

Mr. Reischel: I think, if my memory serves me correctly, *Loving* came down in 1967. So that's 13 years later. They apparently thought there had to be a long pause between the beginning of the end and the end. That was almost the last truly sensitive issue before affirmative action, I think.

Mr. Carliner: Yes. I think there are some cases in Mississippi or Alabama, I don't remember, but my relationship to *Loving* is more of an act of grace on Hirschkop's part than any actual involvement.

Mr. Reischel: I noticed in *Naim* itself that the Virginia Supreme Court says everyone agrees with us with one exception. Apparently, California had already by a 4 to 3 decision invalidated their own statute.

Mr. Carliner: Yes, a number of states either repealed them or – about 17 states as I recall. Harry Bridges was involved in a case like this. Is his name familiar to you?

Mr. Reischel: Oh yes, from the Longshore Workers Union out on the West Coast that the communists threatened.

Mr. Carliner: I think he had a Philippine wife or something, and he had this issue involving one of his marriages. The other cases in which this issue was raised, but I'm not sure whether it – it had to have been disposed of at the lower levels than the Supreme Court, but there were numerous states that had this law.

Mr. Reischel: Were you active, at the time you got involved in *Naim*, were you active in the ACLU then?

Mr. Carliner: I wasn't active. The ACLU organized a chapter here in 1961 and

I became, I may have mentioned, the first chairman on an elected basis. However, I had done work for the ACLU as a cooperating attorney on a number of cases before then, without being active in the organization. I tended to handle their cases involving the right to travel and the right to passports and immigration cases.

Mr. Reischel: Did your interest in civil rights predate or grow out of your immigration experience?

Mr. Carliner: Well, I guess my interest in civil rights predated it because I didn't get involved in immigration until I was an adult practicing law, but my interest in being against discrimination against blacks started earlier in my life. When I was in high school, I was president of the debating club and happened to get to know, I don't remember how, two lovely black women. One was the dean of Minor Teachers College, whose name was Lucy Slowe, and the other one was a teacher of English at Dunbar High School. These two women lived in a house in Brookland in Northeast Washington, not too far from Catholic University, and the Ku Klux Klan burned a cross outside their house and they did not move. And I got to know them from other contacts I had in my school. So I proposed to the debating club that we challenge the debating club at Dunbar High School to a debate and the club approved it.* So, we were going to make this proposition. But some guy in the class took it upon himself to call the principal to tell him about it and the principal, who didn't want to act on his own, went to the Superintendent of Schools, who was Frank Ballou, and he vetoed it. Couldn't have that interracial activity. It wasn't as if we were playing football with them where you get mugged or beaten up, or going to a

*Editor's Note: The District of Columbia public schools were segregated at the time. Dunbar was a school attended by blacks.

sorority dance or something. It was only a debate.

Mr. Reischel: So you already felt very strongly about it while you were in high school.

Mr. Carliner: So, I got involved in these sort of things in early life.

Mr. Reischel: Did that come from your family, your father? Where did your sense of the unfairness of it all?

Mr. Carliner: Well, my father had a sense of justice but he was the sort of person who believed in staying out of trouble. So it didn't come from that kind of – he was just in business making a living to support himself. He worked seven days a week and he wasn't involved in any activities. My mother wasn't that interested either, really. She belonged to a Jewish – I can't quite remember, she belonged to an organization called Hadassah, a Jewish organization concerned with Israel. She was not a social activist.

Mr. Reischel: So you basically evolved. It just struck you as unfair.

Mr. Carliner: Well, I may have come – I'm not sure. I had three siblings. I was the youngest in my family and my oldest brother, who died a couple years ago at the age of 82, himself was somewhat of an activist; he was active in the government workers union in Washington. He was involved in one way or the other, and I guess within my family, he may have had, did have, a major influence on me, but not directly in the sense of – he was nine years older than I.

Mr. Reischel: Ah. Was he also a lawyer?

Mr. Carliner: No. He went to George Washington University. He had a degree in whatever. Then he went in the Army. But he worked in the United Automobile Workers

Union for a good part of his life.

Mr. Reischel: So he was a social activist.

Mr. Carliner: Well, not really. He went into the Department of Agriculture where he was editor of the magazine which the Department printed. Although he was not subject to the draft, he volunteered for the Army during WWII and served in the Army for about three or four years after volunteering. He was active in the – he worked for the Union so he has involvement through the government workers union, but in terms of the things I did, he didn't quite do those.

Mr. Reischel: How did the cross burning come to your attention? Was that in the papers or did you just know about it through the neighborhood?

Mr. Carliner: I did not know about it contemporaneously. I learned about it from these women. How I got to know them I don't remember.

Mr. Reischel: Washington was pretty strictly segregated socially, I imagine, in those days.

Mr. Carliner: Yes. As I kid I didn't live in a neighborhood that was black and I didn't have any black friends when I was a child.

Mr. Reischel: The schools were strictly segregated until 1954.

Mr. Carliner: Yes, the schools were segregated. I didn't play with black kids. When I was in college or high school, I got to know people at Howard University. There was a person there who came out of Richmond, Virginia. His name was James Jackson, a wonderful man, whose father was a pharmacist in Richmond. He suffered during WWI, when he came from Klan activities and he went to Howard University and I got to know him at Howard.

Mr. Reischel: Were you using its library for research? How would you bump into people at Howard? Must have been when you were at high school, I would guess.

Mr. Carliner: I don't remember the original contacts there. But I guess much later, there was a man, a professor of political science at Howard, named Robert Martin, but I was long since an adult then. My brother was married to a woman whose brother-in-law was a professor of chemistry at Howard, named Leon Shereshefsky, but I'm trying to recall what the particular contacts would have been. I knew people at Howard University.

Mr. Reischel: I'm trying to – was there a connection between your feeling of discrimination —

Mr. Carliner: That was when – it was later than high school. There was a well-known economist at Howard University named Abram Harris. I was active in student activities at one time or another belonging to student organizations.

Mr. Reischel: This was when you were in high school?

Mr. Carliner: Yes. He told me to give up all that nonsense and concentrate on my studies and he was right. He was an economist. Went off to the University of Chicago. Brilliant man. To reconstruct my life on this sense, I'd have to dig into memory more than I have at my fingertips right now.

Mr. Reischel: Well your interest in home rule, suffrage for the District of Columbia and for equal rights, of course, are intertwined.

Mr. Carliner: There was a Scottsboro march in Washington. I lived on Bladensburg Road and Bladensburg Road was an entryway to Washington, D.C. I remember when I was about 13 or 14 years old there was a peace march or something in Washington. After

the family bought the place where I was living, there was a car with Jane Addams in it, and I had heard of Hull House in Chicago. I was working at my father's grocery store and I took off my apron and rushed over to interview Jane Addams for my junior high school newspaper. So at the age of 13 or so I had some social stirring and met Jane Addams. Subsequently during the Depression, there were hunger marches in Washington on New York Avenue off of Bladensburg Road after entering Washington, and the other end was at Florida Avenue. Between Florida Avenue and Bladensburg Road on New York Avenue there was no access, no streets of any kind, the railroad track was on one side of New York Avenue and a woods, forest, trees, were on the other side. It was undeveloped then, and the Chief of Police in Washington was a very shrewd fellow. A rather decent fellow who allowed the hunger marchers to come in on New York Avenue but had a police barricade so they couldn't get beyond, if you know that neighborhood, beyond Florida Avenue. These hunger marchers were bottled up in the area between Bladensburg Road and Florida Avenue. Since I lived on Bladensburg Road I could walk down there and talk to hunger marchers, which I did when I was 13 or 14 years old.

Mr. Reischel: And this made an impression?

Mr. Carliner: That made an impression. And then there was a demonstration where what is now Judiciary Square, I guess it was there then, across the street from the Municipal Building, which is where the headquarters was, and I think that was a demonstration for welfare relief. So I went down there, not to take part in the demonstration, but to watch it and I saw policemen clubbing guys over the heads, which left an impression on me.

Mr. Reischel: Pretty brutal.

Mr. Carliner: This goes beyond the cases that I've been involved in. This has to

do with —

Mr. Reischel: Do you think this has something to do with your interest in law as a profession?

