

Oral History of Robert Pitofsky
Seventh Interview
May 20,2004

Ms. Born: This is the seventh interview of Robert Pitofsky for the Oral History Project of the Historical Society of the District of Columbia Circuit. It is being taken on May 20,2004 in a conference room at Arnold & Porter, 555 12th Street, NW, Washington, D.C. 20004. First we're going to talk about some of the things that were done in consumer protection during your tenure as FTC chair. Tell me about the campaign against predatory lending.

Mr. Pitofsky: If I may, let me put the consumer protection effort into a broader context. When I left the FTC as a commissioner in 1982, the consumer protection side of the agency was quite active, but it was active in examining frauds that had been around for a long time: flimsy aluminum siding on houses, pyramid frauds, false advertising and false marketing of various kinds in newspapers and magazines. The frauds were not much different than in the 1970s or even earlier. Beginning in 1980, what you saw was a technological revolution. There was the growth of the Internet. There was the immense growth of credit cards and credit transactions. There was a flourishing business in gathering information about people and selling it in a way that invaded privacy. It was a different world. I think Congress was vaguely aware of the changes that had occurred, but the staff of the Federal Trade Commission was a little bit slow in responding. Fortunately, the Bureau Director during my tenure as Chair was a woman I mentioned before, Jodie Bernstein, and she was one of the greatest managers that I've ever encountered. She saw which way the wind was blowing. She hired young people with technical backgrounds, or she reached out and brought them in laterally. She developed good relationships with the Food and Drug Administration, the FCC, and other agencies, and by dint

of extraordinary leadership—I hope this isn't an exaggeration, I don't think it is—made the Federal Trade Commission the principal consumer protection agency in the high-tech sector of the economy. Now you asked about predatory lending. I mentioned it earlier but let me elaborate. It's often a despicable form of lending in which the lender finds the most vulnerable borrowers—people who haven't a clue about the small print in contracts and what's an unconscionable clause. And they certainly have never heard of flipping. Flipping is a technique where you lend people on the basis of their property more money than they can repay on an annual basis, and you have reason to know they can't repay it. So a year or two later you foreclose on their house, or in one case they actually foreclosed on a church. They take it through a legal proceeding, regain ownership, and then they sell it to somebody else with a loan that they know the next person can't repay. It goes on and on. Most of the people who do this kind of predatory lending are rather small fly-by-night operations. They are the same sort of people who sold aluminum siding and sold encyclopedias door-to-door 20 years ago. But the difference is that they discount the paper that they obtain upstream to the major New York bankers. And one of the great problems that we had was whether or not we simply look for a remedy from the fly-by-night scoundrels, or we try to move upstream to the sources of their money. To get upstream to the sources of their money meant a trial that would go on for months and would be buried in paper. But we decided to do it. In one case we settled with Citicorp for over \$100 million as I recall. Another case, Capital Credit, may still be going on for all I know. It was extremely complicated, and they were dug in about not paying a penalty.

Ms. Born: So the way the commission approached this was by identifying individual cases and suing.

Mr. Pitofsky: Yes. There was no rulemaking. There was a thought at one point

that the Department of the Treasury, under the leadership of Larry Summers, would try to develop some rules in this area. The FTC worked with Treasury, and we came up with some rules, some of which may have constituted overreaching, and we ended up getting nothing. Familiar pattern in legislation in Washington.

Ms. Born: Would these have been Treasury rules or actually Congressional legislation?

Mr. Pitofsky: No, they would have been Treasury rules.

Ms. Born: Another issue that you've mentioned is the case against the Joe Camel advertising program.

