ORAL HISTORY OF
HONORABLE JOHN ROBERT FISHER

First Interview — September 9, 2011

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Judge John R. Fisher, Associate Judge of the District of Columbia Court of Appeals. The interviewer is Cecil Hunt.

(TAPE 1)

MR. HUNT: Good afternoon Judge Fisher.

JUDGE FISHER: Good afternoon Mr. Hunt

MR. HUNT: Will you introduce yourself?

JUDGE FISHER: I'm John R. Fisher. The R stands for Robert. I live in the American University Park area of Northwest D.C.

MR. HUNT: Judge Fisher, later in this interview I'll be talking about your family, your wife and children, but I would like you to tell us something about your forbears, where you were born, when you were born, and something about your family background.

JUDGE FISHER: I was born in North Central Ohio, Knox County, Ohio, in 1946. Although we lived in the town of Fredericktown at the time I was born, we moved to a nearby farm when I was about three years old.

My father was George Fisher. He was born in 1899 in Southeastern Ohio, in an area of Ohio that's really part of Appalachia, and his family and he moved to the North Central Ohio area in 1916, I believe, when he was about seventeen years old. He was a farmer for most of his life; from time to time he had to work in offices or factories to supplement his income, but it was while working at a company in Fredericktown, Ohio, that he met my mother, Helen Clark Fisher. My mother was born in Knox County, Ohio, and she was about seventeen years younger than my

father. My mother was my father's second wife; his first wife died after they'd had two children, and then he met my mother and they got married after his first wife's death.

MR. HUNT: Would this have been during the Depression that they married?

JUDGE FISHER: Well, they'd emerged from that. They married in 1945, as I recall, so World War Two was still going on, but was soon to end.

MR. HUNT: And so there were some siblings before you came on the scene?

JUDGE FISHER: Yes, although they were considerably older than me, and my older sister had moved out of the house by the time I was born. She was still in the area at that time. My older brother, I think, was still in his last year of high school probably when I was born, but he soon went away to college so they weren't in the household very much when I was growing up. A younger brother came along in 1949, and so for the most part it was two children growing up together.

MR. HUNT: So you were the older brother of the second family.

JUDGE FISHER: I am, yes.

MR. HUNT: Tell me a little bit about the kind of family setting, the kind of activities, in addition to hard work, that your parents were involved in, and the kind of atmosphere in your home.

JUDGE FISHER: Well my parents were very hardworking. They were people of modest means, and I remember my dad always working very hard on the farm. My mother stayed at home to raise the children. I recall especially that we always had an enormous vegetable garden, to try to provide food for the table and she would be engaged in a lot of canning, and later on freezing, to preserve food for the winter. Meat and eggs were provided from the farm, and so we didn't do a lot of grocery shopping in town. It was a pretty lonely existence growing up, I would

say. We had only one car, and my father often had that for transportation to work. For many, many years we did not have any television while I was growing up so a lot of activities were in the outdoors—running around playing in the yard, swinging, going down to the creek on the farm, and looking around.

MR. HUNT: Which came first, your start in school or your having household chores?

JUDGE FISHER: I don't remember having any really significant chores before I went to school. I first went to school in first grade. Although they had kindergarten in the town of Fredericktown, that was a half day program and they didn't provide bus service so only the town children would go to kindergarten and I did not, so I first went to school in the first grade.

MR. HUNT: Were your parents readers?

JUDGE FISHER: They were, my father especially was a reader. I think in some senses I'd say he *had* been a reader. There were lots of books in the house, and it was clear that he had read a lot as a younger man. I think as he got older he had less stamina and read less.

MR. HUNT: When did you get started with books and what direction did it take?

JUDGE FISHER: I think I had at least learned some reading skills before I went to school, but I don't remember ever reading books or things before I went to school, but I really liked to read, and I remember many evenings, there being no TV and not a lot of activity in the house, that I would read a book while probably most of my classmates were watching TV or chasing around doing other things.

MR. HUNT: Can you remember the kinds of books, say, in your grade school days, were there books you were reading that would fall into any particular category, or was it random?

JUDGE FISHER: I remember particularly being interested in history, and I can't remember the name of this series, but I remember that there was a series of biographies of

famous people, and these books tended to talk about their childhoods, and they might throw in some information about what they did when they grew up and became famous. I suspect most of the information about their childhood was fiction, but I remember in particular enjoying reading that series.

MR. HUNT: (laughs) I'm sorry that's not allowed in these interviews!

JUDGE FISHER: No fiction?

