

Oral History of Robert Pitofsky
Fourth Interview
February 20,2004

Ms. Born: This is the fourth interview of Robert Pitofsky for the D.C. Circuit Historical Society's Oral History Project. Bob, I think the last time we talked about your years as FTC Commissioner and ended as you were leaving that post. What did you do when you left?

Mr. Pitofsky: Well I returned to my life as it existed before I was a commissioner. I returned to Georgetown to teach and I came back to Arnold & Porter as counsel.

Ms. Born: What did you teach at that point?

Mr. Pitofsky: It was about that time that I negotiated an arrangement that allowed me to teach somewhat fewer hours than I previously had, so I taught then and consistently since antitrust, constitutional law to first year students and a seminar each year. I tried to change the seminar and not continue it more than two consecutive years. *So*, two courses and a seminar.

Ms. Born: A nice schedule.

Mr. Pitofsky: It's not a bad deal.

Ms. Born: What kinds of research were you doing at that time?

Mr. Pitofsky: I started in research on an article on measuring market power, what technically is called "definition of relevant market." It was quite a hot subject at the time. Bill Baxter who was head of the Antitrust Division had published guidelines that seemed to be quite a departure from previous approaches to the subject. It was really one of the more ambitious pieces of writing that I have undertaken. The reason I put it that way is that I started it in 1981 and finished it in 1989. That was because the deanship intervened.

Ms. Born: When you published it, where was it published?

Mr. Pitofsky: *Columbia Law Review*.

Ms. Born: What were you doing at the firm of Arnold & Porter during those years before you became dean?

Mr. Pitofsky: Generally, the same thing I've been doing with rare exceptions ever since I've been at the firm. Counseling clients on deals, generally speaking prior to litigation, because if any transaction that I'm involved in turns to litigation, I drop out of the picture. The firm was very busy in those days and I was quite active. I think that was the period, in fact I'm quite sure it was, when I first secured General Electric as a client, and of course General Electric is 15 different top firms in 15 different industries. So the fact is during those years 90 percent of my work was probably for GE.

Ms. Born: Was this a period when your business development was more effective than it had been before?

Mr. Pitofsky: Yes. Coming out of the commission and with an academic background, it seemed that people would more quickly think of me as an advisor or counselor and I developed an arrangement with Mike Sohn, now chair of the firm, that we would take on almost all projects together so that I had the advantage of having backup at all times and the client had the advantage of having one of the best lawyers I've ever dealt with. It worked well.

Ms. Born: Did this increase the time you were spending in practice or not?

Mr. Pitofsky: I've always tried to put a cap at 500 hours, and yes, there would be a year when I'd go to 600 but I know I've never gone to 700 or 750, and that's why the firm is such a comfortable place for me. I will say, look, I know it's only June but I'm exceeding my quota, and people were very understanding and said, so let's get somebody else in to handle that.

Ms. Born: Were you active in the organized bar during this period?

Mr. Pitofsky: I've always been active in the Antitrust Section of the bar. I didn't go on the council of the ABA Antitrust Section until some years later. I had been the head of the Consumer Protection Committee and I may have been active in other committees during that period. That's been a constant with me since 1970.

Ms. Born: Weren't you on the D.C. Bar board during that time too?

Mr. Pitofsky: Yes, I was. Shortly after I left the commission, I ran for and was elected to the D.C. bar. It was a very interesting three years. Jamie Gorelick was on that board, David Isbell, Jodie Bernstein and other first-rate people. There were some very tough issues about the extent to which the board was perceived to represent the large firms in Washington as opposed to the smaller practitioners in the city. Each side had their candidate and their views on practically every issue. Jake Stein became the president. By the time my three years were up we had managed a modus vivendi on that issue which was quite successful. I was not a leader in working this out, but I certainly was anxious to see that the bar not be divided on every issue along that fault line between big firms and private practitioners. The fact of the matter is that we did work it out.

Ms. Born: How?

Mr. Pitofsky: A lot of it has to do with who's on the board, and I think as time went on neither of those groups dominated the board. The president of the bar became quite sensitive to the feelings of both groups. Much of the debate was over minor issues. It was really just a question of each side regaining the confidence of the other side that they were not trying to use the Bar and the board to the advantage of their style of practice of law.

Ms. Born: What motivated you to run for the board?

Mr. Pitofsky: I had not been active in local bar matters and I wanted to play a role.