Mr. Pitofsky: The investigation had actually been initiated by the commission before I arrived and was advocated by my predecessor, Janet Steiger. But after long investigation, it turned out one commissioner was recused (I guess he must have owned Reynolds stock) and the other four could not reach a decision—they split two verses two on the Joe Camel campaign, which as you recall used a cartoon camel as the identifying trademark speaker for the brand in selling the product. And it just sat there for several years. I should say that the staff also was divided on whether or not the commission had sufficient evidence to persuade a court. There wasn't anything deceptive about the Joe Camel advertising campaign. It would have to be "unfair," using a cartoon character to sell cigarettes to people who were too young to legally buy cigarettes. But Jodie decided this was a case worth bringing and initiated the investigation all over again. I don't think it's improper for me to disclose that, had we litigated the case, we would have submitted evidence that Reynolds was considering five or six ad campaigns at the time they selected Joe Camel. And one of the professionals—I don't think it was an employee of Reynolds, it was probably an employee of the advertising agency put down

on paper, roughly speaking, that the good news was that the Joe Camel campaign was the most effective of any of the five or six, and the bad news was that it was most effective with an underage audience. In my view when you have a document like that you're just not going to lose the case. Reynolds delayed and delayed, but then they finally came to the conclusion that they would be better off abandoning the campaign. We only asked them to abandon the campaign; I don't remember if we ever asked for a fine. We were making law in uncharted terrain. We did persuade the company to cancel the campaign.

Ms. Born: Tell me about the initiatives that the commission had against Internet fraud.

Mr. Pitofsky: The frauds on the Internet were some of the most outrageous I've ever seen. They were blatant, they were gross, they were indefensible. The problem was to catch the people who were doing it, because often they were clever enough to locate in foreign countries. I don't know if we achieved a successful result in half our cases because of the difficulty of getting cooperation abroad.

Ms. Born: Did the FTC's arrangements with foreign countries to share information extend to consumer fraud or were they just in the antitrust area?

Mr. Pitofsky: Excellent question. Almost entirely on the antitrust side. Somehow people forgot there was consumer protection, and while we had some sort of arrangement with Canada and maybe one other country, we had very, very few. The present commission, my successors, have picked up on that in a very constructive way. Chairman Tim Muris has delegated this work to one of the commissioners, Moselle Thompson, and my impression is they've done very good work over the last few years in bringing international consumer protection coordination closer to the level of coordination that applies to antitrust.

Ms. Born: Tell me about the challenges to invasions of privacy, including the FTC's role and Congress' consideration of the issue.

Ms. Born: We haven't talked about the 800-number issue where companies were required to have 800 numbers, and yet they didn't have to actually have staff personing the phones.

Mr. Pitofsky: Right. That wasn't something we did. Congress mandated that certain kinds of companies have 800-numbers so consumers could check the status of some financial transaction. The companies interpreted the law to mean yes, we have to have an 800-number, but we didn't have to hire enough people to answer the phones. There was a sector of the industry where there only were three companies, and all three companies took the same position. I think they caved about five minutes after we called the issue of inadequate personnel to their attention.

Ms. Born: Were there any procedural improvements in the administrative adjudicative process while you were there?

Mr. Pitofsky: There was one major change that I can't even say originated with us. One of the criticisms of the commission prior to my arrival—and a rare criticism of Janet Steiger because she was so successful in the chair—was that the review process between the staffer on the front line and the commission was so complicated, so rife with delay, there were so many levels of review, that not only did things not get done, but the staff lawyer got discouraged about having to wait so long. I wouldn't be surprised if between the Bureau Director and the staffer there were at least three different levels of review, maybe more. So Congress directed in one of the budget messages just before I took office that we curtail intermediate level review. But now comes Jodie Bernstein, this extraordinary manager, and she changed it all around. She said the

staffer's memo should go directly to her. If she thinks it needs a little more work, she gives it to somebody. That somebody gives it right back to her. Three levels of review were eliminated as a result of that approach. The morale of the staff skyrocketed, efficiency improved, and the number of cases we were able to handle improved. It was as simple and important a reform as one can imagine.

Ms. Born: Was it just that bureaucracy had accumulated over the years?

Mr. Pitofsky: One of the problems was that some of the commissioners became nitpickers, and they would see memos that had the smallest flaw or deletion, and they would bounce it back to the staff. The staff became cowed by that kind of behavior and tried as hard as they could to eliminate absolutely any problem with respect to the memo that went to the commission. The result was inordinate delay.

Ms. Born: You've discussed this to some extent already, but tell me what your relationship with the other commissioners was. As chair, obviously you had certain extra and unique functions among the commissioners.

