

MR. RASENBERGER: This is an Oral History Interview on behalf of the D.C. Circuit Historical Society with Judge Laurence Silberman. The date is June 26, 2001. The interviewer is Raymond Rasenberger. I'm going to begin by remarking to Judge Silberman that I have read a good bit of the oral history that he has given to the State Department. Having been an Ambassador at one time in his career, he has been subjected to this same process by that agency and has covered a great deal of the same background that I might have covered, particularly his early years of schooling. So with his permission I'm going to skip some questions about dates and places since they are already covered in the other transcript and just ask a few other questions related to his youth and education that occur to me. That's agreeable Judge Silberman?

JUDGE SILBERMAN: Certainly.

MR. RASENBERGER: Okay, let's start with your birth in 1935. That was, as you recall, in the middle of the Depression and you grew up—I guess you by the time you reached a sensible age we were into WWII—but do you recall the Depression having any particular impact on you, either in terms of what you saw or how you lived or anything of that nature?

JUDGE SILBERMAN: Now that I think about it, it must have had some impact on me because both of my grandfathers were extremely wealthy men in the '20s. One of them, my maternal grandfather, lost everything in the Depression, and I'm sure I was aware of that now that I think about it. I had almost no contact with my maternal grandfather, because after he lost all of his money he sort of retreated to somewhere in Northern New York. And he didn't have as much contact with my mother, for reasons that are not at all clear to me, but may have had something to do with the psychological blow. My paternal grandfather was enormously wealthy.

He was one of the partners of Luria Brothers Trade and Steel, which eventually became a national monopoly, attacked by the FTC, and partially broken up as a monopoly in the brokerage business of scrap, iron, and steel sold to the steel companies. And during the Depression he had invested very heavily in real estate in Philadelphia. Those real estate holdings went sour, and, as a result, he forced his three brothers-in-law, two brothers-in-law left alive, to buy him out; he remained a wealthy man, but nowhere near as wealthy as he was prior to the Depression. But, when he died in 1945, he had an estate of approximately a million dollars, so he was certainly quite affluent. My paternal grandfather was an immigrant, as opposed to my maternal family which had been here in this country for some time, and, as so often happens with sons of very successful immigrants, my father was spoiled and pretty much a ne'er-do-well who lost a great deal of money in various ventures financed by my grandfather. So, in any event, those fortunes or misfortunes of my family, which somewhat were attributable to the Depression, I'm sure had an impact on me. But we were never faced with anything remotely approaching poverty.

MR. RASENBERGER: One other thing that I read is that you were born not long after an older brother was killed in an accident, first of all let me ask you—

JUDGE SILBERMAN: The other way around. My older brother, five-years older than I, was killed when I was nine months old. According to my mother, I was actually speaking, obviously in a rudimentary fashion at nine months, but when my brother was killed, I stopped speaking until I was three years old, causing great concern on the part of my parents as to whether I would ever speak.

MR. RASENBERGER: It's interesting. Did your brother's death have any longer-term consequences for you?

JUDGE SILBERMAN: Yes. I think it impacted seriously on my parents. I don't think they ever recovered from it and it probably contributed to their divorce when I was nine years old. Certainly my father never recovered from it, my mother didn't really either, and there's a strange aspect of the family pictures of my brother and the pictures of me at the age of four and five—they are indistinguishable, we are virtually twins, five years apart. And I think, at an unconscious level, of course, a nine-month-old child has much more sensitivity and understanding than we once thought, and I'm sure his death had an enormous impact on me, and I still have somewhat of a vague emotional attachment to this brother and still keep his pictures around.

MR. RASENBERGER: Really? Do you have any other siblings?

JUDGE SILBERMAN: Yes, a sister who was born three years after I was born.

MR. RASENBERGER: But your sense is that this traumatic event affected life in the family to some extent in some way?

JUDGE SILBERMAN: Enormously, enormously. When parents lose their first child in such a cruel and horrible fashion—a seventeen-year-old man who just got his license, was speeding and ran over my brother—when they suffer that, it has an enormous impact on them.

MR. RASENBERGER: Absolutely.

JUDGE SILBERMAN: And it must have had an enormous impact on me. The exact dimensions of which of course I'm not prepared to say.

MR. RASENBERGER: Right. Well now the other thing that happened that is sometimes traumatic is that your parents got divorced, as you said.

JUDGE SILBERMAN: That is correct.

MR. RASENBERGER: Did that make a difference to your life or your development in any particular way? Obviously before they were divorced there were—not obviously, but probably—there were tensions that were evident in the family, what can you say about that part of your childhood?