Mr. Carliner: Possibly, but when I was at the University of Virginia, there was a professor, who took a fondness toward me and he taught agricultural economics. He came from Arkansas. His name was Wilson Gee. He wanted to promote me as an agricultural economist and he thought that I would be very good for the South, very good for agricultural economics. I thought vaguely that I might want to become an economist, or whatever. So he took a paternal interest in me to promote that, but I decided while I was still at college that I would go ahead and go to law school and become a lawyer.

Mr. Reischel: Had you known lawyers when you were younger?

Mr. Carliner: No, not really. My father may have used lawyers from time to time, but not any personal relationship with them. I guess I must have, can't think of, if you're reaching for whether there's a lawyer who was a role model who inspired me to go to law school, I can't think of anyone.

Mr. Reischel: Someone who steered your interest?

Mr. Carliner: I knew lawyers but I didn't go to law school because I knew them. To say I knew them, I can't even now remember when I was in college. I went to no lawyer then, I was too young to have a relationship with an adult.

Mr. Reischel: But yet you took this, if I understand it correctly, it was kind of a three-year college course?

Mr. Carliner: Well, the college course was really four years where one had the

opportunity to get an AB degree in the first year of law school, but in order to have gotten that degree I had to take certain courses as an undergraduate which qualified you for it and I had not taken all those courses. I didn't have it as well structured as I should have, but I didn't. But not having an AB degree, I would be severely handicapped if I were in a university-level environment.

Mr. Reischel: And when you were in law school did you have any idea of what kind of a lawyer you were going to become?

Mr. Carliner: Well, probably, because I tended to identify with the labor movement I thought I might become a labor lawyer. But it went that way and I discovered that many people go into law and the practice they have is serendipitous.

Mr. Reischel: As was yours, in immigration.

Mr. Carliner: Yes, that's right, and I would not have got involved in immigration if I hadn't gotten involved with Jack Wasserman.

Mr. Reischel: I think this might be a good time to cut off this one, unless you want to —

Mr. Carliner: No, I'm at your disposal and I have a feeling I'm going off on a tangent.

Mr. Reischel: No. None of this is really tangential and all of it is interesting. If you want we could go on and talk, but it might be too big a topic to cover in brief compass. I would like to talk sometime about *Marcello* and that long string of cases that seemed to have started back in the '50s and went on well into the '60s.

Mr. Carliner: Yes, well *Marcello* is the case which started on December 26,

1952. The Immigration and Nationality Act was enacted on June 26, 1952, and became effective six months later. So the very day it became effective the Immigration Service in New Orleans instituted procedures against him to deport him from the United States.

Mr. Reischel: Wasn't there a target list that was announced or something like that?

Mr. Carliner: Well, I'm sure there was a target list. Marcello did not come to me directly. It was Jack Wasserman who was really his lawyer and I got involved in it as Wasserman's partner and I argued part of the case that went to the Supreme Court on the ex post facto issue. I'd forgotten about that being in the Supreme Court. Someone once asked me if I had any cases in the Supreme Court. The only ones I remember were motions to admit people to practice.

Mr. Reischel: Well, you've had a good number of them.

Mr. Carliner: I was nominated to be General Counsel of the ACLU. I've told this story a number of times and I'm repeating myself to you, but that's a job where you had to be elected to by a board of your organization, and there was another person who was a candidate for the job also. He described all the cases he had won in the Supreme Court. When my turn came, I said the only thing I've ever won in the Supreme Court is a motion to admit another lawyer to practice there. So I realize that now that case that you told me about was workmen's compensation.

Mr. Reischel: The first one you won.

Mr. Carliner: I hadn't remembered that case at all. But, anyway, I got elected and he didn't.

Mr. Reischel: But, who was Marcello and why were they all upset about him?

Mr. Carliner: Well Marcello was born in Tunisia. He was born in Tunisia because his mother had come to the United States originally from some place in Sicily and she arrived in New Orleans and there was an epidemic of mumps or something. They weren't able to land and so they left New Orleans and went to Tunisia where she gave birth to Marcello and Marcello came back to the United States nine months later in 1907, or whatever year it was. So he grew up in the United States from infancy and the point that's been made by a lot of people is that whatever he was, he was an American problem. There is a well-known anecdote about some Polish ambassador who is complaining that the United States wants to deport somebody as a criminal back to Poland. "Here we sent to you a two-year-old infant who had never done anything wrong as of two years, and you want to send us back a 30-year-old hardened criminal. His role as a hardened criminal was created in the United States. We're not responsible." Well, that's true for Marcello. What happened with him was that in 1926 he was convicted of selling 1,000 grams of marijuana as a tax offense. That was a tax violation and not selling marijuana. He was convicted of that which was not then a deportable offense. In 1952, it was actually June 26, 1952, they made it a deportable offense.

Mr. Reischel: Retroactively?

Mr. Carliner: Retroactively. And that was the argument in this case. There were a number of issues. Wasserman argued the part that it was not constitutional, but not the ex post facto issue, which nobody expected to win because the Court held that retroactivity didn't apply to deportation. I'm not sure which cases had so ruled, but it was not a winning argument, but who knows. I was glad to be able to argue it. I argued that to the Supreme Court. The other

issues which Wasserman argued had to do with due process; they had to do with the administrative procedures involved in the deportation proceedings.

Mr. Reischel: The judge was subject to the prosecutor's supervision, or something like that?

Mr. Carliner: Yes that's right, that was one of the issues. So anyway, that was not won as I recall. We didn't win it. Anyway, that was that case. But, Marcello was never deported from the United States and not because the Immigration Service didn't try, but because, literally, a law suit was brought by a Marcello attorney to challenge his deportability. That he was born in Tunis and not Italy and he was not an Italian citizen. And so they had some colorable argument that he was deportable to Italy. So the case was pending in the courts in Italy which are slow at all times, but in cases like this they were even slower. The Immigration Service was stymied in its ability to deport Marcello. I don't know why he did it, but he filed some sort of record to show that he was born in, I think, in Honduras.

Mr. Reischel: Guatemala, I think it was.

Mr. Carliner: Was it Guatemala? Anyway, he was required under the deportation proceedings to report to Immigration Service once a month to show that he was still around. So he reported one day and they picked him up then and there and then put him on an Immigration Service airplane to fly him, if you say, to Guatemala.

Mr. Reischel: I think so.

Mr. Carliner: Anyway, It was to some Central American country and dumped him there on the claim that he was a citizen of that country, born there by his own admission. Well, when he got there, that country didn't want him and I'm not sure whether they expelled

him or whether he got out on his own, but he left shortly thereafter and he turned up in Florida which was not hard to get into for someone having money and transportation and so on. Soon he was back in business. So the Immigration Service renewed its deportation proceedings against him. We had a series of cases on this. The Immigration Service in its brief listed all these cases, two pages of them.

Mr. Reischel: Yes.

Mr. Carliner: And, Katzenbach, he was Deputy Attorney General, gave a speech to some organization where I was present, describing how lawyers kept prolonging cases forever and forever and forever. He gave them the *Marcello* case as a prime example of it. And we always appreciated the light that Katzenbach had brought; his point of view. But, the *Marcello* cases were used as part of the legislative history to modify the judicial review provisions. I'm not sure the judicial review provisions were exactly modified until recently, at least the most recent legislation cut them back sharply. But anyway —

Mr. Reischel: You challenged the second round of —

Mr. Carliner: We had a number of challenges when we appeared before Judge Matthews in Washington and Oliver Gasch, he was a U.S. Attorney at the time, but we had lots of appearances of which I handled most all of them. Wasserman had a nervous stomach and he didn't like to argue cases at first. This is how I established my relationship with him in court. So we appeared in D.C. court quite often.

Mr. Reischel: Wasn't there at one point, I thought one of those cases had the unusual circumstance of having, wasn't Skelly Wright one of the Assistant U.S. Attorneys?

Mr. Carliner: Skelly Wright was Assistant U.S. Attorney in New Orleans.

Mr. Reischel: In New Orleans?

Mr. Carliner: He was on the Court of Appeals in Washington.

Mr. Reischel: Later on, yes, very famous, but —

Mr. Carliner: I knew that but I'm not sure that issue ever came — did that issue ever come up before the court?

Mr. Reischel: Yes, it did. I think the regularity of what had happened when he was prosecuted at one point was put in issue. And you had to put into evidence Skelly Wright's recollection or something about what he had done with the case when he had been an Assistant U.S. Attorney and that amounted to he didn't remember anything about the case at all, but he did attest that his signature was found on some of the documents, he would have handled it, whatever. I thought it was just very peculiar.

