
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.