JUDGE SILBERMAN: Well that's rather strange because I have virtually no memory of my father. For whatever reasons, it was largely wiped out, and that would be up to a psychiatrist to figure out why. But I do remember there were tensions between my mother and my father, and I do recall that I must have assimilated my mother's sense of disappointment with my father. And I remember somewhat, on a barely conscious level, one element of disappointment may have been that he did not go into the service in World War II, when all of my mother's brothers and many of my cousins who are older than I am in the Silberman family, three of them were in the Eighth Air Force flying B-17s and my mother's brothers were in the service. My father did not go in the service, he was marginally too old. I think he was 36 or 37 when the War broke out, but I think my mother was disappointed that he didn't enlist and somehow I assimilated that.

MR. RASENBERGER: I do get the sense that your mother played a very important role in your life.

JUDGE SILBERMAN: My mother and my paternal grandfather, my father's father, and one uncle, who was a lawyer.

MR. RASENBERGER: Oh, is that perhaps where the seed of becoming a lawyer yourself was planted?

JUDGE SILBERMAN: Between my grandfather, Max Silberman, and my uncle,

Issac Hirsch. Those two, perhaps my mother as well, but those two, had an impact on my becoming a lawyer. My grandfather, Max Silberman, wanted me to go to Harvard Law School from the time I was five years old. I remember that. He was, as I told you, a very successful businessman, but he had a very high regard for lawyers, and two of his sons-in-law were lawyers—one of them a graduate of Harvard Law School, one of whom he had brought into Luria Brothers and ultimately became President of Luria Brothers. So my grandfather Max had very much the idea that I should be a lawyer. Why? I don't know. Because certainly none of the sons of his generation, sons of he or his brothers-in-law became professionals, they were all businessmen. But he very much wanted me to be a lawyer. And that's it. That had an impact on me, and my mother's brother, who was very badly crippled from polio, was a lawyer, and because he was so badly crippled, I think, he went to work as a lawyer in the Internal Revenue Service. He also was very close to me, and perhaps was a model that I had to be a lawyer.

MR. RASENBERGER: And with respect to your grandfather, it is nice to know that there are, were perhaps, some businessmen that thought lawyers were worth being, or having.

JUDGE SILBERMAN: Yes, that's true.

MR. RASENBERGER: That isn't always the case.

JUDGE SILBERMAN: Yes, it's somewhat ironic, because I did what I could to persuade my son not to go to law school.

MR. RASENBERGER: You did?

JUDGE SILBERMAN: Yes. And the other day he said to me, it was the best advice he ever got. He is now the CEO of Strayer Education, which, as you know, is the

company that owns Strayer University. Prior to that he was President of Cal Energy in Omaha. He's a very successful businessman.

MR. RASENBERGER: Why did you advise him not to become a lawyer?

JUDGE SILBERMAN: Because I thought it wouldn't be his highest and best use.

MR. RASENBERGER: Knowing his particular talents you mean?

JUDGE SILBERMAN: Well, I think he would have been a fine lawyer, but I've come to the view, as you have read in my articles, that one of the mistakes that the United States has made has been to encourage too much of its best talent into law as opposed to business. I thought he was a natural leader and would be happier in business and he has been.

MR. RASENBERGER: You were right about that.

JUDGE SILBERMAN: Yes. My older daughter, on the other hand, who recently took retirement from the Antitrust Division of the Justice Department to raise three boys, I persuaded to go into law, rather than taking a PhD in History, and she was very happy in it for a long time and may come back to it some day when the kids are grown up. I think, for women of her generation, law was a particularly attractive and useful profession and I thought she was very well suited to be a lawyer and a litigator—and she was very good.

MR. RASENBERGER: Less of a glass ceiling in the law?

JUDGE SILBERMAN: Well, yes, certainly that's true. For women, particularly women who want to have children, law is a much more attractive calling than business because you can take five or ten years off and come back much more easily than you could ever in business.

MR. RASENBERGER: Right. Well let me just go over your children. Your son

is how old now?

JUDGE SILBERMAN: Forty three.

MR. RASENBERGER: And he is head of Strayer University?

JUDGE SILBERMAN: He is actually President and CEO of Strayer Education.

MR. RASENBERGER: Strayer Education—

JUDGE SILBERMAN: Which owns Strayer University.

MR. RASENBERGER: Okay.

JUDGE SILBERMAN: This is a profit-making operation, it is not a non-profit. A group of investment bankers purchased Strayer Education about five months ago and recruited my son from Omaha, Nebraska, where he was President and Chief Operating Officer of Cal Energy Corporation, to come to run the company.

MR. RASENBERGER: I see, and then your next oldest is a daughter?

