

ORAL HISTORY OF ROBERT P. TROUT

First Interview October 7, 2014

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 Robert Trout, and the interviewer is Stuart Pierson. The interview is taking place on October 7, 2014, in Bob Trout's office at Dupont Circle in Washington, D.C. This is the first interview.

Stu Pierson: It's October 7, 2014. We're at 1350 Connecticut Avenue, the offices of Trout Cacheris & Janis. And we're here at the first session of the oral history of the esteemed Washington lawyer Robert Trout. It's your nickel.

Bob Trout: I was born in the summer of 1948 in Roanoke, Virginia, part of the baby boom generation. I was the youngest of three children. My sister Page is two years older, and my brother Hugh is seven years older. We enjoyed a privileged, upper-middle-class upbringing. You could say that I was born on third base. My ancestry on both my father's and my mother's side has deep roots in Virginia. My wife, who is originally from New Jersey, jokes that I am a part of the landed gentry, only without the land. My father was a prominent surgeon in Roanoke. His father, my grandfather, was also a prominent surgeon in Roanoke. I come from a family of doctors. My father was the very definition of a nice person. He was very gentle, a real gentleman. He worked very hard, was on call a lot. While we almost always had a family dinner together, I never thought of my father as being omnipresent as I was growing up. We didn't do sports together, or throw the football or baseball. He was not a hunter, nor someone who enjoyed fishing; I don't recall ever going camping with my father. My mother was the wife of a prominent surgeon in Roanoke. She was a much more remarkable person than that suggests; the point is, in spite of her significant talents that would have allowed her to enjoy a successful professional career

had she chosen it, she lived in a time and a place where the wife of a prominent surgeon chose not to work outside of the home. Not necessarily because she didn't want to, but because there probably would have been talk. Certainly in retrospect, and even when I was much younger, I had a sense that my mother was very frustrated that she had not pursued a professional career for herself. She was very smart and very passionate about education. In that regard, because she did not believe that the public schools in Roanoke were good, she and her friend of hers decided to start a private day school. They raised the money and built a school, North Cross, which continues to thrive today, some 50 years after it opened. Later, again because of her passion for education, she became an assistant dean of admissions at Hollins College outside of Roanoke. My mother was strict and demanding. And in keeping with her passion for education, she pushed her children to excel. I was reasonably bright and did well in school, but she wanted me to be better. I was a slow reader, so she spent a lot of time both tutoring me and purchasing gimmicks to help teach me to be a faster reader. I'm not sure I ever became a fast reader, but whatever progress I made when I was young, I regressed considerably when I went to law school and began reading cases. I was always good in math, but that wasn't good enough either, so I received special tutoring after school in math. Probably the thing that has stayed with me longest is the tutoring I received in grammar. I thought that was quite valuable, and sounding a bit like the older generation looking down on the younger, I am amazed at what passes for acceptable grammar today. So my mother was constantly pushing us academically. And she was quite strict about what we were allowed and not allowed to do. She, not my father, was the disciplinarian in our home. I would say that she preferred the company of adults more than children.

Stu Pierson: When did you cross that divide?

Bob Trout: When I was 18, after I graduated from high school. That was still the time that you were old enough to be drafted and to give your life to your country, but you were not old enough to vote. At 18, I think you could buy 3.2 beer in Virginia, but not 6.4 beer, at least not without a fake ID. But when I turned 18, my mother all of a sudden started treating me like an adult. It was almost like a light switch turned off after I graduated from high school. And we got along great; she was really interested in me, I was interested in her. If there was some party that she and my father were going to, she wanted to bring me along. I would go to various events with her, and we'd just hang out in the corner together and talk. And it was very special. So I saw part of her after I was 18 that I really hadn't experienced before then. But before that, I did not find her to be easy. Nurturing was not the first word that would come to your mind. We had a nurturing presence in our life, but my mother was not that person. The nurturing piece came from ... we referred to them as maids back then. In the South in the sort of privileged environment in which I grew up, families had maids who took care of the children.

Stu Pierson: You and I have that in common.

Bob Trout: Yes. And it's interesting ... this woman I just loved her to death. And she was with us since before I was born, and she died in 1995 at the age of 96. My mother died of breast cancer in 1971 when I was 23. And so my father was essentially then taken care of by this woman. She was part of our household.

Stu Pierson: Sure.

Bob Trout: And he took care of her, and she took care of him.

Stu Pierson: What was her name?

Bob Trout: Her name was Bertha Porter. But my mother, as I say, she was not the easiest person; she was very demanding. And so she would hire this person, and for whatever reason, that didn't work out. And there were a series of hires, and . . .

Stu Pierson: All for that position?

Bob Trout: Yes. And my sister couldn't keep track of all their names; she was under two at the time. And so she referred to them as "you." But she couldn't pronounce "you," so she became . . .

Bob Trout and Stu Pierson (simultaneously): "Oo."