I knew about the local bar's work with indigent people who needed representation. I was very anxious to be a part of that. I was encouraged to run by some people who had already been on the board and felt that maybe I could be a moderating influence on what had become a very testy relationship. Those are probably the two reasons.

Ms. Born: Did you play a moderating influence, do you think?

Mr. Pitofsky: I don't want to give myself too much credit. But I think, Jodie and I and Lois Schiffer and Jamie and David Isbell, as a group, did manage to ease what had previously been absolutely unnecessary tensions.

Ms. Born: When did the opportunity to become dean at the law school come along?

Mr. Pitofsky: The previous dean had been David McCarthy, and he had served seven or eight years and I think was worn out and announced that he would step down at the end of the then academic year which I guess was 1983. I was not the most aggressive candidate for the position at that time. My position was that it might be interesting. On the other hand, if I didn't become dean, I would continue with what was a very satisfactory teaching and scholarly life. I do feel that if you've been in academia for a lifetime, which is practically the case with me, you owe it to yourself and to your ideas about the way a law school should run to take a shot at being a dean somewhere along the line. Terms are five years long. It doesn't have to be 15 years, it doesn't have to be 20 years. But you come in and you try to change things or introduce ideas that you think are important, and it was on that basis that I accepted the president of the university's offer to become dean.

Ms. Born: What was the selection process that went on?

Mr. Pitofsky: The same as it is now. A committee is elected by the faculty to do

the screening. They usually cut to perhaps five candidates. Those candidates are interviewed by the faculty, by the students and eventually by a collection of executives on the main campus and then the president of the university. Georgetown, unlike almost any other law school I'm aware of in this country, automatically makes a law school dean a high official in the university. You're an executive vice-president. I would say 20 to 25 percent of your time is addressed to university, not law school, issues. So, it is important that the people at the university are comfortable with the person who is going to become the dean.

Ms. Born: So you were one of the five chosen by the selection committee?

Mr. Pitofsky: Right.

Ms. Born: And then did the selection committee choose you?

Mr. Pitofsky: That's the president's call. In fact, I am now the chair of a new committee and the president said now what I believe the president said then, give me a minimum of three names, at least one outsider, and do not rank them unless one person is vastly better than everyone else whose name you are submitting. I think it was probably done that way. And I had a very nice talk with the then president of the university who later became a close friend.

Ms. Born: Who was that?

Mr. Pitofsky: Father Healy. Tim Healy. And, to tell you the truth, his being the president of the university made my being dean of the law school the gratifying and enlarging experience that it was.

Ms. Born: Why was that?

Mr. Pitofsky: He was one of the most extraordinary people I've ever met. It was just fun to be with him. He also had very high standards and he was a great supporter of the law school. My view of deanships is, if the president of the university isn't prepared to back you

when he has doubts about what you're doing, the job isn't worth having, and he certainly backed the law school.

Ms. Born: Before we get into the details of being the dean of the law school, tell me about the role of executive vice president of the university and what that entailed, because this is unusual.

Mr. Pitofsky: It is. It involves one or two long meetings a week and it's a lot of reading before that meeting.

Ms. Born: Is that a long meeting with the president?

Mr. Pitofsky: The president, the provost, the head of the medical school, the chief financial officer, and the dean of students. There are probably about a dozen people. There's also another meeting and that only involves the provost, the head of the medical school and the head of the law school. So there are two meetings a week. Candidly, a lot of it is about money. It's about how you raise it, which foundations you approach, and how you spend it. There were other issues. We'll talk before the end of the day today about my role in settling the gay rights case, but that was perhaps the most memorable and the most substantial commitment of my time and energy to anything that I did as an EVP. There are constant reports about what the law school is doing and why they're doing it and so forth, so, as far as actually discussing issues on the main campus or very occasionally visiting, it's usually about money one way or the other.

Ms. Born: What is the reason that Georgetown has this special role for the dean of the law school and the dean of the medical school too?

Mr. Pitofsky: I'm not sure. It goes back so far that people I've asked that question don't know. They don't know exactly what the reasons were. One factor is that all of the university is in the western part of the District of Columbia, and the law school is all by itself

over in the eastern part. So you would expect the dean to have a role at the university. You wouldn't expect the dean to be an executive vice president, except for the fact that it was a way of bringing the law school into the loop with the rest of the university.

Ms. Born: Is the dean of the medical school an executive vice president as well?