Mr. Carliner: I don't remember, I knew that Wright was involved in the case when it was in New Orleans. But I don't recall any role that he had to play in Washington because he was on the Court of Appeals here and he might have recused himself if something came before him on the court.

Mr. Reischel: Oh, I imagine he would have. And he went on the District Court bench there in 1950, or something.

Mr. Carliner: Yes, he was on the District Court, but he was not widely loved in New Orleans because he was against segregation.

Mr. Reischel: In fact, I think the Kennedys cut a deal. I think Jack Kennedy cut a deal to remove him, to appoint him here to get him out of there. They were glad to see him go and Kennedy was glad to have him here.

Mr. Carliner: Well, the other judge, a very famous heroic judge in Charleston, South Carolina, who was involved in a desegregation case there. I had met him. He retired.

Mr. Reischel: Well, I remember Judge Johnson of Alabama, but —

Mr. Carliner: This judge was from Charleston. Either he was originally from some place else or his wife was. He wrote a decision against segregated schools. He was ostracized in Charleston and he really had to move from there. He moved to New York, or some place. You might remember that.

Mr. Reischel: Was he one of those Eisenhower appointees in the South?

Mr. Carliner: I don't recall. It may have been. I just don't know.

Mr. Reischel: Many years later, I remember the same thing happening to Orma Smith in the Northern District of Mississippi. Some very courageous judges down there.

Mr. Carliner: Yes. People don't realize how heroic some of those people are. Independent judiciary, independent judges who are opposed to what the community wants.

Mr. Reischel: Well, as you saw firsthand in *Naim*, it doesn't have to be that way. The judges can go along with the flow. But some of the federal judges have been truly amazing historically in holding to a position because of what they thought was right.

Mr. Carliner: Well, we've probably worn out your machine.

Mr. Reischel: I think so. I think that's enough for this session.

INTERVIEW NO. 2

October 16, 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 October 16, 1997.

Mr. Reischel: We finished talking last time about your *Marcello* litigation of which there was a great deal over about fifteen years, I think. The high point of which I guess was your argument in the Supreme Court.

Mr. Carliner: I'm not sure that was the high point, that was sort of a, if taken in a musical sense, it was a counterpoint rather than a high point. The main issue there was a due process issue and the issue that I was arguing, which was an unwinnable issue, was *ex post facto*. And the Court held rather summarily that it was not *ex post facto*.

Mr. Reischel: That led into a subsequent argument that you had up there too, I think.

Mr. Carliner: There were a lot of *Marcello* cases, but I think only one went to the Supreme Court.

Mr. Reischel: Right, on *Marcello*, but *Lehman* was about whether or not, if I read it correctly —

Mr. Carliner: *Lehmann v. Carson*, that was a savings clause case wasn't it?

Mr. Reischel: The question was whether or not Congress had intended retroactivity for a provision, a particular provision, and they reiterated summarily that, of course, the *ex post facto* clause didn't apply to immigration. I guess they had so held even before *Marcello*, but you were trying to construe the immigration statute to say that Congress didn't

mean to apply it retroactively.

Mr. Carliner: I wouldn't make an argument like that today. Congress is enjoying doing what it can to the illegal aliens.

Mr. Reischel: Well, I think they've tried to clarify when something is retroactive and when it isn't. I don't know how much is —

Mr. Carliner: Well, Justice Scalia doesn't believe in looking at legislative history unless it is the same language as the statute.

Mr. Reischel: Well, somebody said that he believes the Constitution should be read as it was written. But I was listening to a law professor who said, "What about the warrant clause? No searches without a warrant."

Mr. Carliner: Isn't Justice Marshall the one who said, "It is the Constitution we're expounding"?

Mr. Reischel: The first Justice Marshall, yes, exactly so. One of the other cases I looked at was the *Quan* case that you argued in the Supreme Court. The *Quan* case seemed to be about, the law in it had to do with whether aliens on parole in the United States were "within the United States" for some provision, or whether they weren't. This seemed to be a highly arcane and technical matter, and the Court, I think, held that they were not within the United States. But it seemed to really be about whether or not the Executive Branch could give mercy to people who, if they were expelled to Red China, would be persecuted.

Mr. Carliner: The underlying issue is that if you are in the United States, you can apply for a stay of deportation on the grounds that you could be persecuted or for asylum under one of the statutes on the grounds that you would be persecuted. But you had to be "within

the United States" to do that. Outside the United States, you could not apply. There's a difference even today between people; there's a distinction: when you are outside the United States you come in as a refugee and the procedures are different. Inside the United States, you apply for asylum.

I've had cases of a brother and a sister from Ethiopia. One applied for refugee status from home, and the other was inside the United States applying for asylum from Ethiopia. They would be persecuted there. They were handled by two different agencies. One was approved and one wasn't, even though the factual circumstances as to each person were the same. So the procedures are important. And they've never been – the Court has these Haitian cases. The United States intercepted Haitians from coming here so they could not land in Florida. If they land in Florida, and they come up on the beach, they could apply for asylum. They would stop them from being able to do that. While intercepting them as they were coming from Haiti, they would put them on boats to go back to Haiti or put them on this land that we had control over in Cuba. And the case in the Supreme Court several terms ago was on the very issue of whether they had eligibility to apply for asylum. So it's not a question of the substance; it's a question whether you're in the border. It's a very important [distinction].

Mr. Reischel: And where were all these people in *Quan* who were fleeing Red China?

Mr. Carliner: Well, Quan was an individual as I recall. Was he the fellow who they were telling to have the U.S. Army coach in China?

Mr. Reischel: I think so.

Mr. Carliner: Anyway, there's one case I had where a guy had gone to China,

having been in the United States. He had been in the U.S. Army for 90 days, and being in the U.S. Army for 90 days, even though he was illegally in the United States, he could apply for U.S. citizenship with a special status given to guys who serve in the Army. So he came back to the United States from China and claimed that he would be persecuted there because having a U.S. Army uniform demonstrated obviously that he was a CIA agent, or something. The Immigration Service said, "No he was not in the United States and he couldn't apply for asylum." So this case was one of my cases in the Supreme Court. And the Solicitor General thought better of it, to think of a guy who would serve in the U.S. Army, come back from China, apply for asylum, and couldn't get it. So what they did was make him a citizen. That mooted the case.

[Small Break Here]

Mr. Carliner: Is the D.C. government able to hire anybody these days?

Mr. Reischel: Yes, but only if it is an emergency situation. We're on a continuing resolution because they're fighting about school vouchers again.

Mr. Carliner: Clinton says he's going to veto it.

Mr. Reischel: That's right. So we'll continue. We may end up on furlough again over this. But, don't – (laugh) My comments on that I don't want to be recorded. In any event, we were talking about *Quan* a little bit. Who is or was an alien on parole?

Mr. Carliner: The phrase "parole" is used as a term of art in immigration law that permits somebody from coming into the United States who cannot come in legally. So he's paroled in for various purposes, for humanitarian purposes sometimes, to put him in jail for other times, but he is excludable from the United States. So he is "paroled" into the country and is permitted to stay here for the purpose of the parole procedure, and sometimes he ends up being

granted permanent residence, or whatever. Sometimes he's found to be excluded from the United States, and he is put under exclusion proceedings as distinguished from deportation proceedings. Exclusion proceedings are for people who are "not in the United States," and they have fewer rights in terms of procedures in subsequent matters than people who are being deported.

Mr. Reischel: But people who, like the boatlift people, are seized within the three-mile limit or twelve-mile limit, whatever it is now, they would be within the country?

Mr. Carliner: No, being three miles offshore, you're not within a country unless you get on the beach here.

Mr. Reischel: Oh, right, but once they get on the beach, then they're within the country?

Mr. Carliner: Then they're here.

Mr. Reischel: And a different set of procedures, and they have greater rights.

Mr. Carliner: If you are out in a boat coming in from Balboa or Jamaica and the Marines or Coast Guard picks you up, and they cart you back to wherever you came from, you're not here. Even though you're within the three-mile limit, and you're picked up and put on a Coast Guard vessel which is a U.S. boat, you're not in the country.

Mr. Reischel: But if you land in an airport as a stowaway?

Mr. Carliner: If you land in an airport as a stowaway, you're here.

Mr. Reischel: You're here and then you have greater rights.