Mr. Pitofsky: I think I got along on a personal level with every one of our commissioners, including one or two that were to the left of me and certainly one that was to the right of me, but our personal relationships are excellent. I made it a responsibility of mine to visit every commissioner almost every week—to leave my office, go to their office, chat about this or that, including what's coming up in the following week or two. Sometimes if you're traveling you can't do it every week, but I tried very hard. It was quite interesting. When I arrived, there were two Democrats, two Republicans, and a rather conservative independent. So in a way, I didn't have a working majority. But my predecessor, Janet Steiger (a Republican), was liberal, especially on consumer protection but also on antitrust, so that I had a working

majority with Christine Varney (a Democrat), myself and Janet Steiger. Many of the early cases that we brought involved three to two votes. Then when Janet retired, she was replaced by Sheila Anthony (a Democrat), and once again I usually had a working majority.

Ms. Born: How about the senior staff? You obviously had a direct working relationship with each of them, and you've talked about Bill Baer and Jodie Bernstein. You mentioned Deborah Valentine. But is there more you would like to say about them?

Mr. Pitofsky: First of all Bill Baer and Jodie Bernstein were the best two bureau directors the FTC has ever employed. They not only knew the substance as well as anyone in the building, but they were great managers and street smart. They went out of their way to bring deputies in—either promote from within or they brought in laterally people from Washington who wanted to be part of this particular commission. Teresa Schwartz was assistant dean at George Washington Law School. When she first called, I said, “Teresa, this is a problem. You are qualified to be a bureau director.” She already had major positions at the Federal Trade Commission, had written in the consumer protection field, and was a brilliant woman. She said, “Well, I’ll come over and work for Jodie,” which she did. Bill had similar people. Rich Parker came over to work for Bill as a deputy. Molly Boast came to work with this group. They were both successful partners in major law firms. So there was no lack of talent at the senior level, and at the intake level, we were very successful in persuading young people out of clerkships or in law firms for a year or two, or even directly out of law school, to spend a few years at the Federal Trade Commission. Maybe I’m not objective, but it was a first-rate regulatory staff.

Mr. Pitofsky: What we may have lacked was people with technical backgrounds—lawyers who also had a degree in computer engineering, lawyers who also had a degree in biotechnology. We really had to reach out to other agencies in Washington when we

found ourselves involved in major cases in those areas. But there is no solution. A lawyer who has a background in biotechnology staying at a regulatory agency for ten years is a very exceptional situation.

Ms. Born: You've already talked about your relationship with Joel Klein and the Justice Department. Tell me about your relationship with the White House during those years.

Mr. Pitofsky: I thought the Clinton administration generally took a more hands-off approach to antitrust than any other White House in my lifetime. Indeed it reached the point where at times I would say to someone, why am I not being invited to this meeting? You are talking about merger policy at the Federal Trade Commission or regulation of privacy. It would take a little bit of doing in order to become part of that process. I knew President Clinton but I think I met with him no more than twice in six and a half years. I knew some of the people who were on the National Security Council, people like Dan Tarullo and Gene Sperling. It was really because I already knew some of these people that I managed to have some interplay with the President's office and the Vice President's office. But it was very modest and nothing like the interplay that I know went on 30 and 40 years earlier.

Ms. Born: Were there other federal agencies that you had a lot of contact with other than the Justice Department? You mentioned Treasury.

Mr. Pitofsky: That was an exception and very unusual. Our responsibilities don't intersect very often. The two agencies that I would single out are the Federal Communications Commission and the Securities and Exchange Commission. I knew the chair of each agency before I went into government. With respect to the FCC, there were quite a number of mergers,

joint ventures, exclusive dealing contracts in the media area. And the way things have developed, by and large, the FCC will stand back and allow either the Antitrust Division or more rarely the FTC to work through its process, because both agencies have vastly more discovery authority than the FCC. Then the FCC commissioners will decide whether they are satisfied with the remedy or whether in the public interest, because their standards are much broader than ours, they decide to seek more of a remedy. As a result, our staff kept their staff informed regularly. On a few occasions, not many, I would actually meet with the chair of the FCC, Bill Kennard. That was an exceptionally cordial and constructive relationship. As to the SEC, there are all these rules relating to credit reporting companies, credit companies and banks. I knew Arthur Levitt, so we had some interplay there, but it wasn't all that much. At a different level Jodie Bernstein had many rules that were issued jointly with FDA. She was in contact with FDA on a constant basis, first on cigarettes and then on other products, but I really wasn't much involved in that. If you compare the Federal Trade Commission in late '90s to the Federal Trade Commission of the 1970s, it was radically different in the extent to which the commission reached out to other agencies and other agencies reached out to the FTC.