MR. HUNT: No fiction. Well, can you, before we get to your high school years; are there any recollections from grade school years that stand out as good memories or bad memories?

JUDGE FISHER: I have mostly good memories of my school experience. I think a lot of people would have characterized me as "bookish" and "shy," and so I think my classmates, on one hand sometimes made fun of me because I wasn't an athlete or socially adept, at other times they tended to appreciate that I knew answers to things, and those are my principal memories of grade school.

MR. HUNT: Good, where did you go to high school?

JUDGE FISHER: I went to high school in Fredericktown, Ohio, all twelve years of my elementary school and high school education were in the same town. I graduated from high school in 1964, and we tended to think it was auspicious that we had 64 members of our class in 1964, so we had a fairly small class, as you can tell.

MR. HUNT: Well we know that you went on to do your undergraduate work at Harvard, at least I know. We'll get to that, but when did you start thinking about your college choice and what influenced your college choice?

JUDGE FISHER: Let me say first of all that it was always expected of me and my brother that we would go to college. I think our parents valued education very much, although they didn't have much education beyond high school, and so there was always in the back of my mind the expectation that I would be going to college, which was not an obvious answer for the people in our community. I first became familiar with a variety of colleges in Ohio. A very good liberal arts college named Kenyon College is in the same county where I grew up so I learned of Kenyon and might well have attended Kenyon had things been just a little different, but I think probably in my sophomore year, and certainly in my junior year, I started to think more concretely about where I would go to college. One of the important things would be financial aid, figuring out a way to pay for it, since we didn't have a lot of resources to do that ourselves.

MR. HUNT: Well specifically, were you in any sense recruited, or did you send out the applications and wait to see what would happen?

JUDGE FISHER: Most of the recruiting that I recall was conducted by mail. In high school I took a number of standardized tests, either in subject matter or SATs, things like that, and I tended to score well on those tests, and that would often prompt colleges or universities to send me a letter or pamphlet or something inviting my interest. I don't recall any recruiters coming around to the school and touting their colleges or universities, but there were institutions that sent me brochures and invitations to apply, and I ultimately foisted myself on Harvard, having just applied to them in the blind, so to speak. I think I got interested in them because I enjoyed so much reading American history and biographies of famous Americans, and John Kennedy had been president while I was in high school, and you just couldn't pay attention to American history without realizing that Harvard was a preeminent institution, and it was

completely unrealistic for me to apply to Harvard, but I did so, and for some reason they admitted me and I ended up going there to college.

MR. HUNT: Had you ever visited Harvard, or had you visited the East Coast before you made your decision to go there?

JUDGE FISHER: No. The first time I saw Harvard was when I showed up to begin my freshman year. I actually took a train there. I had to go to a town 30 or 40 miles away to catch the train and went through New York to change trains, and ended up in Harvard, and that's the first time I ever saw it.

MR. HUNT: That took a little spunk. I imagine that your acceptance by Harvard was known to you before you graduated. Were there comments in your high school yearbook? I mean, was it something that people noticed and commented on, your heading off to Harvard?

JUDGE FISHER: Yes, I'm not sure about the yearbook, but I think I probably found out in April of the year I graduated, and I recall that the town paper had an article about I was the first person from that area to go to Harvard and there was some publicity about that.

MR. HUNT: So you arrived and started at Harvard in, what year?

JUDGE FISHER: 1964.

MR. HUNT: And went straight through in four years of undergraduate work, did you?

JUDGE FISHER: I did.

MR. HUNT: You must have some lasting impressions, but first on the academic front, are there classes or professors that stick out in your memory as influential in a positive way?

JUDGE FISHER: I remember particularly enjoying the American history classes taught by Bernard Bailyn. He was a scholar particularly of the theories or ideologies behind the American Revolution and then the American Constitution. He wrote a famous pioneering book

called the *Ideological Origins of the American Revolution*. He was a very good lecturer and I enjoyed his classes. A professor named Frank Freidel taught more general courses about American history. I confess there wasn't much personal interaction with the professors there. I wouldn't characterize Harvard as a warm and fuzzy place, as far as undergraduates were concerned. We did, in our sophomore, junior and senior years, have what we called *tutors*, who tended to be graduate students, who played a certain role in guiding us through courses and thesis preparation and things like that. I think if I had to do it over again, I would study less and explore more while I was at college, but I always felt compelled to work very hard to take advantage of the opportunity.

MR. HUNT: How about your summers? Did you have to work during the summers and did you come back to Ohio to do that?

