THE HONORABLE JOHN ROBERT FISHER

Oral History Project
The Historical Society of the District of Columbia Circuit

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The Historical Society of the
District of Columbia Circuit

United States Courts
District of Columbia Circuit

THE HONORABLE JOHN ROBERT FISHER

Interviews conducted by:
Cecil Hunt, Esquire
September 9 and December 20, 2011

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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges of the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Oral history interviews are conducted by volunteer attorneys who are trained by the Society.

Indexed transcripts of the oral histories and related documents are available in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C., the Manuscript Division of the Library of Congress, and the library of the Historical Society of the District of Columbia. Both the interviewers and the interviewees have had an opportunity to review and edit the transcripts.

With the permission of the person being interviewed, oral histories are also available on the Internet through the Society's Web site, www.dcchs.org. Audio recordings of most interviews, as well as electronic versions of the transcripts, are in the custody of the Society.

Standard Form

INTERVIEWEE ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of [Name of Interviewee]

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, John R. Fisher, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs of the interviews of me as described in Schedule A hereto, including literary rights and copyrights. All copies of the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs are subject to the same restrictions herein provided.

2. I also reserve for myself and to the executor of my estate the right to use the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs and their content as a resource for any book, pamphlet, article or other writing of which I or my executor may be the author or co-author.

3. I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said tape recordings, digital recordings, transcripts, computer diskettes, and DVDs in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

John R. Fisher 2/8/13

[Signature of Interviewee] [Date]

SWORN TO AND SUBSCRIBED before me this 8th day of February, 2013.

Gloria Bradshaw Herbert

Notary Public

GLORIA BRADSHAW HERBERT
Notary Public of District of Columbia
My Commission Expires August 14, 2016

My Commission expires: _____

ACCEPTED this 27th day of February, 2013 by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

Stephen J. Pollak

Schedule A

Tapes recordings, digital recordings, transcripts, computer diskettes, and DVDs resulting from 2 interviews of John R. Fisher on the following dates:

[Number] [Name of Interviewee]

Interview No. And Date	Number of Tapes or DVDs	Pages of Transcript
1- September 9, 2011	1	1-25
2- December 20, 2011	1	26-49

The transcripts of the 2 interviews are contained on 2 DVDs.

Standard Form

INTERVIEWER ORAL HISTORY AGREEMENT

The Historical Society of the District of Columbia Circuit

Oral History Agreement of [Name of Interviewer]

1. Having agreed to conduct an oral history interview with John R. Fisher, for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Cecil Hunt, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs of interviews as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said tape recordings, digital recordings, transcripts, computer diskettes, and DVDs in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

Cecil Hunt 14 Feb 2013

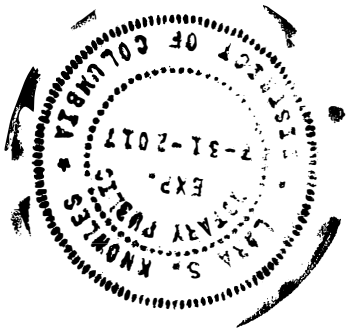
[Signature of Interviewer] [Date]

SWORN TO AND SUBSCRIBED before me this 14 day of February, 2013.

Lara S. Knowles

Notary Public

My Commission expires: July 31, 2017



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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.

ORAL HISTORY OF
HONORABLE JOHN ROBERT FISHER

Second Interview — December 20, 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 2)

MR. HUNT: Judge Fisher, would you please tell us when you were appointed chief of the appellate division of the Office of the U.S. Attorney in D.C.?

JUDGE FISHER: That was in 1989. I think I officially became chief in June of that year.

MR. HUNT: How did it happen that you got that position?

JUDGE FISHER: Well, before I left the office in 1983, I had been a deputy chief of the appellate division for about 3 years, and then, as we discussed earlier, I went back to Ohio for a few years. I missed doing appellate work. I'd stayed in touch with the office and knew that the then chief of the appellate division, Mike Farrell, who became a judge of this court, had been nominated to be a judge and if things went well they would need a new chief of the appellate division. So I applied for that, lobbied pretty hard to get it, and was fortunate enough to be selected.

MR. HUNT: Good. It was Judge Farrell you succeeded, and you had worked with him.

JUDGE FISHER: I had, yes.

MR. HUNT: Tell us a little about the size of the office when you joined it, and the scope of its responsibilities.

JUDGE FISHER: Well, I joined the office on two occasions. I joined in 1976, and I believe the office consisted of about 150 attorneys at that time. When I rejoined in 1989, we were somewhere in the area of 350 attorneys, so the office had grown considerably in size.

MR. HUNT: That's amazing, 350 attorneys in the D.C. U.S. Attorney's Office.

JUDGE FISHER: That's right, and it seems odd now, but in those years there was money available for law enforcement and I think soon after I rejoined the office there was a considerable hiring effort, but either when I rejoined or soon thereafter the total number got up to about 350.

MR. HUNT: What was the size of the appellate division?

JUDGE FISHER: It varied a little bit over the years. I think when I first became chief we had 22, 25 attorneys, something like that. I persuaded the U.S. Attorney at the time that we needed more resources to be able to do our appellate work in a timely fashion, and, because there was a hiring surge going on, there were more resources and I was fortunate to get some of those. By the time I left the office, we generally had 35 attorneys in the appellate division.