Mr. Pitofsky: Yes. There are three executive vice presidents, the provost, the head of the medical school who they call chancellor of the medical school, and dean of the law school.

Ms. Born: Back to your role as dean of the law school, what did you hope to accomplish, what did you think the needs were when you became dean?

Mr. Pitofsky: Let me answer it this way. The first thing that I did was I created a committee of perhaps **20** of what I thought were the best faculty members at the school, the most perceptive and the ones with the highest standards, to give me their views on what my priorities should be. The overwhelming priority was construction of a new library. The result was that five of my six years as dean, I was a real estate client. I didn't take the job to do that. But, they were absolutely right. The school was the largest in the United States and was in one building, where everyone was crammed together. So, if you could construct another building and move the library and some offices across the street, close the street down and put some grass between the two buildings, you would have a different atmosphere entirely. One of the things that I had said to the president when he offered me a deanship was that I don't want to sound as if I'm making non-negotiable demands, but I must tell you that the present system where all fund-raising on behalf of the law school is handled by the university is not common in the United States and **is unacceptable**. He said to me, "I've always wondered why your predecessors didn't make the same demand," and we got off to a fabulous start in that way. The library was a \$25

million project that actually ended up being a little more, and we were raising \$1 million a year. Another decision that I've always been grateful for is the president, against the advice of quite a number of his other colleagues, gave the law school the go ahead to construct this very ambitious library building before we had anything like the money necessary. But he was a great fund-raiser, and he said he would devote his energy, as well as mine and others in the law school, to raising money for the school. So there I was, I'd become the dean, I had all sorts of ideas about curriculum, students and so forth and, immediately, priority number one became raising the money and constructing a building.

Ms. Born: So how did you raise the money, obviously partly with the president's help?

Mr. Pitofsky: First of all, we took over our own fund-raising. Second, he and I jointly approached foundations and were very successful. Kresge gave us the largest grant they had ever given any school for a building. Third, the Williams family, Edward Bennett Williams, for whom the library is named, immediately pledged a substantial amount of money. It was nothing unusual about our fund-raising except we had such a good story to tell. Our case was very powerful. Here was a first rate law school, a student body that was getting better by leaps and bounds all stuffed into one building. Therefore, while I was apprehensive about how I would feel about fund-raising, I've never raised a nickel in my life, I was so convinced of the legitimacy of our claims, especially on foundation money, that I thrived on the fund-raising. I keep mentioning foundations because they're going to give their money away, anyway. It's just a question of who they're going to endow. And we were very successful in persuading the foundations of the need to expand this particular facility.

Ms. Born: Do you remember what proportion of your money came from

foundations?

Mr. Pitofsky: I don't. It's probably less than half, but it was far more than we budgeted when we started. There were individual benefactors, who were persuaded that their old school was going in the right direction and they were prepared to support it.

Ms. Born: Did you already have the land?

Mr. Pitofsky: We had all of the land except one building and the man would not sell out. So the president of the university sent me to visit him in his home and said don't come back without that land. I kept raising the price and raising the price, the man's wife kept saying what in the world are you doing, accept the offer, but he wouldn't do it. He had a grievance against the Catholic Church, and it wasn't about money. It was about his hostility to the university. And then, the irony of it all, I think this has been made public before, is he and his family got into some tax trouble, and they ended up selling us that property for substantially less than I had offered that evening at his home.

Ms. Born: So did that difficulty with him delay the building?

Mr. Pitofsky: No, we were going to build around him. It was going to be awkward. There would be a silly enclave at the side of the library, but we were going forward, that was clear. And maybe he didn't realize that. He may have felt that he could hold up the entire parade. But, anyway, there was already a substantial hole in the ground before we ever obtained that last piece of land.

Ms. Born: And did you work with the architects, the builders and all that?

Mr. Pitofsky: Hartman and Cox were the architects. They were younger men but of increasing prominence. The construction manager was a group from Baltimore and they were outstanding. In fact the university still uses them constantly, and yes, absolutely, I learned more

about buildings and pipes and electrical connections than I ever knew before.

Ms. Born: And so this project took five years about?

Mr. Pitofsky: Yes. From the time the president said to his group, we're going to go ahead with this, until the inauguration when Justice Brennan and Joe Califano spoke, that was just about five years.

Ms. Born: Has it improved the law school?