JUDGE FISHER: Initially, yes. I had a job during the school year, a part-time job. Different kinds of jobs in different years. I came back to Ohio in, let's see, the summers of '65 and '66, and worked in a factory those summers. I also worked on a farm part of the time. And in 1966, between sophomore and junior years, my wife and I got married, so when I went back for my junior and senior years, we lived in married housing in the Cambridge area.

MR. HUNT: Well, let's get you out of Harvard and then we'll talk a little bit about your wife and your family. Was there a point during your undergraduate years that ideas began to form in your mind as to what you wanted to do after college?

JUDGE FISHER: I had lots of ideas. They changed a lot, but let me step back a few years. I remember in high school considering that maybe I'd want to be a lawyer when I grew up, and when I was maybe a junior or a senior for the first time to my knowledge a lawyer settled in Fredericktown, and I remember that a friend and I went up uninvited and dropped into his

office and chatted with him about what it was like to be a lawyer and that sort of thing. As I went through college those ideas pretty much faded from my mind, and I was interested in history, perhaps in an academic career. I also liked the study of literature. And so I think I had planned to go on to graduate school in history, up through my senior year. One of the things that I particularly was interested in was constitutional history, and at some point, and I don't recall exactly how this happened, but at some point during my senior year I got to thinking that, well, maybe it made sense for me to go to law school, and approach the study of the constitution and constitutional history that way; and so at the time that I was applying to graduate schools I also applied to Harvard Law School. I first was on the waiting list there, but got off of that, and so I had planned to begin law school in the fall of 1968, following my graduation from college.

MR. HUNT: That leads to the military question: were you in ROTC while you were an undergraduate at Harvard?

JUDGE FISHER: I was not. It would have been a great idea to have done that, but I was—I don't know whether I was being willfully blind or not, but I was not in ROTC. I remember at a certain point in probably my junior or senior year, calling up the ROTC folks and seeing if they had room for me, but they were oversubscribed at that point. One of my vivid memories of graduation day from college is that we had an interruption in activities at midday, and I went to the mailbox and there waiting for me on graduation day was a notice to report for my physical from the draft board, so it soon became pretty obvious that I was going to have to deal with military obligation sooner or later.

MR. HUNT: At that point had you been admitted to law school?

JUDGE FISHER: I had, and I thought for a while that I could maybe postpone military service and complete law school or at least begin law school. It seemed, after consulting with

some people, that I might be able to postpone it and maybe get through the first year, but it wasn't likely I'd be able to finish law school without interruption. I remember consulting with the dean of admissions at the law school and basically deciding that I'd be pretty distracted and in order to get through the first year of law school I would've probably had to take certain appeals and ask for certain exemptions. It would have been pretty time-consuming and preoccupying, so I enlisted in the army under duress.

MR. HUNT: Okay.

JUDGE FISHER: It was apparent that if I didn't enlist then they would draft me, and I ended up enlisting.

MR. HUNT: Well, please tell us about your military service.

JUDGE FISHER: Well, I had enlisted in a program where I could go to officer candidate school in the army, and the cycle that would suit, or that was timed for my needs, would have taken me into the army in January of '69. So we moved away from Cambridge in I think September of '68. We lived with my wife's parents and worked on their farm until January of '69, and then I reported for duty and took basic training at Fort Dix, New Jersey. I've never been colder in my life than I was taking basic training in Fort Dix, New Jersey, in January and February and early March, but that's where that began. I then went to Fort Leonard Wood, Missouri, for advanced individual training. I was trained as a combat engineer, and from there I went to Fort Benning, Georgia, for officer candidate school. I had qualms about the war, and whether I would be comfortable doing what I'd need to do as an officer in the war.

MR. HUNT: This would have been early 1969?

JUDGE FISHER: This would have been the summer of '69. I said I'd never been colder than I was in Fort Dix; I'm not sure I've ever been hotter than I was in Fort Benning, Georgia, in

the summer, but I resigned from officer candidate school about halfway through. They asked us to fill out our preference for duty thereafter, and that was all a sham because there was only one place we were headed, which was Vietnam, and so I went to Vietnam in September of 1969.

MR. HUNT: Would you be willing to comment on the qualms to which you referred, about the war and the prospective duties?

JUDGE FISHER: From my point of view, a lot of the training that we went through prepared us for brutality. Part of the ways they did that was to dehumanize the enemy. I wasn't real enthusiastic about what I was going to be doing, and my particular qualm was I wasn't sure I would be an effective officer, leading people to do things they needed to do to preserve their lives, if I wasn't fully committed to that. I don't know whether that was the right decision or a cowardly decision, but I just didn't feel comfortable going forward to be an infantry officer, in those circumstances.