MR. HUNT: You mentioned you successfully persuaded the U.S. Attorney. Who was the U.S. Attorney at the time you rejoined the office?

JUDGE FISHER: That was Jay Stephens.

MR. HUNT: Tell us a bit about the appellate division chief's role; it sounds like there was a large enough office that you had kind of a management function. Tell us about the management and the lawyering aspects of the chief's role.

JUDGE FISHER: There are a lot of different aspects to being the appellate chief. There is a management role, there's a supervisory role, in terms of sort of small picture, supervising people on specific projects. There's a very substantial teaching role there, and I'll elaborate on

that in a minute. And then I also tried to emphasize a lot of giving advice to trial attorneys, before they created an awful mess that would be hard to clean up on appeal. And then one of the things that was hard to do but I tried very hard to do is to brief and argue important appeals myself. I wanted to be the primary appellate advocate for the office in very important matters, and so I tried to juggle all those different roles. One thing I should explain about the appellate division is that the bulk of our staff was made up of attorneys who were rotating through the division for a period of maybe six or eight months, and our job was to teach them some criminal law, to teach them how to be a persuasive legal writer, to teach them how to be a persuasive oral advocate, and then they'd go off to another assignment. And so there is a very substantial teaching and training role because of that phenomenon. At the same time, I tried to recruit and keep in the appellate division experienced attorneys who had been there and who had substantial skills and could handle some of the more serious cases, but the training role was very important, not only training the appellate attorneys, but I was often a part of efforts to train attorneys in other parts of the office.

MR. HUNT: Trial practice, mentoring?

JUDGE FISHER: Yes.

MR. HUNT: Now, of course you needed the cooperation of the U.S. Attorney in taking on that role. Was that formalized, or did you and your staff simply take advantage of openings?

JUDGE FISHER: It was formalized, at least as far as training the office at large. When I first started in the office in 1976, there was very little formal training at all. This time around there was a training director; there was a staff that organized training. With an office that large, and new people joining the office several times a year, it really required a big effort to provide

meaningful training to them, and so the training director would often call upon people in the appellate division, including myself, to contribute to those classes.

MR. HUNT: Did you inherit a deputy or deputies, or were you able to recruit your own or select your own?

JUDGE FISHER: Well both. I inherited deputies, and then over the course of time some of them left. I think I may have been able to get one more deputy position, so from time to time I was able to select new deputies, as the old ones moved on to other things.

MR. HUNT: And you argued some cases yourself?

JUDGE FISHER: Quite a few.

MR. HUNT: Which ones did you reach out for? What type of case did you particularly want to take on your own?

JUDGE FISHER: Well, it depended. If there was something that was very important to the office, either because it was a high-profile case or because there was an issue that would have a lot of future ramifications, I always had to figure out whether I was the best person to do that, not only in terms of skills but also availability, could I devote the time to do that. And then from time to time I just got restless and I looked around for something that was available that I could brief and argue myself.

MR. HUNT: When the case involved representation of an agency, were there ever instances in which agency counsel would be involved in briefing or even arguing an appeal?

JUDGE FISHER: Very seldom, and I need to explain that the appellate division really handles only criminal matters, and agency counsel are more often involved when it's a civil matter, and the civil appeals were handled out of the civil division of the U.S. Attorney's Office. Now from time to time, we would have a matter that related to a parole issue, so we might

consult with the U.S. Parole Commission and their general counsel. I cannot remember an instance where one of those counsel argued a case, but they were often consulted in preparing the brief and preparing for oral argument.

MR. HUNT: During your years as chief of the division was the caseload bearable, unbearable, or manageable? What would you say?

JUDGE FISHER: It was never manageable in the sense that it was easy, but I think we did succeed in wrestling it to the ground in the sense that we adopted some good management practices. In a typical year, we would probably file 500 or 600 briefs. I think one year it got up to 700 briefs in a single year, and often there were motions and other things that didn't add to that tally. In a typical year we would argue maybe 150 to 200 appeals, and so that was a substantial effort—

MR. HUNT: Indeed

JUDGE FISHER: to find the resources to brief those and to prepare people for oral argument.

MR. HUNT: I assume you had considerable leeway and discretion in hiring and selecting attorneys to come into the office—well not the ones rotating, but people being brought into the regular staff. Is that correct?

JUDGE FISHER: Well basically the answer to that is no. We almost never hired anybody from the outside to work exclusively in the appellate division. The normal process was that you look at people who had been in the office for several years, who had been through the general rotation program, but seemed to have a special talent and an affection for appellate work. If they indicated they would like to come to the appellate division in a more senior capacity, then

there was often a competition for their talents. So I was involved in those efforts, of course, but as I said we didn't hire from the outside.

MR. HUNT: I'm asking you to reach back. Are there particular cases, either that you argued or the office handled while you headed it, that stand out in your recollection and for one reason or another you think would be worth mentioning for this oral history?