Mr. Pitofsky: It made an immediate difference, but it was only a launching pad for my successor Judy Areen to go on with the construction program. We had already bought the land and she then managed to raise the money and built a very attractive dormitory and now, we're just finishing two more buildings. So Georgetown which possibly had the least impressive physical plant in 1970, now as far as urban schools are concerned is probably as good as any. Quite a change, and it has changed the life of the school immensely.

Ms. Born: What did this project do to your other goals and aspirations for your deanship?

Mr. Pitofsky: I still tried to do many of the things that I had in mind. I think a law school should buzz with the excitement. There should be visiting scholars, holding work in progress discussions, almost every week. The faculty should be meeting in brown bag sessions, to discuss what they're doing virtually every week. I'm not the most ardent fan of clinical education but I fall very much on the side of being in favor of it, and we added a few clinics during my tenure. We revised some aspects of the curriculum. We began to enlarge the faculty, now that we had some room. The faculty was less than fifty when I assumed deanship—I think it was 48 or 49. It's now about a 100, and I would say that 15 or 20 of those additional faculty members were hired during my deanship. We cut back on the number of hours that teachers had

to spend in the classroom. We put an emphasis on scholarship. I did something that I'm not sure was entirely popular, but I went to a merit system of salary adjustments and then put quite a heavy emphasis on scholarship. In terms of time, EVP responsibilities, traveling around the country, fund-raising, addressing construction issues of the school had to be 60 or 70 percent of what I did.

Ms. Born: How did you recruit new faculty and visiting scholars?

Mr. Pitofsky: We were much more aggressive in reaching out to other schools and much more aggressive in inviting the faculty who knew first rate scholars in their field to be in touch with that person and say, we have an endowed lectureship, we have the opportunity for you to visit the school for a week. These were all in place before I took over the deanship, and I just added to the opportunity of people to come to the school and to add spice to the academic life of the law school and it worked very well. Actually, Judy Areen has outstripped me in this regard. So it's really a place that's buzzing at all times now.

Ms. Born: Well you laid the foundation.

Mr. Pitofsky: We got it started. Actually Dave McCarthy, my predecessor, had started it but it was at a relatively low level.

Ms. Born: What changes in the curriculum?

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Mr. Pitofsky: Curriculum changes were not very substantial during my tenure as dean. There had been curriculum changes but they happened after I was dean, I think the main difference was our energy and ability in inviting younger first rate faculty to come to Georgetown. Now, we had a great advantage in that Washington had become a preferred place to both study and teach law. There were people who came to Georgetown, who perhaps

wouldn't have even dreamed of it, a generation earlier. We've always had the most brilliant lawyers and judges who come to teach as adjuncts at Georgetown, but we didn't let them know that that was a possibility as much as we should have. When we invited Judges Harry Edwards and Larry Silberman and others, they agreed to teach a course for us. So, it was in the quality of both the younger faculty and the adjunct faculty that I think changes were made.

Ms. Born: Did you in any way put more emphasis on interdisciplinary work or teaching?

Mr. Pitofsky: That wasn't a special goal of mine. There already were some interdisciplinary programs and degrees. Once again, you have to face the fact that the law school is ten miles away from the university, and so it's very difficult to run some of these interdisciplinary programs. We do a little more now than we did then, but it's not a school like Harvard, Yale, Columbia and to a lesser extent NYU that can easily construct interdisciplinary programs and make them work. We have a great geographic disadvantage.

Ms. Born: Did you do any teaching while you were a dean?

Mr. Pitofsky: I did. Not the first year.

Ms. Born: Where did you find the time?

Mr. Pitofsky: I'll tell you how I did it. I taught antitrust at nine o'clock on Monday morning and I was usually finished by eleven. (And another two hours on a non-Monday every other week.) We cut it back to a three credit course and I taught antitrust on the theory that I really didn't have to prepare all that much for those classes. I just felt that a dean who doesn't teach—welcomes the students the day they arrive and presides over their graduation—it's very possible that the overwhelming majority of the students will never know who you are. You're in a nice corner office on the top floor and you're not a part of the

academic life of the school. So, it really wasn't very difficult, my responsibilities were over by eleven o'clock on Monday morning. But I thought that was the right thing to do. One of the candidates for deanship today teaches a full academic schedule. I don't know how in the world he can do that. That seems beyond me.

Ms. Born: But at least this gave you some interaction with the students. Was this the main interaction you had as dean with the students?