MR. HUNT: Know thyself.

JUDGE FISHER: Right.

MR. HUNT: Important. Thank you. Briefly, tell us about your experience then, as you shipped out in the infantry.

JUDGE FISHER: Well, I actually had what they called a primary MOS (military occupation specialty) as a combat engineer and my secondary MOS was as an infantry man. I landed in Vietnam at Cam Ranh Bay and then had orders to go up to Chu Lai, which was the headquarters of the Americal Division. And I was originally assigned to go to an outpost called Hawk Hill, but I had to first process through the headquarters company of the engineer battalion. And, it proves that the smartest thing I've ever done in my life was to learn how to type, because when I came through the headquarters company, I filled out an information sheet. They saw I

was a college graduate and could type. They needed a company clerk, and they said, "you're not going up to Hawk Hill—sit down right there!" And so, in a great piece of good fortune, I became a company clerk, rather than a combat engineer or an infantryman.

MR. HUNT: So did you remain in Chu Lai for your tour?

JUDGE FISHER: I did. We moved around at various locations within that area, but it was all either in the main base at Chu Lai or right outside it.

MR. HUNT: Now there was some period of time between the time you got out of the army and the time you started law school. Is there anything in particular that you recall about that period?

JUDGE FISHER: Well, it was sort of an unsettling period. Although I was in the army for roughly two years, it killed three academic years and I came back in mid-September of 1970. Tomorrow will be the anniversary of my leaving Vietnam. My wife had been attending Ohio State University while I was in the army; at that time we settled in Columbus temporarily, and I had a hard time finding a job. You probably heard or read or remember that Vietnam veterans weren't exactly welcomed back with open arms, and I don't know whether that accounted for it or it was just my lack of planning.

MR. HUNT: At this period, you were intending to start law school about eight or nine months later?

JUDGE FISHER: Not at the beginning. I had basically decided while I was in the army that I didn't want to go to law school anymore. A couple people asked me why and I said, "Well, I think I've seen enough conflict, let's find something else to do," but I never really had a good concept of what I was going to do, so after I got back to the States and found a temporary job at the United Parcel Service, I got to thinking about things some more. Harvard suggested

you read a series of books about the law and famous lawyers, and I decided that I would again apply to law school. When I left I knew that they wouldn't take me back automatically, but they said they would understand the circumstances, and so I applied, I reminded them I'd been admitted previously, and they were kind enough to let me in again.

MR. HUNT: Let me break in here with a question about the Law School Aptitude Test. When did you take it and how did you do?

JUDGE FISHER: I took it probably in the winter or spring of 1968, when I was a senior. I don't remember what percentile I was in.

MR. HUNT: Harvard liked it twice.

JUDGE FISHER: Well, they're kind and forgiving in many ways, so they decided to let me in.

MR. HUNT: So when did you actually get started in classes at Harvard Law School?

JUDGE FISHER: That would have been in September of 1971, so there was roughly a year after I got back from Vietnam before I began law school.

MR. HUNT: And your wife was with you. Did you have any children at this point?

JUDGE FISHER: No we didn't, and I should commend my wife as we're talking about this movement through school. She worked while I was in college to help support us. I mentioned briefly that while I was in the army she had gone to college at Ohio State, and then when we went back to Cambridge to begin law school she began working again, and worked throughout the three years of law school to support us, so she supported me through half of college and all of law school.

MR. HUNT: That's worth noting, unquestionably. Did your first impressions of Harvard Law School make you feel good or doubtful about your decision to go to law school?

JUDGE FISHER: I felt pretty good about Harvard Law School. One of my current clerks just graduated from Harvard and it sounds like it's a kinder, gentler place now. I for the most part liked law school. One of the explanations for that, I think, is there was a pattern of people forming small study groups, and so we tended to have a cadre of friends that we studied with, and I developed a lot of closer friendships during that time at law school than I had at college, so I think that's part of the explanation. I was still very much approaching the law from an academic or theoretical bent.

MR. HUNT: Was that still an interest in constitutional history, constitutional law?

JUDGE FISHER: And in my first year of law school, my torts professor was a fellow named Mort Horwitz. He was a brilliant teacher, who had been sort of recruited to teach torts, but his passion was American legal history, and I think it must have been the second half of my first year at law school, I took a seminar-type course from him about the origins of judicial review. I loved that; that was great stuff. I asked him whether I could be his research assistant the following summer; he said sure, so I spent the summer after my first year as a research assistant for Professor Horwitz, and I became more and more interested in American legal history. I also started to take classes from a fellow named Roberto Unger. He taught jurisprudence and social theory and that sort of thing, and so I wasn't really pursuing the practical courses, I was pursuing jurisprudence and legal history and things like that, and I liked that.