Bob Trout: Right. And so Oo was this person who was part of my life, and she was the nurturer. She had very little education, but she was probably the smartest person in the house. I have a vivid memory that probably best illustrates the difference between my life growing up with my strict and demanding mother around and my life growing up with nurturing Oo around. My parents went to Europe for six weeks, which meant the children were going to be at home with Oo. She was in charge. And I remember I couldn't wait for my parents to leave, for it was like a vacation to get away from the hard-edged environment that my mother presented in our household to the very soft, nurturing environment that Oo provided. Oo was well known in my parents' circle. Even when they knew my parents were not at home, friends of theirs would just stop by our house and hang out in the kitchen and have a cup of coffee with Oo. And they talked because she was interesting, she had great common sense, and she was a wonderful storyteller with a great sense of humor. So she was something of a celebrity in town. But undoubtedly, she experienced a lot of indignity in the South. She had grown up in West Virginia or New York, and I think had come from West Virginia. I think she'd had a husband who was a coal miner, maybe died in the coal

mines. While Virginia was not the Deep South, it was nevertheless part of the South, and segregation was prevalent. I am sure she experienced indignities that I never saw or knew about, but there was not a bitter bone in her body. I do seem to remember as a young boy getting on a bus to go with her to downtown Roanoke and going to the back of the bus. And I'm sure that a great deal of my political attitudes are rooted in guilt that I feel over the way she was treated and the way blacks were treated in my native South. Oo continued to be part of the family, and when my father turned 65, she organized a big birthday party. She basically threw the party for him. And in addition to his being the center of attention, she was also the center of attention. And then eventually she couldn't hear very well, and she couldn't see much at all. When she was 91 she came to D.C. and stayed with us and with my sons. We needed to be careful about where we went, because she was embarrassed about the fact that she couldn't see anything. We wanted to make sure that we always went to some place where she could get a hamburger and just eat with her hands. By that time, my father had died, and there was no one to take care of Oo as she got older and infirm. When she could no longer take care of herself, she went to a nursing home. That was not easy for her and it was not easy on me. I would go back to Roanoke to visit with her a few times a year, but I suspect I will always feel some guilt that I did not do more for her during the last few years of her life. When she died, my siblings and I went to her funeral. We were her survivors, so we made all the arrangements. At the funeral, the minister told a funny story. He said that he was visiting with Oo some time before, when she was still living at home. He asked if she had any children, and she replied with a very large smile that indeed she did. At which time, she pulled out a picture of my siblings and me, three white children. Everyone had a good laugh. After the minister spoke, I gave a eulogy. I

was a blubbing mess, but my family members very generously told me that I had done a great job of honoring Oo. As you can tell, I become very emotional whenever I speak about her. She was very important to me.

Stu Pierson: Yep.

Bob Trout: After my father died, I then . . .

Stu Pierson: When was that about?

Bob Trout: He died on Valentine's Day 1990, following a stroke while he was vacationing in Grand Cayman. In 1974, a couple years after my mother died, my father remarried. The woman he married, Virginia Lynn, whose husband had died two or three years earlier, had three children all more or less about the same age as the three of us. I knew them, but not well. But everyone on both sides immediately embraced their marriage and the relationship, and we have become just like blood family. So it was a great relationship, and I think that everybody in the two families would say those two spouses were happier with each other than they probably were with their prior spouses. So that's just been a real joy to have them in our lives. And everybody has children, and they became—all those children, now cousins—became extremely close. So we've got a very enlarged family, and we get together as often as we can as a great big family. And now with our generation having grandchildren, it's just getting bigger and bigger.

Stu Pierson: Together down in Roanoke?

Bob Trout: We gather here and there. When I was growing up near Roanoke, there a recreational lake called Smith Mountain Lake, a big lake. I think it was around very early '60s, I drove with my parents about 40 minutes from Roanoke, and there was a staked-out piece of overgrown property. My father's surgical clinic had bought a piece of property to

build a house for the benefit of all of the doctors to share. And we looked down at this river way down, barely visible, and my father said, “They’re building a dam near that mountain in the distance, and so this is going to be a lake in a few years.” And every summer I would go back, and you’d see the lake get bigger and bigger, coming into form. And when it was finally full of water—this would have been early to mid-1960s—my sister and I would leave our summer jobs each day at 5:00 p.m., drive 40 minutes to the lake, and go waterskiing for a couple hours.

Stu Pierson: Is it a water-powered dam?

Bob Trout: Yes.

Stu Pierson: Is it a hydro dam?

Bob Trout: Hydro dam. And it’s gotten more and more popular, with big, very nice, sometimes opulent, vacation homes now. In the 1960’s, when the lake was not nearly as developed as it is now, if you’d go water skiing on any given day, even on the weekends, it would be like skiing on glass. And then in the 1970’s and 1980’s, the weekends got a little bit crowded and there would be a lot of chop in the main channel from all the boat traffic; so it would be during the week you could find it skiing on glass, but the weekends were not so much. And then during the 1990’s, even during the week, it was pretty crowded, and you’d have to find some coves to find the glass where you could go skiing. And now, there’s no glass.

Stu Pierson: Can’t be done.

Bob Trout: Can’t be done. It’s just way too crowded.

Stu Pierson: What are the dimensions of the lake?

Bob Trout: It's about 500 miles of shoreline; I think it's the largest lake in Virginia. It's probably about 20 miles long. It was a very nice place. Still is, I'm sure. I have two sons, Carter and Philip. Carter was born in 1978, and Philip in 1980. And from the year they were born, each year we would spend a week at Smith Mountain Lake with this enlarged family, with all of their cousins. It was the highlight of everybody's year. That's how they forged this great relationship. I think it was very valuable for my children, and for all the children, to experience that intense level of family. And one of the interesting things is they learned from their older cousins how to be. So somebody a little bit younger might think that something was cool and the way to be, and maybe their older cousins would mentor them and let them know, "Nah, that's not so cool." And so it helped them grow up and mature.