Ms. Born: Did you feel that the FTC was quite independent during this period? From your description it certainly sounds like it was.

Mr. Pitofsky: The commission certainly was independent of the White House. Eventually, the Vice President placed me on his Reinventing Government Committee. That assignment had me at the White House on a regular basis, and therefore I would find out a little more about what was going on. But the White House never drew us into something that they were doing, with the exception of our investigation of the movie-music-video games rating systems. That was their idea and we were the administrator of that idea. Were we independent

of Congress? Not really, but we are not supposed to be. Before a case is brought, any Congressperson has the right, almost the obligation, to represent their constituents, and they are not shy about it. Also, there's constant oversight and constant budgetary pressure. So any Chairman—this is true of Janet Steiger before me and it's true of Tim Muris now—spends a good deal of time speaking to members of Congress and their staffs, and I think that's as it should be. The Federal Trade Commission is an arm of the Congress. And that's the way it should be.

Ms. Born: Did you frequently testify before Congress?

Mr. Pitofsky: My memory is a little unreliable on something like this, but when Congress was in session, my guess is once or twice a month. It's not the formal testimony where I think important matters are addressed. It's meeting with the head of your appropriations committee or subcommittee. It's meeting with the head of your oversight committee and discussing perhaps somebody's complaint about what you are doing or not doing. The formal testimony would run in spurts, but it would probably amount to once or twice a month, if Congress was in session. I had very good legislative affairs representatives. Lorraine Miller who is enormously well connected in Washington would see to it that I didn't just sit in my office and wait for people to call me, but she would make sure that I reached out to visit them. And that certainly paid off. Another thing that paid off (I was talking about it recently at a memorial service for Janet Steiger): for a year or two we would go up and testify jointly—previous Republican chair and current Democratic chair—or we would visit powerful legislators together. I tell you it left them a little surprised when the two of us would show up and argue in favor of a particular program. It worked brilliantly because she was very popular on the Hill. Her husband had been a Congressman. It was a great double team. It was one of

the best things I ever thought of.

Ms. Born: Tell me what happened internally. Did the staff grow in number during your tenure? Did it stay about the same? Were there any special administrative issues or problems during your term?

Mr. Pitofsky: The staff stayed about the same. It was about 900,950. At one point 20 years earlier, it had been about 1800, and then in the Reagan years it was cut very substantially. But that really doesn't tell the story because when the staff was 1,800 so many of that number were secretaries, did filing work, were messengers, and those people, not all but a substantial number of those people, were replaced when they retired, by lawyers or economists.

Ms. Born: And computers.

Mr. Pitofsky: And computers. So that the effective force of 900 was closer to the old 1800. Also, frankly—I testified to this—when there were 1800 on the staff, there were too many people. They didn't have enough to do. Whereas with the 900, we never lacked things to do especially because of the merger wave.

Ms. Born: That's very important for morale and for the efficiency of an agency.

Mr. Pitofsky: Now after I left, largely because of this brilliant stroke of introducing the Do Not Call List, the agency has grown a little bit. It's probably a 1,000 or 1,100 now.

Ms. Born: As needed to administer the new rule?

Mr. Pitofsky: That plus international relations. There are things that the agency does now that weren't on the horizon at all 30 years ago. But receiving complaints and distributing them to the right agency, the Do Not Call List, identity theft—the new functions are largely on the consumer side and Congress has usually been more supportive of consumer

protection than antitrust.

Ms. Born: What was done by the agency during your tenure on identify theft? I assume again this was in Jodie's area.

Mr. Pitofsky: Yes, it was a very simple reform. Suppose you are making a phone call in Grand Central Station, New York, and someone with binoculars stands up on the next floor and reads your credit card number.

Ms. Born: That's very funny, that happened to me in New York at Penn Station.