MR. HUNT: How much counseling did you get from the law school as to your course selection and as to your, if you will, your learning path?

JUDGE FISHER: I don't remember any.

MR. HUNT: I'm not surprised.

JUDGE FISHER: Probably in the information packets we got connected with course registration; they made certain recommendations. There were certain requirements of certain core courses; I forget if I was required to take corporations or whether it was strongly encouraged, but I took that. I never took labor law or securities transactions or business planning or any of that sort of thing. I did take a basic taxation course that probably was required, but I didn't receive much counseling and there weren't all that many requirements that we had to satisfy.

MR. HUNT: Was there some point in law school when your orientation began to shift away from the academic aspect of law?

JUDGE FISHER: I think at that time I still was interested in the academic aspects and thought I would maybe one day teach in law school, but, and I don't quite remember my thought pattern right now, but I did sign up for trial practice. I took evidence, but that was taught at a very theoretical level so I didn't learn how to get any evidence admitted in a court of law, but I at least did take trial practice and some courses that maybe would serve me in a practical way after law school.

MR. HUNT: Before we turn to what you did immediately after law school, are there other recollections or observations about the law school experience that you would like to share?

JUDGE FISHER: I have basically good memories of law school. I think it was a very competitive place. I think it was especially true in those days that it was a lot easier to go from Harvard to a big corporate law firm, and although they may not have been consciously pushing you in that direction, that was the easiest path to follow. One of the reasons for that, I think, was that because they taught you so few practical skills, you pretty much had to count on serving an apprenticeship at a big law firm in order to learn how to practice law.

MR. HUNT: You mean if you hung out your own shingle you would have starved?

JUDGE FISHER: Exactly. There were some clinical courses available. I did not take any of those, but compared to the number of clinical options there are today, there were very few at that time.

MR. HUNT: Now, you mentioned that one summer you were a research assistant for Professor Horwitz. Was that between first and second year?

JUDGE FISHER: It was, and actually I spent part of the next summer working for him. I got a small grant to do an independent research project of my own, connected to legal history, and I think I spent three weeks or so at an Indianapolis law firm so they could take a look at me. I obviously had had in mind at least the option of going back to Ohio or nearby Indianapolis to practice law, so I had made the connection with that law firm.

MR. HUNT: Well, we know that you went on, or you will tell us that you went on, to clerkship after law school. Could you tell us about that and tell us how it came about and how you made the decision to go that route?

JUDGE FISHER: Again, I don't remember counseling that led me to explore clerkship options, but for one reason or another I guess I had observed that a lot of people clerked for judges after leaving law school. I was interested in going back to Ohio and I applied to several of the justices on the Ohio Supreme Court. I also applied to some of the United States District Court judges, and I was fortunate enough to attract the interest of Judge Joseph Kinneary. He was a United States district judge in Columbus, Ohio, and he hired me for a two-year clerkship, which I began almost immediately after graduating from law school; so I started working for him in June of 1974. That was a great experience, and I thought it was an ideal bridge between law school and the real world. I would not characterize Judge Kinneary as a great legal scholar. I

think he was a very good judge of people and he really ran a tight ship in the courtroom. One of the things that proved to be very influential to me was that if you were the clerk working on a matter that took him into court, you were expected to go into court with him, so rather than staying behind—

MR. HUNT: In the library all the time.

JUDGE FISHER: That's right, so I spent a lot of time watching evidentiary hearings and trials, and that really appealed to me; I liked seeing that, I thought I would like to participate in that, and on some occasions, many occasions, I figured I can surely do better than they're doing, so that piqued my interest in becoming a trial lawyer.

MR. HUNT: That's very interesting; I was wondering about the educational value of observing counsel in court.

JUDGE FISHER: Both there and at the U.S. Attorney's Office and here, I tell people that reading transcripts or watching people in court is often a lesson in how not to do something, but I've been fortunate to see a lot of great advocates as well.

MR. HUNT: Was your appointment as a clerk—did you have any push from either family connections or political connections, or how did the interview process go and the selection process go?

JUDGE FISHER: I'd had no connection with Judge Kinneary at all, so my application just turned up unexpectedly. He never exactly said this but I think my Harvard credentials probably caught his eye, so he invited me for an interview and that apparently went well; I think he offered me a job at the end of the interview. I said I'd like to go back and talk to my wife about this but, you know, it was obvious that that was a great idea so we quickly accepted the offer.