JUDGE FISHER: There are several, and I talked about how I'd often be involved in appeals that presented a programmatic or long-term issue for the office, and one of the things that happened under Jay Stephens, and this was really, I think, encouraged by Attorney General Thornburgh at the time, was an effort to bring more and more cases into federal court, to take advantage of the higher penalties for gun cases and drug cases, and that involved in the District of Columbia not only a change of policy going forward, where we would—let me back up. As U.S. Attorney here, you have the choice of whether to bring a case in the local court system (in the Superior Court) or in the U.S. District Court, and that's an option that most U.S. Attorneys do not have. Usually a U.S. Attorney has to decide whether to take the case or defer to the local prosecutor. Well, here the U.S. Attorney is *the* prosecutor, so he makes a decision whether to pursue a case in Superior Court or District Court. When there was this emphasis on bringing more and more cases in District Court, it was decided that we would take a lot of cases, I believe there were dozens of them, I forget the exact number, cases that were already pending in Superior Court, and we would dismiss them in Superior Court and re-file in U.S. District Court, and that created all sorts of protests. The principal protest was that the U.S. District Court judges did not like having these cases. They thought many of them were beneath their dignity—just a gun, a small amount of crack cocaine—but the penalties could be pretty severe. So there was a lot of litigation about that, and that resulted in an *en banc* argument that I handled about whether

or not we had violated various statutes and provisions of the Constitution by transferring those cases over to federal court. We won the case; I count that we won it 5½ to 5. One judge voted in our favor but he made it very clear he didn't care for what we were doing. That was one case that was very important.

MR. HUNT: Under what case title, was that particular one?

JUDGE FISHER: The case title was *Mills & Wonson v. United States*; maybe as we tidy up I can get you the citation to that.[2]

JUDGE FISHER: There were a number of battles over the years respecting the United States' sentencing guidelines, and so I handled several appeals dealing with that. I feel a little chagrin now spending the flower of my youth defending the sentencing guidelines, and then the Supreme Court says at the end of all this that they really are not buying in after all, and maybe all that effort was wasted, but there were a number of cases I argued trying to sort out what the guidelines meant, whether various provisions of them were valid or violated constitutional principles, and so there were some of those.

MR. HUNT: Do you recall any appeal where you lost that you still feel that you should not have lost, if that's not too impertinent a question?

JUDGE FISHER: I'm sure there were some and they don't pop to mind right now. There are a couple of cases that you may have heard of that I ought to mention. One involved a spy named Jonathan Pollard, who had been charged with turning over classified information to the Israeli government. He had pled guilty, but then after he'd been in prison for a while he decided to attack the validity of his conviction, and I handled the appeal in that case.[3] That was not an *en banc* case but it was argued before a panel, and I happened to argue against Ted Olson,

[2] *United States v. Mills*, 964 F.2d 1186 (D.C. Cir. 1992).
[3] *United States v. Pollard*, 959 F.2d 1011 (D.C. Cir. 1992).

who became *Solicitor General* of the United States sometime after that. But that was a prominent case that I argued principally because of the prominence of it.

Another case that I argued involved Congressman Dan Rostenkowski. Our office was prosecuting him, and there were some pretty esoteric issues about how the speech or debate clause of the Constitution applied to criminal prosecutions, and did that preclude us from using certain evidence in our prosecution. I argued that case and substantially won it. I think they said some things in the opinion we didn't agree with, but we substantially prevailed.[4]

In this court, I argued an *en banc* case involving the wording of the reasonable doubt instruction. Various judges always thought the language of that instruction was pretty arcane and surely they could do better, but then when they tried to do better it would raise all sorts of issues about whether they had left something out or maybe had reworded something just not in the right way, so we had an *en banc* argument about that.[5]

I had an *en banc* argument dealing with the application of the Miranda Doctrine[6] and over the course of my time, not only as appellate chief but also a deputy chief, I think I argued 16 *en banc* cases, either before the D.C. Circuit or before this court. So those cases come to mind.

One of the last cases I argued before I became a judge involved a concept called "urban warfare," and it basically focuses on when people are having a shootout on the street, and they happen to kill an innocent bystander, what form of murder is that, and do you prosecute only the person who fired the lethal bullet, or can you prosecute all the participants in the gun battle on the theory that they were jointly creating the dangerous situation that resulted in a death, and so I argued that case toward the end of my time.

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[4] *United States v. Rostenkowski*, 59 F.3d 1291 (D.C. Cir. 1995), *petition for rehearing denied with opinion*, 68 F.3d 489 (D.C. Cir. 1995).

[5] *Smith v. United States*, 709 A.2d 78 (D.C. 1998) (*en banc*).

[6] *Jones v. United States*, 779 A.2d 277 (D.C. 2001) (*en banc*).

MR. HUNT: Did the decision in that case become law in the federal courts that continues to be applied?

JUDGE FISHER: Well, it affects the local court system. It was a case that was argued in this court. It's the case of *Roy & Settles v. United States* and I'll get you the citation for that as well.[7]

MR. HUNT: Speaking now from your perspective as a judge, can you think back and name any judges before whom you argued who made a strong favorable impression on you, from the way they handled their bench?

JUDGE FISHER: There were several. I think out of diplomacy I'll not comment on the judges of this court, but in some of my early days I argued before judges such as David Bazelon and *Skelly Wright*, but the one who particularly impressed me during those years was Carl McGowan. He was a very courteous judge, very sensible and level headed, and I always admired both his approach in the court room and the tenor of his opinions. I also thought highly of Malcolm Wilkey, who was a D.C. Circuit Judge.