Stu Pierson: Effective socialization . . .

Bob Trout: Yes.

Stu Pierson: . . . by a larger family.

Bob Trout: Yes, exactly. So that was part of it, the experience that I had with this enlarged family. Spending time at Smith Mountain Lake was one of my wonderful memories, both growing up and then watching my two sons grow up, also enjoying time at the lake. Events from the distant past become vague, but I have one memory that is as vivid today as it was when I experienced it many years ago. It's a funny story, and more importantly, it probably served as a developmental tipping point, a lesson that however painful the truth may be, it beats the alternative by a wide margin. It was soon after I became a Boy Scout, which I did not so much because it appealed to my interests but more because it was what you did at that age. The first badge you get by just showing up, and it

didn't take much more than that to qualify for the Second Class badge. I had qualified and it was now time for me to receive my Second Class badge. Looming ahead was the First Class badge, which required that you learn the Morse Code. I was not looking forward to that, but as I say, getting the Second Class was not heavy lifting. I showed up for the scout meeting. There I learned that the Scoutmaster and the Assistant Scoutmaster were interviewing each of us before confirming we would receive the Second Class badge. I went into the room, sat down alone at a table, while the Scoutmaster and the Assistant Scoutmaster asked me a few questions. "We have just one more question for you, Bob," the Scoutmaster said. "Have you done your good deed for the day?" Of course I panicked. "Yes," I said, praying that they would not ask me what it was. "What was it?" they asked. Of course the only thing that came to my mind was the Boy Scout trope about helping a little old lady across the street. And so before I could stop myself, the words came out of my mouth: "I helped a little old lady across the street." Well, if the earth had opened up at that moment and swallowed me whole, I would have been happier than I was at that moment. The Scoutmaster and the Assistant Scoutmaster showed remarkable self-control in not breaking up into howls of laughter, and they declared me fit to receive the Second Class badge. As for me, I was so completely ashamed and embarrassed by this obvious lie, I dropped out of the Scouts, never going back to another meeting. As I say, it has been a vivid memory for me, an early but enduring lesson that the truth, however painful, is always better than a lie. Better to learn that lesson early, as I did, rather than later when the price can be very dear. That memory dates back well before high school.

Stu Pierson: Did you graduate from North Cross?

Bob Trout: No, I didn't go to North Cross. I went to Episcopal High School.

Stu Pierson: Oh, did you?

Bob Trout: Yes, I think my grandfather went there. My father went there.

Stu Pierson: So you were a boarder?

Bob Trout: Yes; everyone boards there. I went to the public schools all through the eighth grade. When I went to Episcopal in the ninth grade, I was smallish. It was all boys, and they were pretty much all from the South. The school has changed a lot. It's now coed; it now has a lot of international students. But when I was there, everybody was pretty much like everybody else. And socially I think it was useful for me. In my home, I don't think that I was given a very long leash, socially. As I said, my mother was quite strict. So I would have been the kid who had to be in earlier than other kids and who would not have been able to do all the things that my classmates were allowed to do. I didn't have as long a leash as some of my friends and contemporaries. And that would have been embarrassing, and it would have been awkward, and I would have not liked that at all. At Episcopal we were all locked down pretty hard—everybody was locked down pretty hard. And so, as a result, it was a comfortable place because the rules were the same . . .

Stu Pierson: Everybody had the same leash.

Bob Trout: Yes, exactly. And, while I didn't get to go here or there or be out at this hour or that hour, well, it was the same rules for everybody, and so there was a certain comfort in that. Academically, I did well, not great. Still—I've wondered about the importance of Latin.

Stu Pierson: You are now, or you were then?

Bob Trout: Yes.

Stu Pierson: I'm one of those who believes it's one of the reasons I can speak the language.

Bob Trout: Right, and there are a lot of people who think that. I was at a party one time. This was years ago. And I asked the question, "How many people think that taking Latin was really valuable to them?" And there were several people who thought it was, couldn't have been more important. And I was sitting there wondering, what did I get out of Latin? And I'm not sure I, even today, can think of it. And so, there are people who, like my sons, studied a modern language, like Spanish, because it seemed to have more practical application. I don't know how good their Spanish is today, since I don't know that they use it on a regular basis.

Stu Pierson: Did they go to EHS?

Bob Trout: No, they went to Lawrenceville.

Stu Pierson: There was Latin at Lawrenceville, too.

Bob Trout: Yes, there was. But I didn't push them to take Latin. When I was in high school and college, it was pretty much core curriculum. The first couple of years there were certain things you just need to take, because that's what an educated person knows. Not so much anymore. Today the schools give all this freedom to take whatever the students want, and they haven't a clue as to what they really need, and so they take a lot of courses that probably don't help them. But, returning to my sons' decision to go to Lawrenceville, I was of two minds. I thought that public education is pretty important, including the diversity that you get. When I went to Episcopal, as I say, everybody was pretty much the same. Everybody had the same history. And it was . . .