MR. HUNT: You used the term "Harvard credentials" and I failed to ask about "Harvard credentials"; what more can you say about the fact of your Harvard credentials?

JUDGE FISHER: Well, I graduated. I graduated from college Magna Cum Laude. I graduated from law school Cum Laude, but candor compels me to acknowledge that Harvard handed out honors liberally, so I can't claim to have been at the top of either my college or law school class.

MR. HUNT: Now can you tell us about your next career move after the clerkship?

JUDGE FISHER: Well, as I'd mentioned, I had become interested in becoming a trial lawyer. I had been applying to a number of the law firms in Columbus, but it was also obvious to me that the people who got into court most often were assistant United States attorneys, and I instinctively thought that representing the United States would be more in line with my views of what I wanted to stand for, and so I applied to the U.S. Attorney's Office in Columbus, and I applied to the U.S. Attorney's Office out here in the District of Columbia. I had a friend who was out in D.C. and I knew that D.C. had a lot of openings every year, so that that maybe offered the best prospect for a position. The U.S. Attorney's Office in Columbus was very small. People rarely left, and so they didn't have a lot of vacancies. I think eventually the U.S. attorney got authority to hire me on a next-vacancy basis, meaning he could hire me but the next time somebody left they couldn't fill that spot, but by that time he had dragged his heels so much and I had the opportunity out here, and I had the sense that this would be better training out here, so I accepted the opportunity to be an assistant U.S. attorney in D.C., and started that job in June of 1976.

MR. HUNT: It appears that by this point, academic law had been pretty well displaced by aspirations or expectations of being in court.

JUDGE FISHER: Probably we shouldn't say displaced. Probably at that time postponed, and I had developed the sense that if I were going to teach in law school, it might be good to know something about the practice of law, and so I decided that I'd pursue either law practice or being an assistant U.S. attorney for a few years; but I still always had in the back of my mind that I hoped this would lead at some point to a law school teaching position. So I'd say deferred rather than displaced.

MR. HUNT: Was the U.S. Attorney's Office in D.C. a good environment for a fledgling lawyer, in your experience?

JUDGE FISHER: It was a great environment in a very complicated way. One of the attractions of the job was you got tremendous responsibility right away. There was more work to do than a person could responsibly be expected to do. It was like being thrown in the middle of the lake to see if you could swim or whether you were going to drown. At that time we had very little formal training, so you would basically tag along with some people who had been there maybe a month or two longer than you, and initially you'd do certain assignments that might involve deciding whether or how to charge a crime, maybe going into court for things like calendar calls.

MR. HUNT: Was there an organized rotation assignment?

JUDGE FISHER: Absolutely. The theory of the office at that time, and the theory that still prevails today, is that the younger assistants would rotate though various assignments on roughly a six-or a nine-month basis, the theory being that if we exposed you to the different aspects of being a prosecutor, by the time you'd been in the office three or four years you'd be trained in all these disciplines, and you could be a utility infielder. You would have been trained, so they could send you to any assignment that they needed you to serve in, and at that time I

made a three-year commitment to the office, and during those three years I rotated through various assignments. I began my service in the misdemeanor trial section, and so after a few weeks of non-trial assignments they sent me off to try cases.

MR. HUNT: Well, there can be training and there can be critiquing and there can be mentoring. If there wasn't much in the way of training, was there much in the way of critiquing and mentoring in the U.S. Attorney's Office then?

JUDGE FISHER: I think at that time the answer is no. There was a fellow named Vic Caputy who may have held the title of director of training, and he conceived of his job as going around, visiting various courtrooms, watching people, and then grabbing them later and critiquing them. He could only cover so many courtrooms in the course of a week or a month, and there was very little formal classroom-type training or demonstration-type training. Before I moved to felony trials, I remember we had I think a week of what I would call classroom training, a combination of explanations and exercises to help us learn various skills, but I don't recall much formal training. Most of the learning process, as it turns out, was sort of a banding together of youngsters who were in over their heads, and we helped teach each other how to do this. We did have supervisors; you could go to them in the evening and say, "I got this coming up, how do I do it?" But I wouldn't say there was a lot of formal training.

MR. HUNT: Let me ask a question which, feel free to put aside. As a distinguished alumnus of the U.S. Attorney's Office here, on any occasion have any succeeding U.S. Attorneys or senior people in the U.S. Attorney's Office sought the thoughts of you or colleagues of yours who are similarly alums of that office, as to the organization and operation of the office?