Before I left D.C. and went back to Ohio, I had the opportunity to argue a couple of important *en banc* cases, and on the panels in those cases were now Justice Scalia and Robert Bork, who was on the court at that time.[8] So I remember those arguments. In more recent years I had the chance to argue frequently before Ruth Bader Ginsburg, who is now on the Supreme Court. I also have had the chance to argue before John Roberts, who is now Chief Justice of the United States. I particularly admire Merrick Garland, he became a judge later in my tenure, but I've been able to argue before him on a few occasions and I particularly admire his approach to the task of judging.

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[7] *Roy v. United States*, 871 A.2d 498 (D.C. 2005).

[8] *United States v. Byers*, 740 F.2d 1104 (D.C. Cir. 1984 (*en banc*); *also United States v. Cohen*, 733 F.2d 128 (D.C. Cir. 1984) *(en banc*).

MR. HUNT: You are generous and helpful with your recollections there. During this period, while you were chief of the appellate division, did you have any opportunity for activities outside the office—bar activities or other organizations?

JUDGE FISHER: One of my principal bar activities was serving on the legal ethics committee of the bar, and that's a group that met generally on a monthly basis. We would receive inquiries from lawyers about how the rules of professional conduct applied to a particular situation they described, and we would on occasion just give a quick answer, but our primary task was to write opinions, which are then published by the bar.

MR. HUNT: Which we've all read cheerfully!

JUDGE FISHER: So I served on that committee for six years, which was the maximum number. Actually, before that, the D.C. Court of Appeals adopted a new version of the rules of professional conduct that went into effect in I think January of 1991, and I was involved in lots of efforts to get the word out, and I'd provide training to lawyers and our group particularly focused on government lawyers, so I was involved in some of those efforts. And then toward the end of my time in government I served as treasurer of our church for five years, so that took up a good bit of time. Those were my principal activities, apart from work.

MR. HUNT: Are there any other highlights from the period when you were Chief of the Criminal Appellate Division that I haven't touched on and that you would like to touch on before we move forward in time?

JUDGE FISHER: Well, it was a wonderful job to have. I may have mentioned earlier that for someone whose been infected with the appellate virus, being chief of the appellate division of the U.S. Attorney's Office was a terrific job to have because it allowed you to devote your efforts to appellate practice—

MR. HUNT: It gave you an opportunity for cherry picking, in the best sense of the word.

JUDGE FISHER: Yes, indeed. It gave you quite an opportunity to train other lawyers, and one of the things I especially tried to do was to select issues at an opportune time for litigation so maybe we could change the law in the a way that was favorable to us. That sometimes involved decisions about, "well, we don't like what the judge did in this case but this is not the time to really fight it out, let's look for a more favorable case." Sometimes you'd make the same arguments again and again, as the opportunity arose, and then eventually they'd sink in and bear some fruits.

MR. HUNT: That's an interesting comment that you make about the selection, the decision as to whether to appeal certain cases, I'm just wondering, was that left exclusively to you or to the appellate division, or would there be instances in which the U.S. Attorney or top people in the office would influence that decision?

JUDGE FISHER: For most cases, well let me back up. It depends on which side of the house you're talking about, and for reasons that I think are primarily historical, although don't make perfect sense, whenever we were going to take an appeal in the D.C. Circuit, or whenever we were going to seek rehearing *en banc* in the D.C. Circuit, we had to not only get the approval of the United States Attorney but we had to get the approval of the Solicitor General of the United States, because the Solicitor General was concerned about how the law looked throughout the country, trying to make sure that law was consistent, as far as the Department of Justice was concerned, and trying to make sure that people in the hinterlands didn't screw things up too badly. So there was a fairly rigorous process one had to go through to get permission to take a government appeal or to get permission to seek rehearing *en banc* in the D.C. Circuit. I think for primarily historical reasons, they did not exercise that oversight over the local court system, so

when we were deciding whether to take an appeal from the Superior Court to the D.C. Court of Appeals, or whether to seek rehearing *en banc* in this court, that decision was primarily up to me. I had to make a judgment as to whether it was important enough to take up the U.S. Attorney's time in consultation, but I didn't consult the U.S. Attorney in each instance because it wasn't that important a question.

MR. HUNT: And when it was an appeal from the Superior Court as opposed to the District Court, the Solicitor General's Office would not be involved at all?

JUDGE FISHER: That's correct. And so we had that process deciding how to take appeals, seek rehearing *en banc*, try to shape the law. Often you were not all that concerned with the outcome of the individual case but were really concerned about what the law would say going forward. Another effort that I put a lot of energy into that I've referred to briefly as what I call preventive appellate advocacy, trying to get trial attorneys in the mindset of thinking what the record would look like on appeal, and we made a lot of resources available to consult with trial attorneys, so they would often stop by unexpectedly seeking advice. Oftentimes they would call from the courtroom, some crisis had arisen and they needed a case cite or they needed advice on what to do, and my deputies and I would spend a lot of the time during the day giving that sort of advice with the hope that ultimately it would be good for the office as a whole, and also with the hope that if we sort of made some strategic judgments at the trial level, then it would be a lot easier to defend the conviction on appeal, so we invested a lot of time and effort in that sort of thing.

MR. HUNT: That's very interesting. Shall we move forward in the timeline?