Stu Pierson: Upper middle class white guys . . .

Bob Trout and Stu Pierson (simultaneously): From the South.

Bob Trout: Right. And I think it was when I was a senior, the headmaster announced at an assembly that Episcopal would be admitting qualified—I don't know whether he used the word "Negroes" or "Blacks" or what, but Episcopal was going to be accepting Black students. And I think everybody looked around and thought to themselves, "Yes, I guess that's right. I guess we don't have any Blacks here."

Stu Pierson: 1966?

Bob Trout: It was 1966. And, I don't think anybody thought anything of it as being remarkable that the school would start accepting Black students, at least I didn't. What now seems so remarkable is that there weren't Black students before and that no one thought that was remarkable. Today Episcopal seems like a very diverse community by comparison. When I was there, it clearly was not. The students were alike and they tended to make similar choices. For example, a lot of the graduates were going to UVA for college. My father had gone to Virginia. My grandfather had gone to Virginia. My brother went to W&L, and so I ended up going to W&L. I applied to Williams and did not get in. I suppose I had become comfortable in a small homogeneous environment, so I applied to small colleges. W&L was simply a larger version at the time of . . .

Stu Pierson: EHS?

Bob Trout: EHS.

Stu Pierson: Yes.

Bob Trout: As it happens, at the time Virginia was really a just larger version of W&L, and not that much larger, because it was all male and had a similar sort of student body.

Stu Pierson: Sure.

Bob Trout: Maybe a little more diverse, but not that much. Both schools are obviously much more diverse now. I loved the experience of the small school experience, the small classes and the personal attention from the professors, who were very good teachers. Today students take whatever courses suit their fancy. When I was in school, the first year, maybe two were filled with core requirements. Not that I necessarily thought so at the time, but I think there is a lot of value to that. Students are not only learning what their courses teach them, they are learning what interests them, where their passions lie, and that means being exposed to different subjects that they might not otherwise pick on their own. I came from a family of doctors, but one semester of chemistry in college convinced me that maybe medical school was not a good choice for me. Still I had another science course to fulfill, and one of the most vivid memories I have from a single class in college was in a science course I was taking in 1967, maybe early 1968. W&L, at least then, did not have a course in environmental sciences. Certainly not the sort of basic course I was taking. I believe I was taking geology, and one day our professor gave a lecture about the increasing levels of CO₂ in the atmosphere, how it was warming up the climate, and how the sea levels would be rising. I was absolutely blown away. Needless to say, in 1967 or early 1968, global warming was not a topic that folks were talking about. That same semester I was taking a public speaking course, and one of our assignments was to give an expository speech, in other words a speech explaining something. So I gave a speech warning about global warming, this in 1967 or the first semester in 1968. Needless to say, I did not need any persuading when the politicians, in the past 10 years or so, spoke about the dangers of global warming. For me, this was 40-year-old news. So there was a great deal I loved about W&L and benefited from what it had to offer. But I do think that I missed the diversity in

the student body, and I think there was something about that experience—and something about Episcopal—that seemed slightly off for me, not a perfect fit in retrospect. When I was there, I couldn't put my finger on it. But it seemed a little bit off for me. I was not quite as comfortable and didn't feel quite like I was in my sweet spot as I thought I might. I had a wonderful relationship with an economics professor at W&L, John Gunn; I took every course I could get from him. He was a wonderful mentor. And the other really strong relationship from college was one of my roommates, Tom McJunkin. He and I continued to have a very strong personal relationship until he died a couple of years ago from cancer. Other than that, I didn't leave W&L with the really strong and enduring friendships that I see that my sons, who both went to Virginia, have maintained from their college experience. As I was finishing college, I had applied for a Fulbright Scholarship for the next year; and this was during the Vietnam War.

Stu Pierson: Where are we now? We're in 19...?

Bob Trout: We're in 1970. In 1968, I tried to get into the Navy Reserve, which would have meant that I would go to a facility outside of Staunton, Virginia one weekend a month and then there would be a period during the summer that you would have things you had to do.

Stu Pierson: Like training?

Bob Trout: I was trying to get into the Navy Reserve, but I failed the physical, which came out of the blue to me. I had apparently a high systolic blood pressure. My diastolic was low. That's the second number which is the number the doctors seem to care about the most, but the Navy had a cutoff for the systolic or the first number, and mine exceeded that

cutoff. I was nervous about the fact that, yes, the Navy Reserve is going to kick me out, but the draft . . . they're not going to be quite so fastidious.

Stu Pierson: I know the experience.

Bob Trout: Yes. So I applied for a Fulbright Scholarship, which I think probably would have given me a deferral . . .

Stu Pierson: Maybe.

Bob Trout: Maybe, I'm not sure. And I was led to believe that I was going to get it. I was an alternate, but I was led to believe that if history was any guide, there would be enough people that would have done something else that I was going to make the cut. I had applied to law schools just as a backup because I couldn't think of anything else that I wanted to do.

Stu Pierson: Certainly not the draft.