Mr. Pitofsky: Yes. There were always student committees complaining about this and that. They certainly were complaining a great deal about the physical plant, when I first took over the deanship, and the level of safety in that part of the city. I don't think that's an issue any longer, now that all these upscale hotels are in that part of town. But the students did not give me a hard time. This was not the late 1960s. And I can't remember a single matter in which there was a lingering tension between the senior officers of the law school and the students during that period. They were amazing in their willingness to suffer inconvenience while we built that library. We didn't just build the library; we redid the main building and the noise and the dust made teaching very difficult. But the students knew which direction we were going, and they supported it.

Ms. Born: Did you do anything to address their safety concerns?

Mr. Pitofsky: We did. We doubled or tripled the number of guards in the area. We developed a bus system that would take the students to the subway station. We gave them all sorts of warnings about not walking around that area after nightfall. And there were some terrible episodes including one young man who was killed. I must say that was as difficult an experience as I've ever been thorough. Mostly someone was struck and their purse was snatched. No one else was seriously injured that I can recall except this one young man who I

didn't know but I later learned was just an extraordinary person: generous, thoughtful, headed for a career in public interest law.

Ms. Born: It's hard to lose anybody but particularly hard to lose him, it sounds like. What was your relationship with the faculty and your main interactions with them?

Mr. Pitofsky: We got along reasonably well. The business about salaries depending on productivity created some tension between me and a few faculty members who were retired in place. I just felt very strongly before and since, that part of the role the dean must play is to reward the active, constructive, productive, members of the faculty and that means curtailing the rewards of others. There were at least a half dozen people on that faculty who had been hired 30 years earlier, when Georgetown was a regional school preparing young people to take the bar. And I was directed by the president of the university to negotiate very generous deals that would allow them to retire. I must say all six of them behaved so well. They knew it wasn't their kind of school any longer and we worked that out. That allowed us six slots to go out and hire six really first rate young people. So, in general, I thought the faculty did not give me a hard time. Who could be opposed to raising money to build a library? And everybody knew that was the main thing I was doing.

Ms. Born: It sounds like a lot of your role was making use of your skills as a negotiator.

Mr. Pitofsky: That certainly was true when we get to this gay rights episode.

Ms. Born: Tell me about the gay rights episode. This was part of your role as executive vice president, wasn't it?

Mr. Pitofsky: Quite an experience, one of the most memorable that I can recall. In the late '70s, the law school had made a decision that it would not subsidize gay and lesbian

organizations on the law school campus because their goal is inconsistent with Catholic precepts. We're talking about small subsidies of perhaps \$125 a year. The students, not unexpectedly, took the law school to court, to the D.C. court system not the federal court system, and sued for violation of the D.C. human rights statute. That case kicked around in the courts for seven or eight years. First the university would win, then it would be reversed and remanded. Then the students would win and that would be appealed and then remanded. But the last decision came out in favor of the students. There were at least three or four opinions. It was a close call, but the next step was to take the case to the Supreme Court. That's where we were, and the president of the university called me in one day and said, "I want you to go out and bring back to the board of the university the best settlement that you can negotiate. I don't want to leave either side, committed Catholics or gays and lesbians, humiliated. I want a compromise." That's what I did for a day or more every week for the next six months. The present president of the university was Tim Healy's administrative assistant, and he joined me for these discussions.

Ms. Born: What was his name?

Mr. Pitofsky: Jack de Gioia. The gays were represented by Williams & Connelly, Vince Fuller, one of the best lawyers in Washington and two other junior attorneys from that firm. There were two groups of gays and the second was represented by Rick Gross—a partner at the Wald firm and one of the toughest negotiators I've ever met in my life. The three groups would meet at least once a week and hammer out the details of what a compromise would be. We gave away early that the university would provide the subsidy. That goes without saying. But then there were questions about what the students would do. Would they be allowed a newspaper that proselytizes a gay and lesbian way of life? Some threatened they would use the facilities of the university to conduct a black mass, something that goes back to the Middle Ages

and is a form of devil worship. There were all sorts of speech and behavior issues—could they run a parade through the middle of the main campus? Could they celebrate certain days that were important to them? When we were finished, we came back with a settlement that must have been 50 pages and the president took it to his board for what I thought was one of the most eloquent debates I’ve ever participated in. I spoke briefly and a lawyer named John Kirby really carried the ball for settling the case. The issue was, do you go to the Supreme Court or do you take this deal.

Ms. Born: Was John Kirby a lawyer for the university?