JUDGE SILBERMAN: Kate, Kate Balaban.

MR. RASENBERGER: And she is how old?

JUDGE SILBERMAN: She is forty one.

MR. RASENBERGER: And she is the one with three children?

JUDGE SILBERMAN: Yes. My son has four children.

MR. RASENBERGER: Oh! Okay, you've got quite a few grandchildren.

JUDGE SILBERMAN: Seven grandchildren.

MR. RASENBERGER: Okay.

JUDGE SILBERMAN: My son was in the Reagan and Bush Administrations in various positions, ending as Assistant Secretary of the Army for Manpower. He was, after

college, a navel officer for four years.

MR. RASENBERGER: Did he go to business school?

JUDGE SILBERMAN: He went to SAIS while he was at the Pentagon.

MR. RASENBERGER: Really?

JUDGE SILBERMAN: He took a master's degree from SAIS in International Economics.

MR. RASENBERGER: And then your third, third?

JUDGE SILBERMAN: The third child is a producer for MSNBC.

MR. RASENBERGER: What's her name?

JUDGE SILBERMAN: Ann. She's married to a fellow by the name of Nathaniel Otis, so her name is Ann Otis, or, as we call her, Annie Otis.

MR. RASENBERGER: Okay, and she is in Washington?

JUDGE SILBERMAN: She is. All three are, fortuitously for us, in Washington.

MR. RASENBERGER: That is fortuitous.

JUDGE SILBERMAN: And to show some political diversity, my son, is a Republican, my older daughter and her husband are Republicans, as is my son's wife. My younger daughter is a passionate liberal Democrat, and her husband Nathaniel Otis was in the Clinton Administration before he went to business school.

MR. RASENBERGER: [Laughter.] And they are treated with, I assume, the same respect as the Republicans?

JUDGE SILBERMAN: Yes, but a lot of amusement.

MR. RASENBERGER: I bet, yeah, I'm sure.

JUDGE SILBERMAN: And we feel he's redeemed to a certain extent because he went to business school.

MR. RASENBERGER: I'm sure it makes family gatherings more interesting maybe than otherwise they might be—okay, well back to your education, you went to public schools in Ventnor, I take it, until completing two years of high school and then went to prep school.

JUDGE SILBERMAN: Yes, I was doing not very well at all in public high school in Atlantic City. I went to Atlantic City High School for two years.

MR. RASENBERGER: I see.

JUDGE SILBERMAN: Ventnor is basically a suburb of Atlantic City. My grades were quite mediocre. My mother had me tested and concluded that she should send me off to prep school.

MR. RASENBERGER: You were an underachiever?

JUDGE SILBERMAN: Apparently a gross underachiever. My father had gone to Mercersburg Academy so, of course, that was out of the question, I couldn't go there. But my mother wanted me to go to Lawrenceville, and Lawrenceville accepted me, but on the condition that I drop back a year. I was young for my age and I certainly should have dropped back a year, but I was too stubborn and proud and wouldn't do that, so she found a prep school, also in New Jersey, called Croyden Hall Academy. I don't know who recommended it, but it was a little school up in Atlantic Highlands, New Jersey. It was a *de facto* Catholic school, but not *de jure*, but I think I was the only non-Catholic in the school. Twenty years ago it went out of existence. It was a very marginal place, but I did reasonably well.

MR. RASENBERGER: Well something happened to make you pay more attention, or work more closely to your potential, whatever it was that happened there.

JUDGE SILBERMAN: Right.

MR. RASENBERGER: Maybe just getting away from Ventnor or Atlantic City High School?

JUDGE SILBERMAN: I don't know what it was. My SATs went up dramatically between my junior year and senior year. I don't know what the devil happened, but certainly it was positive.

MR. RASENBERGER: Well, as usual, mother was right.

JUDGE SILBERMAN: Yes. She was pretty cold-blooded about it. She wasn't sure whether I was all that intelligent; she thought I was intelligent but she wasn't sure, she was hard-nosed about it so she had me tested first. Then when the tests came out, as they did, she decided she should do something to send me away to school. She thought I would be an academic someday because she thought I was much too impractical to ever operate in the world of affairs, although she thought I would probably go to law school. She assumed I would be an academic because she thought I was hopelessly impractical.

MR. RASENBERGER: [Laughter.] Well to some extent you actually have achieved that, right?

JUDGE SILBERMAN: [Laughter.] Yes, I suppose.

MR. RASENBERGER: Your mother wasn't totally wrong, she was a very major, strong person, it sounds to me like, in every respect.