Mr. Pitofsky: I was the victim of identity theft myself. But I was given very prompt attention by my credit card company. The problem for most people is you might lose your wallet with many credit cards or you don't know which credit card is being used and you start making phone call after phone call to remedy the situation, and it's very irritating. All Jodie did was to institute a system whereby you made one call to the Federal Trade Commission and you said my name is such and such, these are the numbers of my cards, and the Federal Trade Commission took over from there and notified the credit card companies to cancel the cards. It's a very simple reform, but it made a big difference. A much more ambitious program was to create a repository of all fraud enforcement by the states, different parts of the federal government, and several foreign countries, computerize it all and make it available so that if a fraud de jour is beginning to emerge—maybe a lottery based on horse races in Australia, a fraud we actually dealt with—you'll see it earlier by having this repository. That was a major effort that was fully and separately funded by Congress.

Ms. Born: That's fascinating because it's not merely that there are fads in fraud, but it's also often the very same people may be going to fad to fad. The same people that

were doing currency futures frauds were doing other kinds of pyramid schemes.

Mr. Pitofsky: Absolutely. You have to be as high-tech as the people who are engaging in the fraud, and while the FTC surely wasn't perfect, it was a lot better when Jodie was involved. Not just Jodie, she had other people who were just superb on this kind of issue.

Ms. Born: What was your view of the courts during that time and how they dealt with FTC cases and issues?

Mr. Pitofsky: Again let me start off and put it in a broader context. I thought in the '80s one of the mistakes was to deal the courts out of the game. Agencies like the FTC (it's also true of the FCC) either dropped most of its cases or settled. Few cases went to court. Certainly in the merger area the review became totally bureaucratic. My position was there's nothing wrong with losing a case here and there if you think the settlement is not adequate. There was a widespread sense that the FTC was all too often willing to settle for half a loaf. So we went to court more often than some of the commissions of the '80s. We took bigger cases to court; they weren't small potatoes cases. The same is true of Joel Klein at the Department of Justice. We took our chances on litigating, and I think our record speaks for itself—14 merger cases litigated by the FTC and we won 12. On non-merger cases, we lost one case in the Supreme Court that was initiated before I came. Maybe I should have done a better job afterwards. But I think we won almost every other case. I thought bringing the courts into the process gave the commission more stature. The people in the private sector couldn't just say, the foolish people at the commission think this is against the law, but we don't want to litigate it; it's blackmail but we'll cave in. They didn't cave. In the overwhelming majority of instances they lost the case.

Ms. Born: Those court decisions probably had a lot of credibility not merely with the litigants, but with industry in general.

Mr. Pitofsky: I also think that antitrust in general became more middle of the road between 1969 and 1995. Whereas the courts would review a record from the FTC with skepticism, I think they were willing to cut the agency some slack and were willing to deal on the merits of our cases. Also, we found that we had some excellent litigators and they got better as they went along. We only lost two merger cases, and those were both hospital merger cases, so as I said earlier they are quite special.

Ms. Born: Tell me what your take on the quality of practitioners coming before the FTC is.

Mr. Pitofsky: That's interesting; I hadn't thought about that. When I was a bureau director, the range of ability of people who came before the FTC varied widely. There were great law firms in Washington, Covington and Arnold & Porter, and then there were boutiques who specialized in advertising or price discrimination cases, and they were not the world's best lawyers. By the '90s, most of the cases we were bringing were against much larger companies. Most of those companies were represented by top level firms and attorneys. I think the quality of advocacy improved, but I wouldn't say it was night and day.

Ms. Born: Looking back on your time at the commission as chair, what do you think your greatest accomplishments were?