Bob Trout: Well, there was that, but as it turns out, towards the end of my senior year, we had the first draft lottery. There was a lot of drama surrounding the first draft lottery, which was broadcast nationally. I couldn't decide whether to tune in, which would have been stressful, or just get the news the next day. I went back and forth and finally decided to tune in while the lottery was in process. And three numbers after I turned on the radio, my birthday was announced. I think I was 98 in the draft lottery. As it happened, they were running through about 30 days a month. And somebody woke up and said, well, this isn't working. We're going to basically run through the entire year, so what is the point of having a lottery. And so I think they did something to slow it down. But for at least the first three months, it was 30 days a month, so number 98 in the lottery was definitely going to be drafted. And in due course, I received a notice to report for my draft physical. I went for

my draft physical, and to my utter surprise, I flunked the draft physical, too. When the draft was no longer in my future, I was still waiting to learn whether I was going to be going to . . .

Stu Pierson: Go to Fulbright?

Bob Trout: Yes, go on the Fulbright. Now one of the problems is that I would be going to Lausanne, Switzerland if I got this, so I would have to know French. I had taken French in college, but fluent I was not. So I was thinking I've got to be signing up for a Berlitz course, and I kept waiting to be told, "Okay, you're in," because I was going to need to take this Berlitz course pretty soon; I can't put that off much longer. Long story short, I didn't make the cut. I didn't get the Fulbright. And I didn't do the Berlitz course. And so I started law school—at Virginia. Looking back on it, I had actually worked pretty hard in college and had done reasonably well. But I think I had burned out academically, and so I went to law school really because I couldn't think of anything else to do. I probably approached law school with the same level of energy. I didn't think it was all that hard to do okay in law school, but I didn't work that hard, and while I did fine, I did not excel. I was on one of the minor law reviews, but not on *The Law Review*. I think in retrospect, I got lucky because when I found myself pursuing litigation, I ended up doing something that was well suited for my skillset and for my natural aptitudes and abilities. But it was dumb luck, I think. And I definitely think I probably should have taken some time off and done other things.

Stu Pierson: Before law school?

Bob Trout: Before law school. And I've actually wondered whether one of the things that would have been good to have done would have been military service. Now, I probably wouldn't have opted for . . .

Stu Pierson: The jungle?

Bob Trout: The jungle. But I think that some of the discipline that you get in the military would have been useful. In the military, you are trained to put one foot in front of the other and charge ahead, and I think that there is probably some value in that. I think that it's important to nurture the creativity, the imagination. At least stereotypically, you think that some of that gets suppressed in a military environment. I don't know whether that is true or not. So, I don't know, it's a mixed bag. But I've often thought about whether a couple of years in the military might not have been . . .

Stu Pierson: Bad for you?

Bob Trout: Yes, or good for me. But in any event, some experience two or three years between college and law school would have probably served me better than going to law school right out of college because I was burned out academically, I think, by the time I got to law school. One important experience I had while I was in school was living in Los Angeles. During the summer while I was in college I went to Los Angeles because my brother was in training there. He was a doctor at UCLA, and so I went out in '68, got a summer job, and stayed with my brother who was single at the time. We hung out in Los Angeles, spent a lot of time in Westwood. UCLA is just an amazing university, beautiful and big. I don't know that I thought about it at the time, but looking back on it, I wonder whether that very enriched diversity might not have been something valuable to have had. After law school, or during law school, after my first year, I went to Los Angeles, got a job

in a law firm. There was a young partner in the Lillick McHose firm, Pam Rymer, whom I got to know. My brother was a friend of hers, and I worked with her.

Stu Pierson: What kind of work did she do?

Bob Trout: She did antitrust work. And there was a more senior partner that she worked with on antitrust cases. And so I was reviewing documents for the client. She was just a great and generous mentor, and I ended up staying in touch with her. She left the law firm with this other partner, and they set up their own firm, Toy & Rymer in Los Angeles. She was fairly politically active in Republican circles, in addition to being a great lawyer, and so President Reagan nominated her to be a judge in the Central District of California, where she sat for several years. Reagan then nominated her to the Ninth Circuit. She didn't get confirmed then because Reagan was a lame duck, but she was re-nominated by President George H. W. Bush, and she served on the Ninth Circuit. She died of cancer about three or four years ago. I stayed in touch with her and last saw her in 2006-2007. I was very fond of her, and she was very helpful to me when I was trying to figure out a career path. And so after my second year, I returned to Los Angeles to work for a law firm for the summer. After my second year, classmates scattered hither and yon for summer clerkships, almost none to D.C. But when it came time to take a permanent job after graduation, we had a tremendous number in our class come to D.C. Myself included.

Stu Pierson: And that would have been 1973?

Bob Trout: Yes, 1973. And I started at the Department of Justice in the Honors Program.

Stu Pierson: In which division?

Bob Trout: In the Criminal Division.

Stu Pierson: Who was the head of the Criminal Division?

Bob Trout: Henry Peterson. Henry was head of the Criminal Division. I had graduated and took the Virginia Bar. The Virginia Bar was, I thought, ridiculously easy. I studied very hard for it, but it was the only exam that I can remember taking, probably since high school, where I finished the exam early. I went back over my answers, I went back over my answers again, and I left with about half of the allotted time still left. After the bar, I went to Europe with my wife for two and a half months. I met my wife when I was in high school. She is actually my third cousin. She was from Charlotte, and she went to St. Catherine's. Her name is Taisie Berkeley.

Stu Pierson: St. Catherine's is just north of Richmond?