JUDGE SILBERMAN: Very. Not without her own neurosis or neurotic behavior in some respects. She was a woman who eloped on her way to Cornell University, which was a grave mistake, because she had enormous intelligence and talent and had she gone through college, I think she really would have made something of herself at an early time. She was very much before her time in believing that women could do anything.

MR. RASENBERGER: Interesting. So there came a time when you finished Croyden with pretty good grades. You took SATs in those days? And you had—

JUDGE SILBERMAN: I think I was first in my class, so I was able to get into good colleges.

MR. RASENBERGER: And I take it that your choice was Dartmouth partly because it was further away, partly because they didn't require the mathematics.

JUDGE SILBERMAN: That is correct. The trustees of the prep school wanted me to go to Princeton, which they thought they could get me into. Princeton was attractive in one respect because they had a 150-pound football team, and I was dying to play football (I didn't know that Dartmouth didn't have it), but I was too skinny and light to play on a regular team. But I was terrified of math and Princeton required math. At Dartmouth you could satisfy the math requirement with a course called Math I, which was a logic course, and although I had never been bothered by mathematical reasoning, I have a terrible problem with numbers.

MR. RASENBERGER: That's interesting. So your math SATs would be quite different than your verbal ones?

JUDGE SILBERMAN: They were less, but actually I didn't do as badly on the SATs as I would do in a math class because they give you more of a structured question. My

math wasn't that bad on the SATs but I did have enormous problems dealing with numbers in a course.

MR. RASENBERGER: Interesting. You mentioned one other reason I just wanted to list: that you didn't apply to Harvard because you had already made up your mind to go to Harvard Law School.

JUDGE SILBERMAN: That is correct.

MR. RASENBERGER: This was in prep school?

JUDGE SILBERMAN: That's right. Well, I told you my grandfather put it in my head when I was only five- or six-years old.

MR. RASENBERGER: Right. Had you been to Dartmouth to look at the place before you decided on it?

JUDGE SILBERMAN: Yes, I think so. And Dartmouth almost has the paradigmatic image of what an American college should look like. And I did want to go to a more rural college because I had in mind a more urban law school.

MR. RASENBERGER: Right. Well how did it work at Dartmouth? Well let me ask you one other thing before that. Throughout your high school and prep school years you were interested in sports. I take it that was sort of a constant—

JUDGE SILBERMAN: Yes. Although I was hardly a recruited athlete for the colleges, I started on the prep school basketball team and baseball team. I never could hit all that well, and I wasn't a great basketball player, but I was a pretty good fielder and I love sports.

MR. RASENBERGER: So it wasn't totally books.

JUDGE SILBERMAN: Oh no, no, never.

MR. RASENBERGER: Or anything close to that.

JUDGE SILBERMAN: No, I don't think so. I was pretty fun loving too. As you probably noted, I was kicked out of college.

MR. RASENBERGER: Yes. I didn't know whether to ask you about that or not. Lets talk about Dartmouth. Did that particular semester of suspension have any lasting effect on you other than, I gather, you met your wife?

JUDGE SILBERMAN: Yes, I went to Harvard for two summers, so I ended up with seven semesters at Harvard, between the college and the law school, and seven semesters at Dartmouth. The first summer I met my wife at a dance on July 2, 1955.

MR. RASENBERGER: Very good. Can she remember that date also?

JUDGE SILBERMAN: She certainly can. I was introduced to her by three roommates of mine at Harvard, one at Harvard College, one at Dartmouth, and one at Yale, and after dancing with her once I went back to the three, I was 19, and said I was going to marry her.

MR. RASENBERGER: [Laughter.] That's a wonderful story.

JUDGE SILBERMAN: Is that in the State Department?

MR. RASENBERGER: No, that's not in the other one.

JUDGE SILBERMAN: And the one at Harvard was a Haitian, by the name of Jean-Claude Amie—a great tennis player I used to play with. Many, many years later when I was Special Envoy on the Mideast, the Secretary General of the United Nations called George Schultz, the Secretary of State, and asked whether the Undersecretary of the UN who specialized in Mideast affairs could come down to Washington to talk with me. George said of course. I was then a dollar-a-year man still at Morrison and Foerster and he came down to meet with me at the

Morrison and Foerster offices, walked down the hall, opened the door, and here he was, Jean-Claude Amie. And he said, you did marry her, didn't you?

MR. RASENBERGER: [Laughter.] That's a wonderful story. Over all, what do you want to say about the four years at Dartmouth in terms of what you got out of it, in terms of the people that had some influence on you? I did get a little out of the State Department study about Arthur Wilson, and I had a similar feeling about Arthur Wilson. John Adams, I think, was not there when I was at Dartmouth.