Mr. Carliner: You have better rights. To some extent the distinction of being what you can apply for has been somewhat obliterated, but it's still there. To be excluded in the United States, you don't have – for persons who are under exclusion proceedings, due process is

what Congress says it is. If you are under deportation proceedings, due process is what the Constitution or courts say it is. It's not a statute. And, in some ways, those procedures are what law is all about.

Mr. Reischel: Well, all too often they are. You mentioned while looking at my brief earlier, *Woodby*. I use *Woodby* for the clear and convincing evidence rule.

Mr. Carliner: Yes, that's a standard rule.

Mr. Reischel: I take it that's for taking somebody's citizenship away.

Mr. Carliner: Yes.

Mr. Reischel: Clear and convincing evidence. I'll have to talk to you sometime about how —

Mr. Carliner: Rules of clear and convincing, preponderancy, evidence and burden of proof and so on.

Mr. Reischel: Sure. One of the cases you asked me to look at when we talked earlier was the *Rusk v. Cort* case where I think you were on it with the ACLU. In fact, Steve Pollak and you were the authors of the *amicus* brief in the Supreme Court in that one.

Mr. Carliner: Maybe. I know Steve. He was in the Solicitor General's Office at one time, and I don't know that he was ever on a —

Mr. Reischel: He's also active in the ACLU, I think.

Mr. Carliner: I think he was a contributor to it. I don't think he was active in it. Maybe I'm misremembering it. He was in the White House, you know.

Mr. Reischel: President Johnson, wasn't it? Liaison for District matters?

Mr. Carliner: Yes. Liaison. Charles Horsky was there for Kennedy, and Horsky

stayed on for a while, but he had worked for Kennedy, and having worked for Kennedy, he was not, for Johnson, essential. Steve replaced him.

Mr. Reischel: Steve replaced Horsky?

Mr. Carliner: Yes. Steve came over from the Department of Justice. He had been First Assistant to the Assistant Attorney General for Civil Rights. I think that was his job.

Mr. Reischel: May have been.

Mr. Carliner: I don't know. But we were good friends.

Mr. Reischel: I think he was on the brief with you in *Cort v. Rusk*.

Mr. Carliner: He could have been. I don't remember. He would have had to be in private practice then.

Mr. Reischel: Speaking of procedures, *Cort* is one of the few cases you had me look at where the Supreme Court actually said that one of these petitioners was entitled to procedures. That was where the statute made a draft evader or somebody who left the country or wouldn't return to the country in time of war for service, if I remember correctly, automatically stateless, lost citizenship.

Mr. Carliner: Yes, someone who deserted the Army during the war could be expatriated. Leaving the country, I'm not sure that was a ground for expatriation. There was this case of someone in North Africa, a question of whether he deserted or he was AWOL, and there's an important difference, of course. One who deserts in that situation is expatriated. That wasn't *Cort* though.

Mr. Reischel: No, I think *Cort* went to England and he taught.

Mr. Carliner: England, and then he went to Czechoslovakia and he —

Mr. Reischel: He would not return for the Korean War service.

Mr. Carliner: Was it the Korean War? He refused to submit to the draft so he would have been expatriated.

Mr. Reischel: And, the Supreme Court held in *Cort* that that statute was unconstitutional.

Mr. Carliner: Yes.

Mr. Reischel: On due process grounds.

Mr. Carliner: Yes. I think that the major contribution we made there had to do with jurisdiction to bring a lawsuit.

Mr. Reischel: What was peculiar jurisdictionally about the case? Do you recall?

Mr. Carliner: Well, he was outside the United States, and his brother was required to come to the United States and seek *habeas corpus* in order to challenge his loss of citizenship. In order to come to the United States, he needed some special dispensation and wasn't sure that he could get that dispensation. He brought an action for declaratory judgment. There's lots of litigation on declaratory judgment. One of our clients was Serge Rubinstein who had a fear of closed spaces, that psychological thing, like being locked in a closet. In order to bring a writ of *habeas corpus* at that time, you had to surrender to the customs agent or a U.S. Marshal. Custody meant custody.

Mr. Reischel: You mean imprisonment.

Mr. Carliner: But there was a change in the law, and subsequently you submit to the control but are necessarily interned. Anyway, the government was unwilling to allow him to do anything but sue under custody and be put in jail, and then he could bring a suit for *habeas*

corpus. Well, I'm sure from his previous experience of not having been to jail, he didn't care to go back in order to knock on the door to come out. He just didn't want to go in. So he brought an action for declaratory judgment as to whether he had committed an offense. He is charged with using a false affidavit in order to avoid the draft, and that was the merits of the case, and we brought an action for declaratory judgment to say that that was not an offense for which he could be expatriated.

The government was unwilling to allow him to do a declaratory judgment. That became the overriding issue with them, declaratory judgment for *habeas corpus*. We won in the Court of Appeals in Washington and went to the Supreme Court, and that was an interesting little by-play. The Attorney General had been Tom Clark at the time, and Rubinstein had wanted us to hire a lawyer who would be able to make a presentation to Clark. So somebody was hired; I forget who it was. He went to Tom Clark, who was on the court, and reminded Clark that he was the Attorney General when the case against Rubinstein was brought. Well, Clark, of course, didn't know anything about it; the Attorney General can't remember all the cases that were brought in U.S. District Court. Nonetheless, Clark recused himself. As a result, there was a 4-4 decision by the Supreme Court which had the effect of affirming the U.S. Court of Appeals. All kinds of footnotes to the cases.

Mr. Reischel: Did the law subsequently get clarified as to — ?

Mr. Carliner: Yes, *habeas corpus* – you could use declaratory judgment as a way of doing it.

Mr. Reischel: Oh, the law that you established became established law.

Mr. Carliner: Yes, in effect, to certain courts of appeals. Later, I think a case

went to the Supreme Court on that issue. I remember, can't remember the case, but there was a case there, and, I think, the Supreme Court appointed a person who was previously a law clerk to one of the Supreme Court Justices, a right-wing person, who wrote a brief, *amicus* brief, for the court on this issue.

Mr. Reischel: One of the other cases that I read at your suggestion was *Convento* which, as so many of these cases when someone like me who is not an immigration lawyer reads, turns on some point that looks incredibly technical. This was "what's an enlistment," if I remember correctly.

Mr. Carliner: Well, there was a case which was really not technical at all. It is one of the more important cases. The law provided that anyone who had served in the military – Navy, Army, Air Force – during WWII, during time of war, and served for three months, could apply to become a citizen of the United States. The word was "enlist." Well, the U.S. Navy had been headquartered in the Philippines for a long time, and the Navy used Filipinos to be stewards and to work at part of the Navy. They never worked at any other aspect of the Navy. These people joined, they enlisted in the Philippines, and very often their enlistments would expire, and they would be dropped at the landing in Norfolk or San Diego, or some place like that, and so, while in the United States, they would reenlist in the Navy. Well, the Immigration Service took the position that you had to enlist in the United States in order to have the benefit of this provision. You could not enlist in the Philippines. So the Immigration Service had taken the position that these people had enlisted in the Philippines, and the reenlistment in the United States was not —

Mr. Reischel: Was not an "enlistment" for purposes of a statute?

Mr. Carliner: In the Court of Appeals they said, “50,000 Filipinos,” I’ll never forget this argument, “would be able to become citizens if you allowed them to do that.” Well that didn’t move the Court of Appeals any.

Mr. Reischel: That just meant that 50,000 Filipinos had served in the United States Navy.

Mr. Carliner: Yes, that’s right, they did that. So at any rate, that argument was literally unpersuasive. It might have been somewhere else with an anti-Filipino attitude. But that was really a huge gold mine, if that’s the right metaphor for it. The headline story in Philippine newspapers and as a result of that this had more than the rippling effect for just being able to serve in the Army and become citizens. The Filipinos were confined to the stewards jobs and could not go into the Navy generally. And so, when they became citizens, they could serve anywhere in the Navy, and these people perhaps had qualities to be quartermasters, seamen, whatever. So the Filipinos like them get beyond being stewards and taking care of cooking. Apart from that, since they were able to become citizens, they could sponsor their wives to become permanent residents, and they could sponsor their brothers and their parents. So the number of Filipinos who have come to the United States through this has been enormous. The Philippine quota, there is a quota for them, has been oversubscribed because of the very large number of Filipinos who had to come in through this enlistment clause. So in terms of major decisions that I’ve been involved in, that in terms of the quantitative, the technical issue is rather interesting, but the effect on the number of people is vast.