Bob Trout: It's actually right in the middle of Richmond. And she was going to be my date for Finals at Episcopal, which was our equivalent of the prom. It's after all the exams, and it's the big dance on campus, and I think it was two nights of partying. You've finished your exams. You're completely free. Life is great. So she was going to be coming to Finals sort of as a blind date. That spring I didn't know who I was going to invite to Finals—which was a big deal. And so I kept putting it off, and putting it off. And I didn't have anybody in mind, so I think my parents, who knew her parents—they were originally from Roanoke before her father went to practice medicine in Charlotte—said, "Why don't you invite Taisie Berkeley." And I kept putting it off, putting it off, putting it off. And I happened to be in Richmond for a tennis tournament one weekend in the spring, and I heard someone say "Taisie." We were playing St. Christopher's in tennis, and St. Catherine's is their sister school. There are not a lot of girls named Taisie. So I looked and I saw this girl who seemed to be responding, and I was thinking, well, that must be Taisie. And then I

decided, well, if that's Taisie, maybe I'll put this off and see about somebody else. And so another week goes by, I was thinking I'm not getting any closer. I'll just go ahead and invite Taisie. Well, it turned out somebody else on our tennis team was dating her roommate. And so on Sunday morning, he said to me, she is going to be in church that the students at Episcopal attended each Sunday. The reason that Taisie and her roommate were at our church that day is that the St. Catherine's choir was singing with our choir. And my friend told me that Taisie knew that I was going to invite her to Finals. And she was going to accept. And so I thought, this is not going to be heavy lifting. I had in mind this other face that I had seen the week before in Richmond. But when I arrived at church and looked at the girls from St. Catherine's, standing next to the person whom I knew to be dating my friend was just the most stunningly beautiful girl I could remember seeing. That was Taisie. So I just hit the jackpot because it was a completely different person from the girl I had seen in Richmond. And so, I was thinking, this is as good as it gets. I'm going to be going to Finals with her. Unfortunately, about three days before Finals, her father dropped dead of a heart attack, so she did not come to Finals. We ended up getting together during the summer at some point, and then we dated while she went to Hollins and I was at W&L. And we dated all the way through college. And then there were fits and starts and pauses and whatnot over the next couple of years, but we were married in 1972. So after the Bar, we went to Europe for three months. And when I got back, I was probably the last person to show up for their job at the Department of Justice, so I was assigned—it's not like I had any choice—to a particular section of the Criminal Division. It was called the Government Regulation Section. And it was a bit of a dumping ground for every statute or enforcement activity that no other section wanted. And so, for example, one of the things that we did

was immigration. We weren't immigration or INS lawyers, we didn't do the INS cases, but we did the petitions for review from the Board of Immigration Appeals to the various Courts of Appeals around the country. And so I arrived in early October 1973, and in early December, two months later, I argued my very first case in the Fifth Circuit in New Orleans. It was an immigration case that somebody else had briefed and I was now arguing. So that was pretty cool.

Stu Pierson: Do you remember who your panel was?

Bob Trout: I don't remember who was on that panel. But I remember that I had Thornberry on a panel, I had Wisdom on a panel, and I had Goldberg on a panel when I was doing these cases. In the course of the two years that I was there, I had about 10 oral arguments and 16 briefs that I wrote in the Courts of Appeals all around the country. One of the other areas that none of the other sections wanted was obscenity cases. The Supreme Court had just handed down an obscenity case that moved the bar a little bit away from utterly without redeeming social value to a little bit more relaxed standard for what the government had to prove. I didn't really have much interest in prosecuting these cases. But I will say this, if you were at the Department of Justice at that time, it was probably the only thing that allowed you to actually try a case because all the other sections were just pushing paper for the U.S. Attorney's Offices. Even the Fraud Section was not trying cases back then.

Stu Pierson: Wonder whether it should be trying them these days?

Bob Trout: No comment. In any event, I arrived and two weeks later Spiro Agnew resigned and entered a nolo plea to tax evasion. And the DOJ lawyers assembled in the Great Hall of Justice in the Justice Department Building, and Elliott Richardson was there

with George Beall, the then-U.S. Attorney from Maryland and the three Assistant U.S. Attorneys, Barney Skolnik, Timmy Baker, and Ron Liebman, who had handled the investigation.

Stu Pierson: I think I remember Skolnik.

Bob Trout: Yes. He was a terrific lawyer. Quirky but very good. And there we were in the Great Hall, celebrating the rule of law, that no one is above the law. And the integrity of the Department of Justice and the fact that it forged ahead and took down . . .

Stu Pierson: The Vice President.

Bob Trout: The Vice President. We just left there so ebullient and full of ourselves and how important we were in the firmament, and it was a very cool thing. And two weeks later, we were back in the Great Hall, and Elliott Richardson gave a speech with the Seal of Justice removed from the podium because he was invited by then-Acting Attorney General Robert Bork to address the troops on the Monday following the Saturday Night Massacre. And as high as we were two weeks before, we were low on that day as we were listening to Elliot Richardson give us a pep talk about going forward and life would go on and this would be just fine. He wanted Robert Bork to have all of our support. So that was my immediate experience in the Department, and then I got down to doing what I was supposed to do, which was handle the appeals from the Board of Immigration appeals, and then eventually I ended up trying a total of two or three obscenity cases.