JUDGE FISHER: From time to time, new U.S. Attorneys do introduce themselves and ask for my advice, since I've become a judge. I ended up being in the U.S. Attorney's Office for

a very long time, and the office changed a lot while I was there. Although there wasn't much in the way of training when I began, now there's a very vigorous training program, not only for brand-new people but for people moving into new assignments, and there are various ways of having ad hoc training; it might be a brown-bag lunch or an afternoon one-hour session after court, sharing of information on paper or by computer. So the training is just light-years ahead now of what it was at that time.

MR. HUNT: We can detour from your legal career a bit. During your first period in Washington, 1976-1983, can you tell us a little bit about the atmosphere of the city, you and your family's experience of the area?

JUDGE FISHER: My wife and I lived in Arlington, at a couple different places, during that seven-year period. A lot of existence was taken up with work; I generally was in the office at least six, maybe seven days a week. I didn't necessarily work a full day on the weekends, but we tended to socialize with other people in the U.S. Attorney's Office and their families. We did, bit by bit, get acquainted with D.C. and the museums and monuments and things like that, but there was a lot of work involved.

MR. HUNT: I get the impression that there wasn't much time or opportunity for outside activities or joining or this sort of thing, but was there some of that?

JUDGE FISHER: Not much joining, and then in 1979 our first child, our son Clark, came along, and so that refocused our existence quite a bit too.

MR. HUNT: Good, I'm glad you mentioned that. I think this would be a wonderful time just to tell us a little bit about your family, as to when they arrived and where they are now.

JUDGE FISHER: Great. We have two children and we're very proud of both of them. Our son Clark is 32 years old now; as I said, he was born in 1979. He's married and lives near

San Francisco, in California. He is a district manager for Farmers Insurance Company, which means that he basically recruits new agents, trains them, supervises them, and directs their activities. He doesn't do a whole lot of selling of insurance himself anymore. He and his wife are going to make us grandparents in November of this year, so we're very much looking forward to that. Our daughter is Mandana; she's about six years younger than Clark, having been born around Christmastime of 1984. I should say that Clark attended college at Denison University.

MR. HUNT: Back in Ohio.

JUDGE FISHER: Back in Ohio, a very fine liberal arts college in Ohio. Mandy went to college at East Carolina University, and then attended three years of graduate school at Boston University in the field of physical therapy. She completed that graduate study a little over a year ago, passed her board exams, and is a physical therapist at Children's Hospital here in the District of Columbia.

MR. HUNT: Now we can get back to your legal career, if that's all right. Thank you. How and why did you make the move, I guess *when*, how and why, did you make the move from the U.S. Attorney's Office in D.C. to that in the Ohio Southern District?

JUDGE FISHER: Basically for family reasons. We talked about maybe postponing my entry into academic life. I had also thought when I left Ohio and came to D.C. that I would eventually go back to Ohio, and I considered that to be home, and so I'd made a three-year commitment to the U.S. Attorney's Office here, and thought I would probably go back to Ohio soon after the three years were up, but I liked what I was doing here. I stayed longer and longer, and it became less likely, I thought, that I'd go back to Ohio. While I was in law school, or actually just before I began law school, my father suffered a stroke, and it left him with

expressive aphasia and some physical limitations. My mother had cared for him over a very long period of time, and it was a situation where the need to care for him gave her strength at the same time it was wearing her out. My father died in March of 1983, and my mother essentially collapsed after that. I heard that there was an opening in Columbus, Ohio, for an Assistant U.S. Attorney, and decided that well, it would enable me to help my mother more and continue doing the kind of work that I liked to do. I should say that during the time we were here in the District of Columbia we would drive back frequently to Ohio, to check up on my parents and help as we were able, but that was really hard, doing it very often, and—

MR. HUNT: With a car full of little children, too.

JUDGE FISHER: Yes, and so it seemed that we needed to be closer by to help my mother, so when this position in the Columbus U.S. Attorney's Office opened up at that particular time it seemed that the obvious thing to do was to move back to Ohio and help out my mother and reestablish our lives in Ohio.

MR. HUNT: Good. With your time in the U.S. Attorney's Office in Columbus, were you doing civil cases, criminal cases, or a mix?

JUDGE FISHER: I was doing criminal cases, mostly grand jury work and trials. We also did a few appeals; you tended to handle the appeals involved in your own trial cases, but whether at the grand jury or trial or appellate level, I did exclusively criminal work.

MR. HUNT: Okay, at your time in the U.S. Attorney's Office in D.C. and your time in the U.S. Attorney's Office in Columbus, is there a case or cases that stand out in terms of your satisfaction or the challenge, that you had the lead in?