Mr. Reischel: And Congress didn’t tamper with it, I take it.

Mr. Carliner: No.

Mr. Reischel: The Supreme Court, I think, denied *cert.* I'm not even sure *cert.* was sought.

Mr. Carliner: This was a case in the U.S. Court of Appeals here.

Mr. Reischel: Yes.

Mr. Carliner: There have been other cases involving Filipinos which I was not involved in. During the war, you could be a Filipino in some circumstances who would serve in the U.S. Army, and serve for three months, and automatically you could become a citizen. There were also Filipino detachments that were attached to the Army. Filipinos who worked with them were not eligible to apply for citizenship under that provision. There was an ambiguity between some units which were attached to the U.S. Army but were not part of it.

Mr. Reischel: Well, did the government accede to the ruling? They didn't try to challenge it?

Mr. Carliner: I don't remember. Challenging jurisdiction isn't likely for the Department of Justice. They might have a case arising in a jurisdiction where they have a conflict on the surface, but I don't remember a case like that.

Mr. Reischel: I think it became the law. I was just wondering if Congress changed it, and it looked to me, from looking at it, that the United States must have acceded, not fought it anymore.

Mr. Carliner: It was not a Supreme Court kind of issue, but it could be, I don't know; it's hard to say what the Supreme Court will do.

Mr. Reischel: Were there other cases that you felt particularly good about or particularly upset about that you had handled in the immigration area?

Mr. Carliner: Well, the exclusionary rule was one. We had petitions for *certiorari* quite often. People would be questioned about their rights without being given warnings. The Immigration Service, or what not, would give people rather rough treatment then. Almost always in the deportation hearing. The Immigration officer involved would say the guy had been in such and such, and the testimony from those officers sworn to tell the truth, or a U.S. employee presumed to tell the truth, would be taken as true for purposes of the proceeding.

Mr. Reischel: Just like police officers.

Mr. Carliner: You'd have cases, this is administrative law, where you'd have a hearing in which the alien says one thing and the INS officer says something else, and the Immigration judge believes the INS officer and that's credible and probative evidence. So you appeal that and the Court of Immigration Appeals says, "Well, it's credible, and such and such." And if that's the case, they're going to review it, and, anyway, the court is reviewing an administrator whose decision is presumptively valid.

Mr. Reischel: So you would have liked to see a Miranda-type warning?

Mr. Carliner: Yes. So we had a number of cases where we tried to challenge the conduct of the Service. The only one we ever won was on a different footing. There was a case in which somebody, a client, was living on the second floor of an apartment building, and the INS officers climbed up the whatever to get into the guy's apartment. Not through the front door, but through the windows in the back. So they came in the back, and they came in the front, and this guy, he was living in Prince George's County some place, he was in bed with a headache or whatever, and these half dozen INS officers swarmed over his apartment, and they took him into custody. He was found deportable in the hearing, and I raised a different twist on this. I don't

remember what the particular issue was, but the Board of Immigration Appeals held that was an improper search. I won that case. There are a number of cases like that, but the ruling wasn't expanded, not in New York, anyway.

Mr. Reischel: But, no prophylactic rules, Miranda-type rules or Escobedo-type rules?

Mr. Carliner: I had lots of petitions for *certiorari* in the Supreme Court and I never got *cert.* on it. Although I knew from my son who had friends who were law clerks on the Supreme Court, and I'm not sure if I learned through them, but it was a troubling issue for some of the Justices, but we never had four who were troubled enough.

Mr. Reischel: Troubled enough. (Laugh) Even this, I take it, was back in the Warren Court days?

Mr. Carliner: I don't know if it was Warren or Burger. I just don't know without fishing out my briefs. But that's where we were on the issues. That was one that we fought, raised lots of times, and never got anywhere. One of these days I mean to go down to the Supreme Court where, I understand, they have records of the colloquies of Supreme Court Justices at conferences.

Mr. Reischel: Oh really? I didn't know they had those.

Mr. Carliner: Yes. Not yesterday's cases.

Mr. Reischel: No (laugh), I'm sure they have some time limit on it.

Mr. Carliner: The *Naim* case is one that I'd like to look at, just out of curiosity.

Mr. Reischel: Sure. I looked today at those two orders; the first one that said it wasn't clear what the Naims' relationship to Virginia was before they went, when they went to

North Carolina and when they came back, and then the part said, “and we don’t have all the issues here,” which I take it was the full faith and credit issue.

Mr. Carliner: Well, I’m not quite sure what the record was before that court in Portsmouth, but the Naims were living together in Norfolk or Portsmouth, and they lived there before they got married. And then they went to North Carolina and got married and came back the same day.

Mr. Reischel: Well, the Court remanded it for findings in the Virginia court, and I take it the Virginia court clarified it; it did something additional.

Mr. Carliner: No. The Virginia court did not address it; they said we’ve got nothing else to say and did not make any additional comments. They went back to the Virginia Supreme Court of Appeals to make findings, but they refused to make any.

Mr. Reischel: Is that right? I think you filed a motion to recall the mandate after that?

Mr. Carliner: Yes, and they said there’s no constitutional relationship before the Supreme Court.

Mr. Reischel: Well, what they said, I think, is really interesting. What they said was, “In light of the Virginia court’s further action,” which apparently was saying we won’t do anymore – there’s no federal question presented.

Mr. Carliner: No?

Mr. Reischel: Oh my, what a shame. Although maybe not.

Mr. Carliner: I was too early in trying to challenge the miscegenation statute.

Mr. Reischel: Right, and who knows what would have happened if they had

taken this issue then.

Mr. Carliner: I was a fool rushing in, but then I'm no angel.

Mr. Reischel: The other one of your immigration cases I looked at a little bit was more recent. You ended up representing Unification Church with respect to some of its trainers.

Mr. Carliner: That case was just decided in the District Court. Judge Jackson, I think, decided that. I'm not sure any major issues of law were involved there, but the Unification Church was not a very popular organization. It brought a lot of people here for training.

Mr. Reischel: And the question was whether or not they were bona fide trainers?

Mr. Carliner: I don't remember specifically what they – I've got the brief here some place. The Unification Church, I guess, was running a bona fide training program. I say that, but you've read more recently than I have. I don't remember.

Mr. Reischel: Was the INS's concern that they were just going to bring these people into the country and keep them here?

Mr. Carliner: Well, no. What the Unification Church was doing in those days was to bring a lot of people here mainly from Japan, despite the fact that Moon is Korean. He didn't have a strong base in Korea. Mostly people from other countries. They were bringing them here at the outset of his activities. They were going from door to door to raise money. They were selling things or fund-raising. So the question began, "Were they coming here to solicit funds or what not?" Now they've given that up. They've gone into real estate. But they did have a training program, and that was the issue that I had before Judge Jackson.

Mr. Reischel: You're still handling cases in some of the courts, are you not?

Mr. Carliner: For the Unification Church?

Mr. Reischel: No, no, just generally. You still have an active litigation practice.

Mr. Carliner: I still have an active litigation practice. Less and less litigation.

The jurisdiction has changed. Mostly, back in 1961, you had the choice of where to bring a lawsuit, and someone could live in New York, California, and could bring that to the United States District Court in the District of Columbia where jurisdiction lay here. If you were pursuing a decision of the Board of Immigration Appeals, you'd go into the Circuit Court, and you could choose the circuit in which the alien was living or the circuit in which the hearings were held. Well, the Immigration Service used to have its headquarters in Washington, D.C., so if you're reviewing a decision of it, you could bring your case in the District of Columbia. And now they're in Virginia, and some of the cases are going to the Fourth Circuit. There were very few cases in the D.C. Circuit. Reviewing a decision of the Board of Immigration Appeals would go into the Circuit Court, but if you had other kinds of cases, they would go into the District Court. The U.S. Court of Appeals for Washington was the luck of the draw. Depending on which three judges were on your panel. In Virginia, that court is generally hostile to alien cases, but not always. At the one in Washington, I haven't been in the Circuit Court of Appeals in Washington in a long time, and I've been before the Court of Appeals in Virginia, of course.

Mr. Reischel: Do you think that more or less a reflection of the Reagan/Bush appointees?

Mr. Carliner: Yes, sometimes Republican Presidents tend to appoint people who are less friendly to the aliens and people who are —

Mr. Reischel: I would think the D.C. Circuit would probably have been at the same time.