JUDGE FISHER: Indeed.

MR. HUNT: Then we get to your nomination and confirmation as associate judge of the District of Columbia Court of Appeals. When did this occur, and as best you can tell us, how did it come about?

JUDGE FISHER: Well, in order to become a judge on the local courts you cannot be a shrinking violet; you don't wait for people to come to you. We have a process that is articulated in statute. There is a judicial nomination commission, and whenever a vacancy occurs, on the trial court or on this court, that's announced. The commission solicits applications; they then screen the applications and conduct interviews, and the commission then selects three names for each vacancy and it forwards those names to the White House, and then the White House has to choose a nominee from the names that have come from the judicial nomination commission. So you don't wait for somebody to come seek you out, you have to apply for the job. In 2005, I think, there was a vacancy on the court, and, actually it was 2004, the first vacancy that I applied for, and I decided that I would apply for the vacancy and see what happened.

MR. HUNT: Let me interject, I think, a related question. If my understanding is correct, in effect the Home Rule Act did not delegate to the District any of the function or any authority, with respect to the naming of judges. Is that correct, and is that why the position on this court is handled out of the White House without any involvement of the council or other arm of D.C. government?

JUDGE FISHER: That's right. Actually two things happened in the early 1970s, and one was the Court reform and reorganization act. Up until the very early 1970s, although there was a local court system, it had very limited authority, and most of what we would call "street crime" was prosecuted in the U.S. District Court. So the U.S. District Court judges would have jurisdiction not only over the typical federal matters—big drug cases, mail fraud, bank robbery,

that sort of thing—but the district judges would try rapes and murders and street robberies, things like that. There was a Court of General Sessions, but it had primarily misdemeanor jurisdiction and then somewhat limited civil jurisdiction. There was something called the Municipal Court of Appeals, but that had limited jurisdiction as well, and its decisions were reviewable by the D.C. Circuit on basically a *certiorari* basis. And so in the late 1960s the White House decided that it would propose the creation of a robust local court system, and that led to the creation of the Superior Court and it led to the upgrading, I'll say, of the District of Columbia Court of Appeals. So this court became the highest court of the District of Columbia. Our decisions were no longer reviewable by the D.C. Circuit. If anybody was going to review our decisions it would be the U.S. Supreme Court. So at about the same time, what we generally call the "home rule" effort was going on, but I think it was primarily in connection with Court Reform and Reorganization Act, that Congress decided that they would retain in the President, the appointment authority for judges of the local courts, and so judges of the Superior Court and judges of this court are nominated by the President, confirmed by the Senate, and the Mayor and the Council of the District of Columbia are not involved that process.

MR. HUNT: Thank you, I think that the digression was very helpful brief explanation of the history and structure of the D.C. Courts. Back to your elevation to the bench—was there anything that stood out in the confirmation process, or was it not an event?

JUDGE FISHER: Well, I probably ought to fill in more about how I got to be nominated, and it was in many ways a very uncomfortable process because to succeed before the commission you not only have to fill out a lot of paperwork to explain your background and experience and everything, but you also need to be a salesman for yourself. You need to recruit people to recommend you and then it is advised that you try to visit with each of the

commissioners individually. Eventually there is a group interview before the commission, but it's recommended that you go around and try to visit each commissioner privately if you can. Not every commissioner will sit down with you privately but most of them do, and so that was a very uncomfortable process, sort of trying to sell yourself. I was raised in Ohio to be a modest young man and not to be a self-promoter, and this was kind of awkward.

MR. HUNT: Well self-promotion aside, in any instances were there inquiries into, say, judicial philosophy, that you thought might be beyond line?

JUDGE FISHER: Nothing that went beyond the line. People were of course very concerned about one's approach to being a judge, and one of the questions I encountered a lot was, "well, you've been basically a lifelong prosecutor. What are defendants and defense attorneys going to think when they look up and see you on the bench?" So that was something I needed to address. I was fortunate in my first effort to be included among the three candidates whose names were sent to the White House, but the White House nominated somebody else for that first vacancy. Unexpectedly, another vacancy came along, and there's a very odd system here, but because the first vacancy had not yet been filled I technically was not eligible to be recommended again by the commission, yet under the statute my name was still before the White House, and the White House has the ability to reach back to a previous list if that vacancy has not yet been filed, so the new vacancy came along and they remembered me and so they picked me from the prior list and I was nominated for the second vacancy that came along.

MR. HUNT: That sounds efficient and certainly not inappropriate.

JUDGE FISHER: Well, it's kind of bizarre, but it's part of the statutory process. So then the confirmation process went relatively smoothly. One of the things that affects confirmations to this court and to the Superior Court is that our nominations do not go to the Senate Judiciary

Committee but they go to the Committee on Homeland Security and Government Affairs, which has the portfolio for the District of Columbia. And so a lot of the partisan wrangling that you read about a lot dealing with the nominees to the federal courts that occurs before the Judiciary Committee does not typically occur with our nominations.

MR. HUNT: News to me, thank you.

JUDGE FISHER: So it was mainly a process of filling out a lot more paperwork, interviewing the staff at the Senate committee, and then waiting for them to pay attention to my nomination, but that did occur in what in retrospect seems like a fairly timely fashion. I think I'd been nominated in June of 2005 and was confirmed in October of 2005.