Stu Pierson: Here?

Bob Trout: In Florida. It was not dissimilar to what goes on today in that the postal inspectors figure out where they want to try the case, and they order the porn to be mailed to them in a particular venue, wherever they wanted to try the case; in this case, it was in

Orlando. And so it is your typical setup that they still do when they want to manufacture venue and create an opportunity for someone to commit a crime. I prosecuted the case. I certainly appreciated the public policy questions about whether that's the way the government ought to be spending its resources. But we were going to spend the resources—the section chief was very, very aggressive on wanting to prosecute obscenity cases—and I wanted to try cases. And so I tried two or three obscenity cases.

Stu Pierson: All to verdict?

Bob Trout: Yes. All to verdict. All convictions. And I was there with the postal inspector. I had nobody else there with me, and I was trying to figure out how to do it as I went along. George Young, who was then the Chief Judge of the Middle District of Florida, for whom I believe the federal courthouse in Orlando is now named, was just very pleasant. He was a good judge, and patient—he had to be for someone who was trying his first case. And the defense attorney, I think in both of them, was an attorney by the name of Joel Hirschhorn, who is, I think, the nephew of the Hirschhorn for whom the sculpture museum is named.

Stu Pierson: Oh, really?

Bob Trout: I think. And he was a very good lawyer and a very nice guy. We got along fine. He was much more experienced than I was, and I was learning how to be a lawyer in a contested case. He couldn't have been more generous and gracious in his dealings with me. We got along just fine and periodically, we'll email each other back and forth. So that was what I did in the Department of Justice.

Stu Pierson: Immigration and porno cases.

Bob Trout: Right. But I realized, where I needed to be was in the U.S. Attorney's Office. And I applied in Los Angeles and I had gotten to know the Assistants in Orlando, so I applied there. I think they were just waiting for a slot to open. And I applied to Baltimore because I was just so taken by what the Baltimore office was doing. At the time, following on the Agnew investigation, they had a big investigation that they were carrying on into Mandel. And so I ended up getting a job with the U.S. Attorney's office in Maryland.

Stu Pierson: Did you have children by this time?

Bob Trout: No. This was 1975. And at the time, I knew that being an Assistant U.S. Attorney was the best job. I had figured that out. But it was a well-kept secret in the industry, I think. You know, people were still coming to go to the big firms and make the money. When I started, I think I made \$13,500.

Stu Pierson: Not much more than I was making.

Bob Trout: And the big firm lawyers were starting at \$15,000. Those days are long over, when there is just that little disparity.

Stu Pierson: It wasn't little then.

Bob Trout: No. Well, that's right. So I applied in Baltimore. They just had one district to cover the entire state. Jervis Finney was the U.S. Attorney. He had succeeded George Beall. I didn't really know this at the time, and I don't know that he knew it at the time, but Jervis Finney comes from a long line of Baltimore doctors, and I come from a long line of ...

Stu Pierson: Of Roanoke doctors.

Bob Trout: Exactly. And, it is basically a half-generation apart. I could be mistaken, but I believe the history was that Jervis's grandfather mentored my grandfather, who mentored Jervis's father, who mentored my father. All at Johns Hopkins. They all went to Hopkins to medical school. Jervis ended up being like the black sheep in the family. He became a lawyer. And I was the black sheep in my family. I became a lawyer. I didn't learn about my family's history with Jervis Finney's family until after I already had the job, and for all I know, Jervis doesn't know it to this day, the irony that he ended up essentially carrying on this mentoring role . . .

Stu Pierson: In a different profession.

Bob Trout: In a different profession. So he hired me, and at the time I was handling an interesting case. As I have reflected on it, this case was a lesson in reality. It's a fun anecdote. I had handled a case in the Third Circuit—Board of Immigration Appeals petition for review to the Third Circuit. And I thought it was a pretty cut and dry sort of case. Pretty easy. In some of these cases, you write the brief, there is a per curium decision that comes out, there is no oral argument. So in this seemingly easy case in the Third Circuit, I wrote the brief; I thought I had it figured out. There was a certain logic, a certain common sense to the government's position. There was a little bit of a problem in that there was some dicta in a Supreme Court case that I had to work around. But it was clearly dicta, and it was somewhat old, and it just didn't seem that much of a problem. And I was expecting a per curium decision without oral argument. But they scheduled it for oral argument, and so up I went for oral argument.

Stu Pierson: Which circuit are we in now?

Bob Trout: We're in the Third.

Stu Pierson: We're in Philly?

Bob Trout: In Philly. So Taisie's brother, older brother, Al Berkeley, was married to the daughter of one of the Third Circuit judges. In other words, the father-in-law of my brother-in-law was on the Third Circuit. At my brother-in-law's wedding, I had met the judge, spent maybe two minutes in conversation with him. Al Berkeley was always looking to help people. Still is. That is just part of his nature. And so when I was in law school, he talked to his father-in-law, and one thing leading to another, he had arranged for me to have an interview with a senior judge on the Third Circuit for a clerkship. And it was probably a courtesy interview. I had an interview, but I certainly didn't feel like I had knocked it out of the park.

Stu Pierson: Third year of law school?

Bob Trout: Yes. And I didn't get the clerkship.

Stu Pierson: So this is three or four years on?