Mr. Carliner: At the same time. Well then it was more friendly then than now; but now with Silberman and all that, it is no better than the Fourth Circuit.

Mr. Reischel: Yes, I would think it would be about the same. Although now we're getting some of the Clinton influences, it's becoming a different —

Mr. Carliner: Pat Wald. Is she a sitting judge there?

Mr. Reischel: She's still in active, regular active service. She stepped down from being Chief Judge to allow Abner Mikva to become Chief Judge.

Mr. Carliner: And then when Mikva was off, who is the Chief Judge?

Mr. Reischel: Harry Edwards is the Chief now, and he'll be the last Carter appointee. The next one, well, probably Harry Edwards because he was young enough. His age and Silberman's age are such that Silberman will never be Chief Judge unless something happens to Harry Edwards. If he's offered the United Nations or comes off the bench, something like that (laugh). I don't know, I guess Williams or Sentelle would be the next in line. It would be one of those, but Edwards is still fairly young.

Mr. Carliner: There is a judge who wrote a very detailed brief and citations, who is he?

Mr. Reischel: Spottswood Robinson.

Mr. Carliner: Is he still on the court?

Mr. Reischel: No, he went senior a number of years ago. Wonderful, wonderful gentleman.

Mr. Carliner: Yes, very genteel.

Mr. Reischel: I don't think he even sits anymore; I think his health has been very

bad. Yes, he was Dean of Howard for many years. Howard University Law School. Yes, he'd have 400 footnotes in an opinion, quite daunting to read but quite helpful too.

Mr. Carliner: Very helpful. You didn't have to write a brief; he'd write it for you.

Mr. Reischel: I take it the Immigration law has been constantly changing. You mentioned the Haitian situation and the Cuban boatlift situation.

Mr. Carliner: Well, the Haitian situation was not changing; it's been like that forever, but the immigration law now is quite changed in terms of the available remedies, penalties and what not.

Mr. Reischel: Had the statutory law been fairly stable for a while before that?

Mr. Carliner: Well, better than stable. In the course of time, more immediate relief was available for people, so you could get discretionary benefits which you might not have been able to get before in terms of suspension of deportation and those kinds of things. Except for people who were aggravated felons, and there's nothing worse than being an aggravated felon.

Mr. Reischel: Tend not to get mercy from anyone. (Laugh) But that was all rolled back with the recent legislation?

Mr. Carliner: Yes, in the last three or four years. You can marry your mother, and you'd get a better sentence than if you sell cocaine or marijuana. The drug business has changed the immigration law. Not that I have that many clients in that situation, but the jails in the south are full of people who are there for drug convictions.

Mr. Reischel: Well, not just there, here too. Many of them, so many drug crimes were federalized that the United States Attorney is putting people away everywhere, here

included.

Mr. Carliner: There is not a high proportion of immigration cases. The number of criminals involved is not disproportionate to the numbers.

Mr. Reischel: I suppose smuggling enforcement, did that change?

Mr. Carliner: Well, smuggling was always, nothing new about the —

Mr. Reischel: Right, but there's been a lot more of it at least with respect to drugs. Yes?

Mr. Carliner: I don't see much of that in my practice. My favorite story about smuggling, which I may have told you already, is a guy called "Coyote" who helped people cross the Mexican border. They treat people very badly, and they squeeze a lot of money from them; they were not nice people. But nonetheless, that's how they made their living. This guy got caught, and they sent him for three years to a reformatory in Minnesota. The reformatory he went to happened to be the place where all the immigration forms were printed. He was assigned to the print shop, and he was there for two years, and he had this collection of Immigration Service forms, so when he left, he took copies of all of them. So, he was in business forging these forms. White collar crime, not much danger. So, it's upward mobility. (Laugh).

Mr. Reischel: (Laugh) He learned a real trade. Well, speaking of changes, let's talk a little bit about home rule, which is another cycle. We talked last time about the early days when there was the Georgetown group of people who were interested in the franchise, and then I guess when the southern stranglehold got broken. Was that under Johnson?

Mr. Carliner: Well, what brought about the change was not the southern stranglehold, but the Home Rule Committee had been campaigning for home rule among the

Democrats in Washington. Many of the Republicans were against it. The Chairman of the House District Committee was from South Carolina.

Mr. Reischel: McMillan.

Mr. Carliner: McMillan. Nothing close to home rule could get out of his Committee. There was no way of discharge petitions getting out of committee. Speaker O'Neill was Speaker of the House, and he was quite sympathetic and friendly toward it, but he wasn't in a position to change the course of events in the House of Representatives on that. Under the Reorganization Act, with which you're probably familiar, the President has the authority to submit reorganization plans to Congress to change different government entities from one to another as long as they do not change the powers that the people exercise within those structures. So Charles Horsky, he was the White House Advisor then, but then Steve Pollak took over from him, and I had made this proposal and took it to the White House.

Mr. Reischel: You did it yourself or as part of the Georgetown Committee?

Mr. Carliner: Well, lawyers of the Washington Home Rule Committee or not, we organized a committee for the reorganization plan. There's some controversy on that. There were some people among whom was Joe Rauh who were against it. Smallwood Williams, who was the bishop of the biggest black church in Washington on New Jersey Avenue, organized the community. The idea emanated from me. The organizing committee drew upon the statutory authority of the President to submit reorganization plans. Previously, the city was governed by three commissioners. So, the proposal was to create a Mayor-Council form of government with a Mayor who was going to be in title more or less a typical Mayor, and the Council, the City Council, which had nine or eleven people on it. So that was a proposal that went to the White

House, and by that time Horsky had left and Pollak was there, and so President Johnson agreed to it. It didn't go to the House District Committee.

Mr. Reischel: Did Steve Pollak back the plan inside?

Mr. Carliner: Yes, he supported it. It didn't go to the House District Committee, where it would have gotten a slow death and burial. It went to the Congressional Committee on Government Organization. Under the Reorganization Statute, Congress's role is to vote a plan down or up. I'm not sure it had to go back to the President.

Mr. Reischel: I think they had to veto it. I think there had to be a majority of one House against it.

Mr. Carliner: I think subsequently some issue was raised about this in home rule.

Mr. Reischel: Congressional veto, *Chadha*.

Mr. Carliner: That's right, I guess.

Mr. Reischel: Another one of your immigration cases. (Laugh)

Mr. Carliner: That's right. Anyway, we had a major lobbying effort to get the Congress to accept the new reorganization plan, a really Herculean one really. We turned out people to work on this, and it went through.

Mr. Reischel: What was Joe Rauh's objection?

Mr. Carliner: He wanted to have officials elected from the community. He didn't want to take "a half an inch" that was his —

Mr. Reischel: He didn't want a half a loaf; he wanted the whole thing.

Mr. Carliner: Another metaphor was that was not a loaf of bread, it was an

organism and that things developed out of their organic development. He had another phrase. I don't remember it now. But we got things gradually, and got half a loaf, which sustained some things, which had a life of its own; it's good to know it as something else. So anyway, this went through, and Pollak was in charge of picking people to be on this Mayor/City Council form of government for Johnson's White House. The obvious person to choose was Walter Washington. He was in one of the major housing organizations here. He was comfortable. He was virtually a Washingtonian. I think he came from Jamestown, New York. The members of the City Council were to be "broadly representative of the District of Columbia." So they chose a number of people: Polly Shackelton, one guy named Joe Yeldell who presented himself. He turned out to be something of a sorrow. John Hechinger was chair of the City Council.

Mr. Reischel: Was Marion Barry on it?

Mr. Carliner: No, he was on the School Board, wasn't he?

Mr. Reischel: He was at that time, he had been, but —

Mr. Carliner: He wasn't on the original one.

Mr. Reischel: Was John Wilson?

Mr. Carliner: There was a Republican at one time, a lovely fellow who died, I can't seem to remember.

Mr. Reischel: John Wilson?

Mr. Carliner: No, John Wilson wasn't there.

Mr. Reischel: Arrington Dixon?

Mr. Carliner: No. Somewhere I've got all these names. Anyway, it was a broadly representative group that was the appointed Mayor/City Council form of government.

All the activities to get home rule for Washington had come out of Volunteers in Home Rule Committee and other organizations. But with this creation of the Mayor/City Council form of government, they had offices, staff in the District Building, and all the impetus for moving forward came out of that group. They had money, had lobbying, had offices and so on.