Mr. Pitofsky: He was a partner at Mudge, Rose in New York. And very active.

Ms. Born: Was he on the board?

Mr. Pitofsky: He had been on the board, but by the time of the debate I think he had stepped down. You’re talking about some of the best lawyers that I’ve ever dealt with. The board consisted of about 30 people, 30 to 35. Six of them were priests. They all voted to settle the case. But there were many Catholics on the board who felt very strongly about this in the most understandable way. One person who I respect enormously said these are our children, do not think that we are hostile to them, but this is our religion and we are committed to support the precepts of our religion. Before this meeting, we had authorized a clerical investigation of the Catholic Church’s treatment of gay and lesbian people starting about the 12th or 13th century, and it concluded that gay thoughts were not a sin, were not a violation of God’s rule. It’s only acting on them that was. To make a wonderful story a little shorter, the vote was 18 to 17 to accept the settlement. And I remember still who the deciding votes were. Joe Califano was a deciding vote. He spoke at the end. He was on the board and he said, “I’ve sat in the White House for years and I’ve never heard anything quite like this debate.” I asked the dean of

students ten years later, was there any part of that settlement that didn't work and became a bone of contention, and he said no, no one has ever challenged the terms of that settlement. It made me very happy.

Ms. Born: One of the things that I was going to ask you about was your relationship with the president of the university and your relationship with the board.

Mr. Pitofsky: My close relationship was with the president, and I think I can fairly say we became good friends. I admired him enormously. It was beyond professional — we talked books, plays, he was a poet, he taught poetry and wrote poetry. He was very close to Bill Clinton so he knew a lot of politics. My wife Sally enjoyed being a dean's wife immensely. She socialized more regularly and comfortably than I did, and she and the president of the university got along. So it was a good relationship. As far as the board was concerned, I knew individuals but, except on extraordinary occasions like the gay rights matter, I never said a word at board meetings. I sat and listened.

Ms. Born: Did you enjoy being dean?

Mr. Pitofsky: Yes, but I have to admit that I also enjoyed stepping down. I am very glad that I was dean. The university relationship was extraordinary. I stayed an extra year to finish the library and to preside over its inauguration.

Ms. Born: So, it was a total of six years?

Mr. Pitofsky: A total of six. I didn't want another five-year term. I have no regrets for having done that, although, the truth of the matter is, I didn't write a word during those six years and as I've said to many other people, it's not just that you stop writing, you stop reading. There's all sorts of new scholarship that emerges in your field. A deanship is an 11-month a year job. But I still think that committed academics should do it. I don't think they

should stay as I think Dean Griswold did at Harvard for over 20 years. Judy Areen, my successor, was very generous in having stayed 15. Because she was ready to step down five years ago.

Ms. Born: So there was no difficulty in making your decision to step down? You really wanted to and stayed on an extra year, basically?

Mr. Pitofsky: Most deans stay one long term. It's exceptional when they take a second term or a third term. Judy might be the longest serving dean in the country right now.

Ms. Born: Tell me about the mechanics of your stepping down and the choosing of your successor? Of Judy.

Mr. Pitofsky: I announced in September as I recall that I would step down as dean and then I was probably kept at arm's length in the selection of my successor more than almost anyone else. I never doubted there were good candidates who were available to step into the job, and I didn't think it was right, especially because I had such a close relationship to the president of the university, that I should not be involved in the selection. When it's all over at the end, you put your two cents in, but I was not active in the selection of the possible candidates or the selection of the committee that chose the candidates. Judy's done the same thing this time around.

Ms. Born: It avoids the appearance of trying to continue your role.

Mr. Pitofsky: Exactly.

Ms. Born: Were there other activities you had while you were dean? Outside of the university?

Mr. Pitofsky: One activity that I came a little bit to regret is I accepted, against my better judgment, an appointment to the council of the Antitrust Section of the ABA. I should

have been smarter than that. There is no way I could attend all those meetings or stay up and read all those reports. I confess that I came around to the view that I hadn't done an adequate job in that role. I felt badly about it. Did I do anything else while I was dean? Not much.