JUDGE FISHER: Probably at this time it would make sense to talk about my first period in D.C. and the period in Ohio; once I came back to the District of Columbia things were quite

different. We had talked about the fact that when you're a young AUSA in the District of Columbia you went through rotations, and one of the rotations was service in the appellate division. I already had a notion that I would like doing appellate work, but I'd never really had an opportunity to do it, and sure enough I really did like doing appellate work. During my first rotation in the appellate division, I was assigned to handle a gigantic appeal that we called the Hanafi Muslim case[1], and I ended up writing a brief that, I forget, I think it might have been one hundred and sixty-five or one hundred and seventy pages long. I had I believe twelve or thirteen opponents on that case, and after the briefing we had an argument in the District of Columbia Court of Appeals that went on for about five and a half to six hours, so I'd have to say that that was the preeminent case in my early years.

MR. HUNT: So that was appealed to the court where you now sit—to the District of Columbia Court of Appeals.

JUDGE FISHER: Exactly, and perhaps I'll explain a little bit to people who did not remember this, but, in I think it was the spring of 1977, there was a group of people that were referred to as Hanafi Muslims; these were African Americans who had adopted the Muslim religion. They had some complicated grievances because of some murders that had taken place in their family, and they decided that they would avenge their grievances by taking hostages at three different places in the District of Columbia. They took some hostages at the Islamic Center up on Massachusetts Avenue, at B'nai B'rith headquarters, and at the City Council building. I forget now how many people were killed, I think one or two. There were a number of people injured; Marion Barry was a city councilman at that time, and he was shot and wounded, and they held hostages for I believe a period of 39 hours or so, until they were finally persuaded to surrender. That ended up being a very long trial in the Superior Court.

[1] *Khaalis v. United States*, 408 A.2d 313 (D.C. 1979).

MR. HUNT: Were they being tried on murder charges?

JUDGE FISHER: Among other things: kidnapping and a variety of charges.

MR. HUNT: Capital charges?

JUDGE FISHER: Actually no. At that time, well there was not then and there is not now a death penalty available in the local courts of the District of Columbia. They were all convicted; some of them got very, very long sentences, longer than any individual could ever completely serve, and then it resulted in a complicated appeal. So the handling of the Hanafi Muslim appeal was probably the highlight of my early years in the District of Columbia. In part as a result of that, and in part because I really, really liked doing appellate work, as it turns out better than I like doing trial work. After I'd done trial work for a few years, I asked to go back to the appellate division as a senior assistant, a more permanent appellate assistant, and I eventually was allowed to do that, and soon after that I became a supervisor in the appellate division, first a deputy to John Terry, who was chief of the appellate division at that time; he's now a senior judge of this court. Then from 1982 till the time I left in 1983 I was a deputy to Mike Farrell, who is now a senior judge of this court. So that last probably three years of my time in D.C., from 1980 to 1983 approximately, I was a deputy chief of the appellate division, and during that time I handled some *en banc* arguments in both the D.C. Circuit and in the D.C. Court of Appeals. Some of them might be worth a mention.

MR. HUNT: Thank you. Just to complete the record on the appeal of the Hanafi Muslim case, the outcome of the appeal was?

JUDGE FISHER: The convictions were affirmed.

MR. HUNT: Thank you. Moving on, and just perhaps finishing the Ohio phase, you left the U.S. Attorney's Office in Columbus when, to do what?

JUDGE FISHER: I left in June of 1986, and I became of counsel to a distinguished law firm called Vorys, Sater, Seymour and Pease. They were basically a corporate law firm, one of the larger firms in Ohio, and actually, as I recall, I had a chance to join them when I left my clerkship with Judge Kinneary. I decided instead to come be an assistant U.S. attorney, but then there was an opportunity to go there in 1986 and I figured, well, I wasn't getting any younger, if I was ever going to do this, this was the time, and so I went over there in 1986 and stayed till about April of 1989 I believe.

MR. HUNT: And again, were you doing litigation at Vorys, Sater?

JUDGE FISHER: Litigation, but not trial practice. I did participate in two trials, as I recall. One I sat at counsel table but, I didn't get to speak in court. Another trial I co-tried with another lawyer, but I think I participated in only two trials in essentially three years. Most of my activity was related to discovery or motions practice, those sorts of things.

MR. HUNT: Did you have any outside activities during this period, in the bar or church or organizations during this period in Columbus?

JUDGE FISHER: Not much. We tried to spend time with our children. We regularly attended church, but I was not really a joiner in Columbus, either.