Mr. Reischel: Of course, you had more people involved in governing the District on a day-to-day basis.

Mr. Carliner: That was adopted in 1967 as I recall.

Mr. Reischel: I think that's right. It's called the Reorganization Plan of '67, but I think by the time it got through —

Mr. Carliner: That was adopted then, and two or three years later Congress passed a bill granting the same powers as the Reorganization Plan; I don't think they expanded the powers but provided for the election of the Mayor and the City Council.

Mr. Reischel: Right. Well, of course, they gave true legislative authority to the Council where before it had only had police power authority.

Mr. Carliner: Yes, but they had the power to adopt regulations.

Mr. Reischel: Yes. Police regulations.

Mr. Carliner: Just police regulations?

Mr. Reischel: That's right.

Mr. Carliner: Well, they expanded the authority —

Mr. Reischel: Of the Council in the Home Rule Act. But then you turned around and sued?

Mr. Carliner: I sued. Not after they elected them.

Mr. Reischel: No, you sued after they adopted your plan. [Laughing]

Mr. Carliner: After they were appointed because they weren't elected. A form of government should have the right to elect officers.

Mr. Reischel: [Laughing] So you came up with this plan, and then you sued to prevent it from being implemented?

Mr. Carliner: Yes, but I don't think there's anything anomalous about it, but Walter Washington was pissed off about it. Anyway, the suit never went anywhere.

Mr. Reischel: You were arguing, if I remember the lawsuit correctly, Ninth Amendment, the powers reserved to the citizens. Now all those arguments sound very good to me.

Mr. Carliner: Bork agreed with that too, but in a different context.

Mr. Reischel: If I remember the circuit opinion correctly, they said you didn't raise a substantial question. Our rights are so insubstantial —

Mr. Carliner: I didn't expect that they would have an opinion or dismiss summarily.

Mr. Reischel: There was a question about whether or not they had to dismiss you or convene a three-judge court. It's only a three paragraph opinion.

Mr. Carliner: Well a three-judge court would have been the District Court.

Mr. Reischel: That's right, but they had decided they didn't even have to do that because it wasn't a substantial federal question, which I guess tells us a lot about our rights.

Mr. Carliner: Anyway, the Circuit Court of Appeals dismissed the appeal, and the Supreme Court did not grant *cert.* so that was it.

Mr. Reischel: I've always thought those were good arguments in lots of ways, but history is against us.

Mr. Carliner: Well, history has been against us more substantially because people ask me why we want home rule. I said to make the same mistakes other cities make, but I didn't realize what a needless mistake we were making.

Mr. Reischel: Well, you were still involved at the time the home rule battles were —

Mr. Carliner: Yes, I was still involved in that, but I never voted for Marion Barry. I never liked him.

Mr. Reischel: Somebody recently said, I was listening to one of these arguments recently, "Look the last two governors of Arizona have been convicted as felons, and nobody's taken away their home rule."

Mr. Carliner: Well, the Mayor of Boston was in jail.

Mr. Reischel: Sure, Curley, back in the '40s.

Mr. Carliner: I don't think we should take our home rule away because the Mayor's in jail. He might improve the prison system.

Mr. Reischel: But, I take it, there were people at the time that home rule went through who realized that this crushing pension debt that they transferred to the government was going to be quite difficult.

Mr. Carliner: Well, there are aspects to it which are not serendipitous. One of the people who was really helpful to us was Ancher Nelson.

Mr. Reischel: Of Minnesota.

Mr. Carliner: He was a conservative Republican from Minnesota, and he sat on the House District Committee with McMillan. Ancher Nelson and McMillan did not see eye-to-eye on home rule. One of the issues that Ancher Nelson was interested in was vocational education. He was a woodcrafter of things, and one of the things that came out of this legislative effort was the establishment of the Federal City College, as part of that. It was also the elected Board of Education, which was before the government. It was also electing a non-voting delegate to the House of Representatives.

Mr. Reischel: Now were these part of your program?

Mr. Carliner: It was all part of it. Sturges Warner, an attorney with the Jones, Day firm, was heavily involved with the non-voting delegate part. It all came about as part of this whole package. It was done simultaneously. So these are spin-offs which would have given considerably more power and benefits to Washington than just the home rule government. I park my car at the University of District of Columbia garage. I know it's about a mile from here, and I take the Metro downtown, and when I go in this garage, they have parking for about 700-800 automobiles. This marvel is a product of having a University of District of Columbia city parking garage. [Laughs] So I get a benefit from that.

Mr. Reischel: Well, it's got to have been pretty painful for you to watch what's been happening to us lately.

Mr. Carliner: Yes, it is painful, but I think you have to look forward because Barry has been such a disaster for our government.

Mr. Reischel: With all due respect to the Mayor, who I have known for a long time now and I think is a brilliant politician, I think he makes —

Mr. Carliner: Yes, there's no question he's a brilliant politician.

Mr. Reischel: And a born politician.

Mr. Carliner: He has a great style. Not for running the government though.

Mr. Reischel: One of the things I really like about him is when he's in a room, he's really interested in what makes people tick.

Mr. Carliner: Is that right?

Mr. Reischel: Yes, he's very interested in everybody, and I think that makes him an excellent politician. But there's no question he was not the person to be elected Mayor when a conservative Republican Congress came in. So now we're really going back —

Mr. Carliner: One of the offices that was denigrated was the Non-Voting Delegate. Walter Fauntroy had it for a long time, and he had risen a high level, and he was qualified in it. But Eleanor Holmes Norton has been brilliant in handling —

Mr. Reischel: She's a brilliant woman.

Mr. Carliner: She is, and people said non-voting delegates, what do they do? But, in the House of Representatives, she serves on committees and all the work she has done on it, it's amazing she hasn't become chairman of the District Committee. One thing she cannot do, although they tried to finesse it, was have a vote on Committee of the Whole where you can vote on legislation as such. But, ninety-five percent of the work of the House of Representatives is done on committees reporting out legislation and using your power that way.

Mr. Reischel: Was that an idea that you all borrowed from other governmental structures, earlier ones? Were there other non-voting delegates earlier?

Mr. Carliner: Yes, Hawaii and Puerto Rico. Hawaii has representatives because

it is a state, but Puerto Rico has a non-voting delegate.

Mr. Reischel: The territorial apparatus?

Mr. Carliner: Anyway, Norton, whom I have known for many years, has been really a genius, brilliant in the way she's handled the office.

Mr. Reischel: You had contact with her at the ACLU as well.

Mr. Carliner: Well, I knew her first when she had graduated from Yale Law School. She went to work for the ACLU in New York, and she worked under a guy named Noah Wolfe, who was really a difficult fellow to work for; he was so sexist, arrogant, what not. I was on the Board of the ACLU and would see the sort of relationship, but she worked for a while, she worked in New York, some sort of anti-discrimination commission.

Mr. Reischel: That's right. The city I think.

Mr. Carliner: She came to Washington, D.C. One of my extracurricular activities, I don't know why I was involved in it, but a friend of mine is a pediatric neurologist, Mary Coleman, and she'd dealt with children who have Down syndrome and autism, genetic diseases of that sort. She asked me to serve on an organization that she'd created on brain disorders of children, and she asked me to be chairman of it in order to preside at the meetings. They would give reports on medical services. Well, this isn't confidential now, but Eleanor Holmes Norton has a child who has this sort of disorder.

Mr. Reischel: Yes, I've known that, I don't know how well known it is, but yes.

Mr. Carliner: Well, I knew it contemporaneously because Eleanor had come to meetings because of her interest in what we were doing. So over a period of two or three years she participated in those meetings. But, that was never discussed. It did not become public

knowledge until some time considerably later. Anyway, I've known her, but we don't have a particularly close relationship.

Mr. Reischel: Yes. I worked for her at the EEOC for a couple of years and she's a very brilliant woman.

Mr. Carliner: But one of the people who led to getting a non-voting delegate was Congressman Ford, who became President. He was the Minority Leader of the House of Representatives then. Jack Nevius was the guy whose name I was trying to think of. I don't know whether you knew him or not.

Mr. Reischel: I didn't know him, but I read his testimony, among other things.

Mr. Carliner: Well, Jack, of course, was the one who you called for a Republican. Carl Shipley was head of the Republican party in Washington, and he was very hostile to all these things. But Nevius was not. Nevius and I and Sturges Warner and some others, we met with Ford to get his help on this non-voting delegate business, and he gave it.