Ms. Born: Tell me about the Georgetown Study of Private Antitrust Litigation and the board of the Craig Corporation,

Mr. Pitofsky: Okay. The Georgetown study was initiated while I was dean, but two other people wrote it. Some prominent lawyers in the city, especially Joe Sims who's at Jones Day, felt that there was a lot of heat underlying different views of private antitrust treble-damage litigation. They were people who were opposed to mandatory treble damages. But there was very little reliable data on any of these subjects. Sims and his colleagues raised a very substantial amount of money, hired an economist, hired two lawyers and looked at the records of treble-damage litigation throughout the country to examine the state of affairs. For example, there was a theory that judges were reluctant to dismiss antitrust cases on a motion to dismiss or summary judgment and the result was that, if you brought one of these cases, the only way for the defendant to get rid of it was to pay some kind of blackmail settlement. This study showed that it was absolutely not true. It may have been true 20 or 25 years ago because of an opinion that Justice Douglas wrote saying you ought to dismiss antitrust cases during motion practice very cautiously. But the fact of the matter was judges were dismissing antitrust cases left and right. It was not a blackmail factory. There were many other issues the study addressed. We published it. I still see it cited regularly as a source. Craig Corporation was very interesting. Jim Cotter was a student who had attended Georgetown University and its law school with absolutely no money. I think he may have played football for the university, but he was on scholarship, and he was on scholarship at the law school and working nights for the Internal

Revenue Service. He is the classic case of a poor kid who graduated from law school. He came out of the law school, worked for a while for the IRS, then went off into business for himself, and became a very successful entrepreneur. We became friends. I'm sure I was trying to raise money from him. I visited him in California. He eventually contributed a million dollars to name a room in the library. But the main point is we got along very well and he asked me to join the board of his corporation, which was at that time a conglomerate. Now it's almost entirely a movie company. I only did it out of loyalty to the university, and it was a wonderful experience for me. Most lawyers never see a corporation from the inside. They see the issues after they have been framed, as opposed to being on the board of a corporation and participating in the initiation of programs and framing of issues. So I learned a lot. The problem was that, since it was a conglomerate, he was invested in all sorts of things, many of which were very prosperous. But he took over control of a savings and loan and that was the time when people's careers were being destroyed simply by knowing Keating, much less being on the board of an S&L. I said to him, life's too short. First of all, I don't understand the economics of a savings and loan company, unlike your other companies, and I just can't bring myself to be responsible for decisions relating to the savings and loan business. He tried to argue me out of it, but he was very generous, and I stepped away. But I'd been on that board for eight or ten years. I learned a lot.

Ms. Born: So you stayed on the board even after your deanship?

Mr. Pitofsky: I don't think I went on the board until more or less in the middle or the end of my deanship.

Ms. Born: Is there anything else we should discuss about your deanship or about the executive vice presidency of Georgetown?

Mr. Pitofsky: I don't think so. Another major project that I was asked to do was to sell the hospital, because the hospital was an economic drag on the whole university. I spent quite a bit of time, and I thought I had the hospital sold, but the deal collapsed and the university is still struggling to get out from under this extremely unfortunate economic relationship. The hospital's budget is larger than the university's budget. As the president said, "When the hospital sneezes, we get pneumonia." It's well known now that the university, over the last half dozen years, has probably averaged \$15 million a year in red ink because of the hospital. That's almost the entire financial problem of that university.

Ms. Born: I thought they had sold it.

Mr. Pitofsky: We had sold it, but there were strings attached. And the university is still responsible economically for some aspects of the hospital. I regard that as a failure. I wasn't the only one out there trying to sell the hospital. But it's too bad that we didn't succeed. I don't recall any other major matter, and the Craig Corporation Board and the hospital were minor compared to the constant responsibility for fund-raising. We ended up with a building and we were a million dollars short. And the Williams' family came to our rescue. It was the opposite of being risk averse to start this construction with no history of fund-raising. The only thing we had was the property on which the SEC stands today, which is a great piece of land and a constant annual source of revenue. So actually we were raising more than a million a year: we were raising three million a year because of that land rent. But there was no endowment for the law school and a very modest annual income, one of the smallest in America, at that time.

Ms. Born: In your fund-raising efforts, did you need to travel a lot? Did you visit with a lot of alumni as well as foundations?

Mr. Pitofsky: In the first year I traveled an enormous amount, because I felt people

had the right to see the new dean. After that, I came up with a strategy, which I think was successful, and that is I asked five senior members of my faculty, Father Drinan and Sam Dash are two that I recall, whether they would be willing in my place to handle some of these alumni and fund-raising relationships. For them, it was two trips a year; for me, it was 20 trips a year. And they agreed, I had the right people and they were extremely successful.

(End of Tape)