MR. HUNT: With your background as an appeals advocate, was there still a learning curve when you ascended the bench, a learning curve as a judge, how did that period evolve?

JUDGE FISHER: There was a very substantial learning curve. I probably was as familiar with the workings of this court as a lawyer can be. I'd been appearing before the court for close to 20 years, off and on. Some of the judges of this court I'd worked with in previous jobs, but one of the things that really shaped my first few years on the court was that I had to recuse from most criminal cases involving the United States, so as a result I had a pretty small docket of criminal cases and a very large docket of civil cases and administrative reviews and things like that. So I was not allowed to work, for the most part, in my area of expertise—

MR. HUNT: It was probably an advantage for your growth as a judge.

JUDGE FISHER: Well, it has been an enormously rewarding period of growth. It was very hard, in that I had to learn to be competent in areas that I had not practiced in before, and there was a fairly steep learning curve in a lot of those things, so I would have occasional criminal appeals if they were really recent, had not been percolating in the U.S. Attorney's

Office while I was there, or if they involved juvenile matters, which are prosecuted by the local Attorney General's Office, but I was doing a lot of civil cases, a lot of administrative reviews, and that really took a lot of hard work to try to understand those cases.

MR. HUNT: As a judge with a case coming before you for oral argument, how do you go about preparing for oral argument—would be question one. I guess question two would be what are you trying to accomplish during the course of oral argument?

JUDGE FISHER: Well, I think, from the point of view of all of the judges on this court, one of the primary benefits of oral argument is that it presents sort of a deadline, at which all of the judges need to be well-prepared, because immediately after the argument we go into conference and we take a tentative decision about how the case is going to come out, so ideally all three judges will be well-prepared at that time, and so one of the principal benefits of oral argument is that at one time and place all the judges are equivalently prepared and ready to make a decision. As far as the argument itself, I think we're seeking clarification. We're seeking a comfort level; that is, if a party is asking us to take a certain position in this case, what kind of trouble will that get us in down the road, how far-reaching is their argument going to be, and just satisfaction that the argument they're asking us to adopt is well supported in the case law and in the record. A lot of the questions we ask are trying to clarify factual things about the record. You sort of put this spin on what happened, but demonstrate to us that that's a fair reading of what happened in the record. Often people will be asserting things that are not in the record, and thus we're not supposed to consider them.

MR. HUNT: On that point, are you really fully dependent on opposing counsel to point out mis-citations or misuse of the record or is it ever something that you would have your clerks check on.

JUDGE FISHER: Yeah, we often go back to the record or the transcript, depending on the kind of case, and try to verify the accuracy of the representations. Sometimes opposing counsel will point them out, but not always, and so sometimes we catch those glitches on our own.

MR. HUNT: Glitches may be putting it kindly.

JUDGE FISHER: Well, I think sometimes they are truly glitches, and other times it may be an effort to maybe distort things a little bit. In terms of my individual preparation for oral argument, I always read the briefs myself, and in many instances I read them more than once, but what I will typically do is ask my law clerk, one of my law clerks, to read the briefs and I will read the briefs too and then after we've both done that we will talk about the case, and one of the things that shapes our approach to oral argument here is that, unlike in many courts of appeals, we know in advance which case we're assigned to write, so you take a special care in preparing for the cases that you're assigned to write and you feel more comfortable devoting increased resources to those cases. So I'll have the law clerks read the briefs, I'll read the briefs, we'll talk about the issues, we may do some preliminary drafting to try to get things worked out in our minds about what the facts are and what the legal issues are. And so I think it's fair to say that all the judges of this court are well-prepared when we go into oral argument.

MR. HUNT: Now you mentioned the kind of pre-selection of which judge will be writing which case, but that suggests a selection in advance of the judges who vote on the decision. How does that work?

JUDGE FISHER: Well, it's still in part a mystery to me, but the important thing to emphasize is the judges themselves have no say in what they're assigned to write. I think there are two operations that go on independently of each other. Somebody out there decides which

judges will sit together on a particular day and somebody else working independently will decide which cases are going to be heard on those days, and then there's some sort of random selection about who will be assigned to case number one, case number two, and case number three, so there's no opportunity to cherry-pick the cases that we will work on.

MR. HUNT: That is interesting. I don't know if it's possible to reach back and come up with a recollection of this, but, as to questions that you raise during oral argument, do you have any sense as to how many of them have been formulated in your mind or your notes in advance of argument and what proportion occur to you in the course of argument?

JUDGE FISHER: It's hard to say. In my early months, and maybe still even my early years as a judge I was more apt to prepare a list of potential questions in preparing for argument—not that I would ask them all, but try to formulate things that I thought were important to address. Now I'm less apt to write anything out in advance, but I think maybe I've become more adept at doing it mentally. Probably most of the questions I ask I've thought about in advance, but a lot of them come up just in the spur of the moment. An advocate will say something which will spark you to say, "well wait a minute, how can that be?" and "how do you reconcile that with this legal doctrine or this portion of the record?" So, at least a significant number of the questions I think are spontaneous, a reaction to what an advocate said or maybe a reaction to what one of the other judges had said.

MR. HUNT: What goes into your decision to write a dissent?