Mr. Reischel: This was back in the late '60s as well. At the time of the Reorganization Plan?

Mr. Carliner: Yes, it went through, and one of the people who worked on that very vigorously was Sturges Warner. Did you know him?

Mr. Reischel: No.

Mr. Carliner: He had some sort of crippling disease where he had to use a wheelchair. He worked very heavily on that issue, and he was really prime in the campaign. But, with that help and with the help of people like Ford, that went through Congress.

Mr. Reischel: So Ford was really in favor of, as some Republicans are, local

representation, local government?

Mr. Carliner: The idea that we should have two senators. I saw Mansfield who was the Senate Majority Leader and Scott who was the Minority Leader. Whoever's in control of Congress, and they said, "District of Columbia, a state, two senators? Hell no." Neither one of them could see to do that. So the idea of Washington, D.C., getting two senators, I don't think it'll happen.

Mr. Reischel: I've sometimes wondered if there isn't some kind of a — one needs something in the Senate in order to exercise some leverage on financial matters.

Mr. Carliner: In the Senate.

Mr. Reischel: Well, the Senate is the place to exercise the leverage, right? But, there's such a long history of not letting in — Well, we're back to, we wouldn't let in a free state unless they let in a slave state —

Mr. Carliner: Well, one more congressman in a House of Representatives of 435 people is not going to make much difference. But, two senators in a 100-people —

Mr. Reischel: Has there ever been a governmental model where there were non-voting senators or one senator?

Mr. Carliner: Well, there's a model for a non-voting senator, Jesse Jackson. They have all this in this building and very pretentiously had this limousine downstairs and a chauffeur sitting there, and the tag says "Senator."

Mr. Reischel: Well, of course, there's a non-voting Vice President in the Senate. I don't know.

Mr. Carliner: A non-voting Vice President? Who is that?

Mr. Reischel: Well, the Vice President's job is to preside over the Senate, but he only votes if there's a tie vote. I don't know if there are any answers. I do think things are about as bad as they can get. I hope they don't get much worse.

Mr. Carliner: Well, this is an aside. I was on the Council of the Administrative Law Section, and the fellow who sat next to me on the Council was an attorney for Bush. He was Vice President. He was with the firm of Wilmer, Culter & Pickering; his name slips me right now, but a very lovely fellow. Anyway, the issue came before the Administrative Law Section, which was a fairly big body, as to what the White House should do when Congress asked to be sent documents and what not from the White House, whether it should plead Executive privilege and turn them down. What's the fellow's name? But anyway —

Mr. Reischel: Is it Boyden Gray?

Mr. Carliner: Boyden Gray, that's right. He said, "Of course, the White House should never send anything." He was counsel to the Vice President. "The White House should never send anything to the Senate or House of Representatives when they ask for it because it is Executive privilege." So I turned to Boyden and I said, "Do you say that as counsel to the Vice President as he is presiding over the United States Senate or as Vice President who sits in the other office in the White House?" He said, "I never thought of that." [Laughs]

Mr. Reischel: [Laughing] Yes, a little conflict of role.

Mr. Carliner: Well, we sort of ramble I guess. It's enjoyable to me to have you over.

Mr. Reischel: Yes, I know you've got a 4:00 p.m. appointment so maybe we should end this one.

Mr. Carliner: I'll have to apologize to you.

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.

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.

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Professional Experience

Extensive experience teaching, supervising, and leading attorneys litigating in courts and administrative agencies, particularly in appellate courts, and in managing government litigating units. Personally briefed and argued cases in many federal circuit courts of appeals and in the D. C. Court of Appeals. Led a unit at the EEOC devoted to establishing significant new precedent. Served for six years as counsel to the D.C. Court of Appeals' Committee on (Bar) Admissions, conducting investigations and hearings, drafting decisions, defending them in court, and advising on legal questions. Principal draftsman for the reports of a number of court and bar committees.

Employment

Deputy Corporation Counsel, Appellate Division
District of Columbia Government
November 1980 - present

Manages the District's litigation in all appellate courts. Gives legal advice to trial divisions, agencies, and high government officials. Teaches and supervises briefing and argument, and argues significant matters personally (e.g., drug testing, affirmative action, employee furloughs). Develops and defends legal positions in many different areas of law, ranging from civil rights actions (often involving defending against First, Fourth, Fifth, and Eighth Amendment or Title VII claims) to various agency decisions (workers compensation, occupational licensing, government contracts, and land use, among others).

Chief, Legal Division
Bureau of Consumer Protection, Civil Aeronautics Board
November 1978 - November 1980

Supervised administrative and court litigation concerning violations of agency regulations, often involving consumer fraud or deceptive advertising.

Trial, appellate, and supervisory attorney, and head of the
Amicus Curiae Branch (1973-1978)
Equal Employment Opportunity Commission
November 1969 - October 1978

Litigated equal employment opportunity cases in the federal trial and appellate courts. Supervised briefing on cutting-edge issues, including sexual harassment and affirmative action.

Education

Harvard University Law School
J.D. 1969

Emmanuel College, Cambridge University, U.K.
Lionel de Jersey Harvard Fellow 1965 - 1966

Harvard College
A.B. 1965, magna cum laude in Government

Harvard National Scholarships 1961 - 1964
Unsung Hero of New England Football Award, 1964

Publications

"The Constitution, the Disability Act and Questions about Alcoholism, Addiction and Mental Health," The Bar Examiner, August 1992

Editor, C. Reischel, et al., Appellate Practice Manual for the District of Columbia Court of Appeals (The Bar Ass'n. of the District of Columbia, 1985)

Contributor, Schlei & Grossman, Employment Discrimination Law, chs. 28 & 30 (Bureau of National Affairs, 1976)

Hebert & Reischel, Title VII and the Multiple Approaches to Eliminating Employment Discrimination, 46 N.Y.U.L. Rev. 449 (1971)

Bar and Court Committees

Member, District of Columbia Bar Committee to Study Unauthorized Practice, 1994 - present

Member, Character and Fitness Committee
National Conference of Bar Examiners, 1992 - present

Counsel and Member, Committee on Admissions
District of Columbia Court of Appeals, 1989 - 1995

Member, District of Columbia Bar Committee to Study the D.C. Court of Appeals, 1987 - 1990

Chair, Examination Subcommittee
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Awards

1991 Beatrice Rosenberg Award for Distinguished Government Service (D.C. Bar)

1978 Younger Federal Lawyer Award (Federal Bar Association)

Some recent cases

District of Columbia v. AFGE, 619 A.2d 77 (D.C.1993) (Argued for emergency stay of order entered that day enjoining employee furloughs scheduled for next day. Stay granted. Plaintiffs unlikely to prevail on impairment of contract theory.)

Wilson v. Kelly, 615 A.2d 229 (D.C. 1992) (Briefed and argued that the D.C. legislature cannot require the Mayor to submit for its approval contracts exceeding \$1 million. Held: statute violates the District's charter.)

Christian Knights of the Ku Klux Klan v. District of Columbia, 751 F. Supp. 215 (D.D.C. 1990), aff'd 972 F.2d 1283 (D.C.Cir.1992) (After remand on the afternoon before the scheduled march, tried on an emergency basis the issue of whether the police could shorten the march because of anticipated violence from counter-demonstrators. Crediting plaintiffs' over police experts, court ruled march could not be shortened.)

Hammon v. Barry, 813 F.2d 412 (D.C.Cir. 1987), rehearing denied 826 F.2d 73, rehearing in banc granted 833 F.2d 367, in banc order vacated 841 F.2d 426, cert. denied 486 U.S. 1036 (1988) (Briefed and argued that fire department could require that blacks be hired in the same proportion as represented in the applicant pool where there was evidence that the hiring test was invalid. Held: explicit racial categories are illegal except to remedy past discrimination, and since the representation of blacks in the fire department exceeded their representation in the relevant labor market, such a remedy was improper.)

Jones v. Mckenzie, 833 F.2d 335 (D.C. Cir. 1987), vacated sub nom. Jenkins v. Jones 490 U.S.1001 (1989), on remand 878 F.2d 1476 (D.C. Cir.1989) (Briefed and argued that the public schools could test bus drivers and attendants for drug use, where the test was part of a physical and there was evidence of drug use among this group. The Circuit held that the test was bad because it could not show drug use on the job, but the Supreme Court vacated.)