Mr. Pitofsky: We've talked about some of them. One was the staff. The agency couldn't function in the '60s and '70s with the staff it had. Phil Elman has now done an oral history in which he describes how life was in the '60s. It was nothing like that in the '90s. Because we were active, it was a place that attracted very able people from great law firms, great universities. I think the decision to move from rulemaking to case-by-case litigation was important and that's the way the agency should run. I mentioned two other things. One is

recognizing that the Federal Trade Commission is not just a law enforcement agency; that's not what its originators had in mind. They wanted the commission to do studies, reports, hold hearings, seminars, give materials to Congress, and we reinstalled that tradition with considerable success. Another thing we did—and I have to tell you my successor, Tim Muris, has done a better job on this than we did—is post facto review. It's not enough to bring a case and win it. You ought to go back five years later and see if it was worth winning. And he's done a terrific job on that. I think those are the main things. My predecessor restored good relationships with the states. I didn't have to do that; it was there for me. Good relationships on the Hill; I didn't have to do that. I think the things I mentioned were the main changes. I guess I would add—how can I forget, it's my common theme—that antitrust suffered by bouncing from the far left to the far right for 30 or 40 years. The '90s and the first five years of the 21st century have been characterized by a real effort to find a middle ground for antitrust that's economically sophisticated but not totally economic in its approach, that discontinues initiatives that the Warren Court may have allowed but probably weren't a good idea at the time. Time will tell, but certainly if you take the three administrations, Bush I, Clinton, Bush II, the antitrust approach is really very similar. There are things we quarrel about but nothing like 30 years ago. And then it was bringing consumer protection into the high-tech world. There is no other agency in Washington that has anything like the resources and the authority of the Federal Trade Commission on the consumer side.

Ms. Born: Quite a lot of good accomplishments.

Mr. Pitofsky: When I left I was very pleased to have done it, of course, and I thought for the most part it worked out pretty well.

Ms. Born: Tell me about your decision to leave, Bob.

Mr. Pitofsky: It was just a matter of a few months. My term would have ended in September of 2001. George Bush had been elected. The tendency at an agency, when the new President is elected and everybody knows the chair is on his way out, is to be dead in the water. So I did write a letter to the White House saying, I have to leave in 2001, but I give you my commitment that, on the day my successor is appointed and confirmed, you will have my resignation. That turned out to be mid-April 2001, so I left four or five months early. And that allowed a seamless transition between me and Chairman Muris. I think that's the better way to do it then to hang on and create a gap between Republican and Democratic administrations.

Ms. Born: Did you give transitional assistance to Tim Muris to ease him into the job?

Mr. Pitofsky: Tim had been at the FTC almost as many times as I have. I was there four times; this was his fourth time. I didn't have to tell him very much about the agency. Also, I knew him well, and we had met on a regular basis during my entire term. I'm sure that the staff did for him what they did for me. They put together briefing books for his confirmation hearing so that he would know what our budget was like and things like that. It wasn't all that much to do for someone who knew the agency from the inside just about as well as I did.

Ms. Born: So what did you decide to do when you were thinking about leaving?

Mr. Pitofsky: I knew I would go back to teaching, and since we are Washingtonians now there wasn't much of an issue there. I told the school very early in the game I'd be back. I thought about different law firms. I actually cut my list down to five. I talked to four others, but in the end it was too attractive not to come back with old friends at Arnold & Porter. The ~~firm~~ made me a very generous offer, and that was the end of it. I didn't spend much time or agonize very long over which law ~~firm~~, especially since I knew I was

primarily going to be a teacher anyway. I took four months off. I was quite tired. I knew we had another edition of the casebook coming up, so I kind of flipped the pages, but essentially I stayed at home. I read all of those books that I hadn't had time to read. It was a lovely three months. I didn't start at Georgetown or the firm until September 1st, even though I left the government in April. I think Sally and I took one brief trip abroad, and of course we spent a few weeks at Cape Cod.

Ms. Born: What did you teach when you started teaching again?

Mr. Pitofsky: I went back to my same courses. I teach constitutional law to first year students. And I teach the basic antitrust class and then I always try to teach different seminars. I'd become intrigued in my last year at the commission with the issue of antitrust and intellectual property. So I told the students we are all going to learn this together. Next year I'm going to teach at Columbia, and I'm going to teach antitrust and intellectual property again.

Ms. Born: As a visiting professor.

Mr. Pitofsky: Yes, just one semester.

Ms. Born: What was your caseload here at the firm like? Did you find that your practice changed from having been chair of the FTC?