JUDGE FISHER: Well, I should say that I write very few dissents. I generally feel that I'm not God's gift to jurisprudence and people are not just hanging out there waiting to learn my individual views, so I write few dissents and I write few concurrences. I believe our primary goal ought to be to make the law, make the individual decision, as clear as we can, and having an

extra opinion out there often detracts from the clarity. When I do write a dissent I have to feel pretty strongly that the decision is wrong and that it is worth my while to state why I think it's wrong. I think you'll see that the judges of this court do not dissent all that often, and often it's more a process of uncertainties or disagreements which will be worked out in the drafting process, so that the majority opinion ends up being something that, if you're not necessarily wild about it, you're comfortable enough with it that you will remain silent. So a lot of the disagreements, the uncertainties, are worked out in the drafting process, and often I will go along with an opinion even if I disagree because I know I'm not going to change the result, I've had my say and I've failed to persuade the other judges. I have to think "well, what good is it going to do for me to voice a dissent?" Occasionally I think it's worth the effort, but as I said I don't write separately very often.

MR. HUNT: Case conferences can be pretty exciting occasionally?

JUDGE FISHER: Actually, the conferences themselves generally do not get all that exciting. It's the effort to write it down that often sparks more comment, and sometimes you will think that "yeah that sounds like the right decision in this case," but then when you see a draft you'll think "hmm, I didn't bargain for that." And so I think more effort goes into the process of commenting on draft opinions than necessarily goes into the conference.

MR. HUNT: That's interesting. From your time on the court, do you have any wise words for advocates appearing not necessarily before this court but you've talked about when you were in the U.S. Attorney's Office, training trial attorneys for their advocacy. What advice might you give advocates, based on your experience on the bench?

JUDGE FISHER: One piece of advice is that you need to know your case backward and forward. I think what really disappoints me and disappoints other judges is when I know your

case better than you do, and that should never happen. The advocate ought to know the facts better than we do and because they've had more time to work on this individual case they ought to know the legal framework better than we do. Another thing is that you need to put a lot of preparation into getting ready for oral argument. One of the things that I always urged as an advocate and tried to do myself is in the preparation, step out of your advocate role, try to identify all the problems with your case, try to anticipate the questions that a judge might ask, and try to be prepared to give a satisfactory answer to those questions. So that involves a lot of self-criticism, I think, being able to set aside the fact that you've convinced yourself you're right and anticipate all the pitfalls, and it also requires a lot of collaboration from colleagues, so I think moot courts are indispensable. When you work for an institutional litigant you have colleagues around who help you prepare for oral argument; that's very hard for sole practitioners or people in small firms to do because often there just aren't the resources available. But I think those two things are important; having a thorough knowledge of your case, having thought through your case and anticipated questions, and just the style of argument I think is just very important. You're not up there to regurgitate your brief. You're not up there to give a speech. You're not giving a closing argument to the jury. Ideally you're engaging in a conversation with the judges in a pretty conversational style with good eye contact. When I grew up I did not have a high opinion of salesmen, but when I think critically about the role of an appellate advocate I think you have to be in many ways a salesman. You have to be able to look somebody in the eye, you have to be able to state sincerely to them your view of things, you have to be able to respond candidly to questions they have about the product you're selling, and I think a lot of people who come into appellate courtrooms don't approach things in that way.

MR. HUNT: May I see if I could translate that into—"some style without histrionics"?

JUDGE FISHER: Exactly. I have no use for oratory. We had an argument the other day where people commented that maybe the lawyer just got a little too emotional and it wasn't particularly helpful to the cause, but you know the art of persuasion is something that takes practice.

MR. HUNT: Going further away from the workaday, are there reforms that you would like to see in the court system as it exists here in the District of Columbia or more generally from your experience?

JUDGE FISHER: Well, there are a number of challenges that I think we're dealing with. I should begin by saying I think the people of the District of Columbia are very well served by the Superior Court and by our court. We have very conscientious judges who bring a lot of talent and experience to their jobs. One of the principal challenges is the volume of the work, both in the trial court and here. One of the challenges the Court of Appeals is dealing with is trying to manage the volume of the work in a more expeditious fashion. It can take years for an appeal to migrate from a notice of appeal to a final decision, and we are working very hard to try to figure out how to deal more efficiently with the easier cases and how to conserve resources for the more challenging cases. I think in the last few years we've made a lot of progress on becoming more current, but we've got a long ways to go and it encompasses things from how long it takes to prepare a transcript so people can then write their briefs, how long we allow them to write their briefs, how quickly we get to argument after the briefs have been finished and of course after argument how long it takes us to write the opinion. I think we're doing a lot better at the latter stage, how long it takes us to get an opinion out, and our statistics are looking better and better. I think in the earlier parts of the process there are still some useful changes we can make.

MR. HUNT: May I ask specifically about delay in the preparation of the transcript. Is that strictly a matter of resources?

JUDGE FISHER: I think in large part it is, yeah. Sometimes you have to get the attention of the lawyers to focus on what they need and sometimes there are delays that, oops, they set out to write their brief and discover they don't have a transcript that's essential, but it's in large part a question of resources and technology. I think now we're getting to the point where we will get more and more transcripts in electronic form rather than in paper form and what goes on in the courtroom. There are newer systems that can produce an almost instantaneous transcript. I think we're not there yet in the Superior Court, but technology will be a big part of that too.