Bob Trout: Yes.

Stu Pierson: That you're right here in this case?

Bob Trout: This would have been in 1975, and two years or maybe three years before that, I had interviewed. So with that as background, I showed up in Philadelphia.

Stu Pierson: So they don't send you the panel before?

Bob Trout: No. So I showed up in Philadelphia and the senior active judge sitting in the center is the father-in-law of my brother-in-law. There was another active judge there and seated to the right of the father-in-law of my brother-in-law was the judge—the senior judge—with whom I had interviewed. So I got up and was arguing this case that I'm

surprised they were even having oral argument about. And I was getting hammered by the youngest, the most junior judge on the panel, Judge Aldisert.

Stu Pierson: The one who doesn't know you?

Bob Trout: Yes. And I was getting hammered. And I came back and I said to myself, and then to my colleagues, we're going to lose this case. I can't believe it. We're going to lose this case. And sure enough, the opinion came down and we lost. But the father-in-law of my brother-in-law has written a dissent. And the dissent followed the path that I had charted. So we looked at the way the majority wrote this, and the immigration lawyers were going to see this huge opportunity to just bog down the administrative process.

Stu Pierson: The entire system?

Bob Trout: Yes. In order to get *en banc* review, you had to get the permission of the Solicitor General. So I wrote up a . . .

Stu Pierson: A memo?

Bob Trout: A memo. A memo, which is referred to as an SG memo, and it went up through the process and finally found its way to the SG.

Stu Pierson: Who was the SG then?

Bob Trout: Robert Bork. And . . .

Stu Pierson: Yes.

Bob Trout: And so I wrote an SG memo asking for permission to go *en banc*.

Stu Pierson: Because bad things will happen.

Bob Trout: Bad things will happen. And he granted the permission. So I went back to the drawing board and I filed a different brief. I was into the legislative history—it was really dense and into the weeds. It was just a different take.

Stu Pierson: Does the SJ have to approve the brief?

Bob Trout: I don't think so. And the Third Circuit granted the petition. I was pretty proud of that because it's not the easiest thing to get a Court of Appeals to hear a case *en banc*. They were going to hear argument. It was now September 1975. I had gotten my job in . . .

Stu Pierson: Baltimore.

Bob Trout: Baltimore. And I was about to start work in the U.S. Attorney's Office in Baltimore. But clearly they would bring me back as a Special to argue this in the Third Circuit. I was at home one night and the phone rang. It was my brother-in-law, who said, "I was talking to my father-in-law, who said if he sits on this panel, the other judge is going to make a stink and insist that he recuse himself." And so talking to my brother-in-law, I quickly came to the obvious point: why lose a vote, or potentially a vote, in this case. If I had spent two minutes of social time with this judge—the father-in-law of my brother-in-law—that was probably a lot. I suppose you could say, "Yes, well he promoted me to this other judge as someone to be interviewed." But I regarded it as borderline frivolous. After all, my name was all over the brief the first time. It's not like he said, you can't sit as a member of the panel. Anyway, so . . .

Stu Pierson: So what did you do?

Bob Trout: Well, without telling anyone about the call with my brother-in-law, I said I'm going to be an Assistant U.S. Attorney. Somebody else is going to need to argue this case. And, sure enough, somebody else argued the case, and the government lost again. This time, I think there were like three votes with the dissent—again, the father-in-law of

my brother-in-law wrote the dissent. Now there was no split in the circuits, but for all the reasons that Bork and the Solicitor General's office said . . .

Stu Pierson: We got to go.

Bob Trout: Yes. He said we've got to petition for cert. The Third Circuit, sitting *en banc*, had issued its decision sometime in 1976. And so the government petitioned for certiorari, and in December of 1976, the Supreme Court granted cert. and simultaneously without oral argument . . .

Stu Pierson: Summarily reverses.

Bob Trout: Yes, reverses unanimously. Remember, Thurgood Marshall was on the Court. William Brennan was on the court. These are Justices not known to simply fall in line with the government's position in cases. Obviously, a very, very easy case for the Supreme Court. So it just so happened, within a month of this, I was at some sort of family event and the father-in-law of my brother-in-law was there and we had, by a factor of five probably, a greater and longer engagement than we had ever had before. He was giddy with excitement over this because, again, in the per curiam decision, the Supreme Court quoted liberally from his dissent in the Third Circuit. He just thought this was the greatest thing. He was so excited about this victory and complimentary about me. And I said to him, "Well, you are entitled to be excited about this, but you've got to remember that I'm the idiot who could not even persuade a majority of the Third Circuit of something that was so self-evident that the Supreme Court could unanimously reverse without oral argument. We both laughed. He was very gracious.

Stu Pierson: What's his name?

Bob Trout: His name was Frank Van Dusen. It was interesting because I thought that Judge Van Dusen, maybe once a week, probably once a month, certainly several times a year, had advocates or attorneys appearing in front of him with whom he has some personal and social relationship that was greater than what he had with me. And, as I say, it is not like the other judge complained when it was obvious that I was on the brief and I was going to be coming to argue the case when they set it down for argument. So I viewed it as a lesson in reality, in that it seemed this had not so much to do with judicial propriety, and a great deal more to do with vote counting. And that was a lesson for me.

[END OF FIRST SESSION]