Mr. Pitofsky: It did. Before I left for the FTC, I was extremely busy here—busier than I should have been. Once I came back here, all of my clients had gravitated to other people in the firm. It was slow going, and only now I'm beginning to get busy the way I was several years ago. I did take on—and I think maybe it wasn't the wisest thing—a new “career” as an expert witness. There must have been six or eight different cases in which, for one side or another, I was the expert witness—n consumer protection usually, maybe antitrust or European law, or explaining American law to Europeans. It was very time-consuming. I ended up doing

far more than I really wanted to, and some of it wasn't as interesting as it might have been.

Ms. Born: Are you still doing that?

Mr. Pitofsky: I stopped taking anything new in the expert witness line. I have to finish three or four of the commitments, but I won't do that anymore. It's like practice has always been—some of the things I do are truly fascinating and I enjoy them tremendously, some of the other things are same old-same old. This firm has always been very understanding of the fact that I'm primarily a teacher. I won't cancel classes for client meetings, and I'm rarely here at the firm before 4:30 in the afternoon. From that point of view, I don't know if I could ever have found a firm in the entire country that fitted me better than Arnold & Porter.

Ms. Born: Tell me about what else you have been were doing. How did you get chosen to be the head of the dean's search?

Mr. Pitofsky: I'm older than most of the people on the faculty, I had been dean, but the main reason is one of my closer friends is the present president of the university, and he asked me to do it. There was just no way I could say no. If I'd known what a burden it was about to be, I might have tried to think of an excuse, but I did it. Everyone else was elected by the faculty.

Ms. Born: All the rest of the committee?

Mr. Pitofsky: All the rest of the committee. Two other people were chosen by the president: the head of the nursing school and the provost of the university. Then seven people were elected by the faculty, and as I just told them over a toast earlier this week, it was one of the best committees I've ever had anything to do with. My faculty was very shrewd as to elect those seven people.

Ms. Born: Were they all faculty? Was there a student representative?

Mr. Pitofsky: There was one student.

Ms. Born: Was there an alumni representative?

Mr. Pitofsky: One alum. So I guess there must have been 11 or 12 people in the group. They worked hard, they listened to each other, they were always relevant to the subject, there was a certain passion about getting it right. And they would not let well enough alone. They just kept the due diligence efforts on and on. To our surprise we had more qualified candidates than we ever thought we would. I think half a dozen people could have easily been dean in the school. That's what stretched the search out so long—it was getting six or seven down to one.

Ms. Born: How long did the process take?

Mr. Pitofsky: Thirteen months.

Ms. Born: How much of your time was devoted to it?

Mr. Pitofsky: It wasn't bad at the beginning, but in the last two months, when we were trying to cut from five to one, the committee's take was that certain of these phone calls had to be made by the chair of the committee, and I was on the phone a great amount of time.

Ms. Born: This was investigating, talking to people who knew them?

Mr. Pitofsky: The candidates were very close. Everyone of them had so much to be said for him or her. And everyone of them had somebody who was saying, "Oh what a disaster." So you really had to make all of these calls to see what was going on there. But I think we came out with the right person, and I'm just glad its over.

Ms. Born: Did the president of the university want you to give him more than one name?

Mr. Pitofsky: Yes. The understanding was not less than three names, with at least

one outsider. In other years that's been a real problem because there may not have been two insiders who were really qualified to be the dean and sometimes no outsider wants the job. We certainly didn't have that problem. It was really very pleasing to see how many people at other first-rate schools thought being the dean of Georgetown at this time was a good idea.

Ms. Born: Is that due to the stature and reputation of the school?

Mr. Pitofsky: Its two very practical things. All the building is finished. Judy Areen did that. If the dean tries to build anything else, he will be lynched. And she put the school in good financial shape. So your job is to come in and address the quality, the academic program, and many people who may not want to be dean under most circumstances would be dean under those circumstances. I wish that had been my role when I was dean instead of raising the money to build a library.

Ms. Born: This new dean will get to do the fun stuff.

Mr. Pitofsky: I think so. We'll see how it plays out. You never know, but Alex Aleinikoff does have an instinct for the quality of academic life. And that's what he's going to be asked to do.

Ms. Born: You must feel relieved to have that behind you at this point.

Mr. Pitofsky: Everything else backed up. I fell behind in preparing for class, I fell behind at the law firm.

Ms. Born: That's understandable. It just took an enormous amount of time.

Mr. Pitofsky: Maybe I'm too compulsive.