MR. HUNT: That's excellent. To wind up, what aspects of your career have provided either the greatest challenges or the greatest satisfaction to you?

JUDGE FISHER: I guess my current job and my next previous job would be the greatest challenges and satisfactions. I thought being Chief of the Appellate Division of the U.S. Attorney's Office was a marvelous opportunity. It wasn't easy at all; as we've talked about there were a lot of aspects to it, but it gave me the opportunity to do the kind of thing I enjoyed very much. I like to think I made a useful contribution in that role. And then being a judge of this court is just a great opportunity, a lot of responsibility. It's a constantly evolving job where you're facing new cases. People sometimes ask me the question, "do you miss being an advocate?" and I answer yes, I do miss being an advocate. "Which would you rather be, a judge or an advocate?" and my response to that has been I feel very blessed to be able to do both in one lifetime. Probably there's nothing that compares to standing at the podium, giving an argument in an interesting case, but being a judge of this court is a marvelous opportunity, it allows me to

put to use the experience that I have gained over 30, 35 years, and so I feel very blessed to be able to do both in one lifetime.

MR. HUNT: Thank you Judge Fisher. We've covered a lot of very interesting ground and I appreciate your time and your recollection.

JUDGE FISHER: It's been a pleasure Mr. Hunt.

ORAL HISTORY OF
Honorable John Robert Fisher

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THE HONORABLE JOHN R. FISHER
ASSOCIATE JUDGE
DISTRICT OF COLUMBIA COURT OF APPEALS

Judge John R. Fisher was appointed to the District of Columbia Court of Appeals in 2005 by President George W. Bush.

Judge Fisher, son of the late George and Helen Fisher, was born and raised in Knox County, Ohio, and graduated from Fredericktown High School. He received his Bachelor of Arts degree *magna cum laude* from Harvard College in 1968. He then served as an enlisted man in the U.S. Army, spending one year in South Vietnam. After his military service, Judge Fisher attended Harvard Law School, receiving his law degree *cum laude* in 1974.

Following law school, Judge Fisher clerked for two years for the Honorable Joseph P. Kinneary, United States District Judge for the Southern District of Ohio. He came to the District of Columbia in 1976 to join the United States Attorney's Office, serving in a variety of trial, grand jury, and appellate assignments from 1976 until 1983. Judge Fisher then served as an Assistant United States Attorney for the Southern District of Ohio from 1983 to 1986. In 1986, he became Of Counsel to the law firm of Vorys, Sater, Seymour & Pease, in Columbus, Ohio, where he specialized in complex civil litigation.

Judge Fisher returned to Washington, D.C. in 1989 to become Chief of the Appellate Division of the United States Attorney's Office for the District of Columbia, a position he held for over sixteen years. In this capacity, he supervised criminal appeals in the D.C. Court of Appeals and the United States Court of Appeals for the District of Columbia Circuit, managed the work of a forty-five-person division, and briefed and argued appeals, including sixteen *en banc* cases before the D.C. Court of Appeals or the D.C. Circuit. As Chief, Judge Fisher also emphasized the concept of "preventive appellate advocacy" – appellate attorneys providing advice and guidance to trial lawyers to prevent some troublesome issues from arising on appeal.

Judge Fisher has worked on bar committees dealing with the Rules of Professional Conduct. He served for six years as a member of the D.C. Bar's Legal Ethics Committee. He also served on the Advisory Committee on Procedures of the United States Court of Appeals for the District of Columbia Circuit. He was Treasurer of Washington Farm United Methodist Church for five years.

Judge Fisher has received the Harold Sullivan Award from the Assistant United States Attorneys Association, a Director's Award for Executive Achievement from the Director of the Executive Office for U.S. Attorneys, and the John Marshall Award for Outstanding Legal Achievement for Handling of Appeals from the Attorney General of the United States, among other recognition.

Judge Fisher is married to Margaret Fisher, who is an instructional assistant focusing on character education at an elementary school in Fairfax County. They have two children.

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Of Counsel to Wiltshire & Grannis LLP since 2001, with a practice dealing primarily with international trade and investment, particularly as affected by national security or foreign policy factors. Advises and represents companies on export controls, trade sanctions and governmental review of foreign investment into the United States.

Received his law degree from the University of California, Berkeley (Boalt Hall), where he was an editor of the *California Law Review*. Practiced corporate securities law in a San Francisco law firm until taking a position in Washington, D.C. as an attorney with the Agency for International Development, working on support for private investment. Helped with the development of the legislation that established the government-owned Overseas Private Investment Corporation, becoming Vice President and General Counsel, a position that included line responsibility for dealing with hundreds of millions of dollars in claims under political risk insurance policies during OPIC's early years. Moved to the United States Department of Commerce, where he headed the legal offices handling international investment and export control matters.

Served as chairman of the International Law Division of the District of Columbia Bar, President of the Washington Foreign Law Society and as a member of the Executive Council of the American Society of International Law.

Has lectured frequently and has written extensively on international trade and investment subjects, including serving for many years as co-chair of the Practising Law Institute annual program *Coping with U.S. Export Controls*.

Resides in Annapolis, Maryland with his wife Susan Feahr Hunt.

January 2013