Ms. Born: Bob, you got the Miles W. Kirkpatrick Award. Tell me about that.

Mr. Pitofsky: It was a great honor—a really personal and gratifying honor for me. I regard the turning point in the history of the FTC as the Kirkpatrick Report which I had a hand

in writing, and as a result I became a life-long friend of Miles and so much of my career has involved being a Bureau Director and Commissioner and then Chairman of the Federal Trade Commission. So to receive that particular award was very pleasing.

Ms. Born: And well deserved. Where do you go from here?

Mr. Pitofsky: I'm not sure. I am thinking about it these days. I'm a little down about the last year or so – I don't think I care to work this hard, and we haven't even talked about the fifth edition of the casebook. In fact, one of my partners is a judge and the other is a commissioner at the SEC so a lot of what I regard as the detail work fell to me. I am going to think over the next six months or so about curtailing my commitments to some extent, but one thing that has not turned sour or false or empty for me is teaching a class. I can't say I have the same enthusiasm for scholarly debate as I once did. I still enjoy law practice very much. Sally and I are talking about ways in which I can cut back. The fact that I'm going to visit my old law school next spring and teach antitrust where I learned antitrust has a certain charm to it.

Ms. Born: Yes, indeed. How has teaching changed in the course of your career? How has law school changed?

Mr. Pitofsky: To be honest about it, teaching in the second and third year of an urban law school has become more difficult. I think that the students were more engaged, more active, and more prepared 30 years ago than they are today. After all this is Washington, so many of these students are externs or they are working on the Hill or they are working part-time for a law firm—perhaps because they need the money because they are so deeply in debt. The Socratic method is the minority rather than the majority style of teaching. The people who are teaching seem to become better and better. There must be ten applicants for every law school teaching job in the top law schools. I suppose with respect to teaching generally, not me, but

teaching generally, it's become more theoretical and interdisciplinary than it was. I will admit economic analysis is more a part of my course, but I certainly don't try to be an amateur philosopher as some teachers would do. Young people coming into teaching both write and teach in a highly theoretical way, and veterans like me still think you are supposed to learn what the courts had to say rather than some academic kind of thing. In those senses it is a bit different, certainly different than the law school I went to which was Columbia in the '50s. It was totally pragmatic. Unless you signed up for jurisprudence, no one was going to talk pure theory in your presence at Columbia Law School.

Ms. Born: Do you think the schools are doing the job they should in preparing the students?

Mr. Pitofsky: I think they have OD'd on theory. I think in general opening the window to interdisciplinary thinking and adding to the curriculum not only the thoughts of judges but of scholars and even political figures is a good idea. But I think that in some courses that pendulum has swung too far. But that is what always happens in revolutions. It is better now than it was then, and I think it will get back to a more centrist point of view. I remember there was a tenure fight over an individual and the worst criticism people could mount was that this person only writes about Supreme Court decisions and why they were decided that way.

Ms. Born: Why would a professor do that?

Mr. Pitofsky: That's why I said, "Are you thinking of reconsidering my tenure?" But that was not some outlier speaking, that is a large percentage of many faculties.

Ms. Born: Harry Edwards has some interesting comments on this subject.

Mr. Pitofsky: He is the best on putting the spotlight on this issue, and I try to give copies of his articles to my colleagues.

Ms. Born: Do you want to comment on how law firms have changed?

Mr. Pitofsky: Oh, I wasn't prepared for that but I have certainly note the change in size of these firms which has a social and professional aspect to it. Dewey Ballantine I think employed 100 lawyers when I joined that firm in 1957. Arnold & Porter in 1974 had perhaps 110; now we are talking about 800. I don't know ten percent of the people in this building. Second, I will say what many other people have said—that there is increased emphasis on the bottom line and that billable hours have achieved a prominence in the value structure that wasn't true then. Now maybe it's unavoidable, but it certainly wasn't true when I started practicing law. It's hard to complain in a building like this and surroundings like this, but I think that, if I were not an academic and if I were starting out and my goal was to practice law, I would try to associate with a small law firm. Now, that's not easy to do. Students often come to me with incredibly fine records and ask me what small law firm in Washington I would recommend, but there aren't many of them around.