JUDGE SILBERMAN: No, no, John Adams must have been there when you were there.

MR. RASENBERGER: Well if he was, I missed him. He was a History Professor?

JUDGE SILBERMAN: Right.

MR. RASENBERGER: You were a History major.

JUDGE SILBERMAN: Yes. His name, it just came out recently, was originally Adamovic. It was John Adams who kindled in me the great interest in the Balkans.

MR. RASENBERGER: Yes, well in any case—

JUDGE SILBERMAN: Well, you know Dartmouth as well as I do.

MR. RASENBERGER: I know Dartmouth, but I'm about eight years before you, or seven years, or something like that. And I do remember certainly the same professors. You know Dartmouth had a reputation, which may have carried over into your era, of being not anti-intellectual, but certainly sort of a country club. Intellectual matters were there but a gentleman's "C" was perfectly okay. Did you have that sense about the school?

JUDGE SILBERMAN: I did. I did not like the anti-intellectualism of Dartmouth, and what I found a little frustrating was that the intellectuals who were there tended not to be very fun loving, and the fun loving people tended not to be very intellectual, and so—

MR. RASENBERGER: They couldn't be both.

JUDGE SILBERMAN: That's right. Now, the ones who were somewhat anti-intellectual turned out to be, in many respects, pretty smart people who were covertly serious about their work, but never wanted to discuss intellectual matters. And I found that a little frustrating. Although this is probably irrelevant, you would understand it, the fraternity situation for me was an interesting one. I did not approve of the all-Jewish fraternities, and so I wanted nothing to do with them. I ended up a social member of Sigma Chi, which was a peculiar—

**[END TAPE 1-Side A; START TAPE 1- Side B]**

JUDGE SILBERMAN: —because I was not given one of the twenty-two rushes, or whatever they were. I was very disappointed, but several of the upperclassmen came to me when I came back after being kicked out for that semester and invited me to become a social member, because they couldn't do more than twenty-two. So I was *de facto* a member of the Sigma Chi fraternity for all other purposes—I just didn't go to the secret meetings.

MR. RASENBERGER: I see, you had the requisite social skills I take it for a fraternity life.

SILBERMAN: I don't know, but I enjoyed it very much and they were a number of good friends. But I always felt a little peculiar. I think I may have been the only person in my class who was a social member of a fraternity but not a full member. It was rather strange.

MR. RASENBERGER: Yes. Did you have to take Great Issues when you were

at Dartmouth?

JUDGE SILBERMAN: Yes, I did. I thought it was a very important course, which I enjoyed very much.

MR. RASENBERGER: Yes, I'm glad that you said that because I was an instructor for a year in Great Issues. And how did you do in terms of academic achievement, not that it really matters at this stage of your life, but I mean were you turned on academically in any sense, by History? Or everything?

JUDGE SILBERMAN: Yes, yes, by much of what I had at Dartmouth. I didn't particularly like languages. In fact, I am terrible at languages and getting through French was a bad problem. I ended up passing the French exam only because the passage that they gave us to translate was one that I had worked for two months translating in prep school. I was very lucky, and I think I got a D in that course; it was the lowest grade I ever had but just enough to pass. I did well at Dartmouth, but not spectacularly. I finished, according to the FBI reports, 125<sup>th</sup> in my class. But I did graduate with distinction in my major because I did very well on the comprehensive exams. I typically would not study very much until the end of the course and then read the book the night before the exam, and did well enough. Actually my grades from my one semester at Harvard were slightly better than my grades at Dartmouth.

MR. RASENBERGER: Using the same study techniques?

JUDGE SILBERMAN: Well the same study techniques became a problem when I got into law school. I will tell you about that later, but I used to rely heavily on memory, of what I heard in class, and then just read the book the night before. But, as I said, I graduated 125<sup>th</sup> in my class, and only got into Harvard Law School because I did very well on the LSATs.

MR. RASENBERGER: Oh really.

JUDGE SILBERMAN: Well 125<sup>th</sup> was respectable in a class of eight hundred and fifty, but it wasn't typical Harvard Law School material. Yet I was accepted to Harvard, Yale, Columbia, and Penn, and that was surely based on my LSATs.

MR. RASENBERGER: Which were very strong, I bet.

JUDGE SILBERMAN: Yes. But it's interesting that you ask about Dartmouth because at the end of my freshman year I had a friend at Harvard who played football at Harvard as I recall, and we got together one weekend when I was seriously considering transferring to Harvard, and he was seriously considering transferring to Dartmouth. We talked each other out of it.

MR. RASENBERGER: That's a wonderful story, a great story. And I gather your son and daughter went to Dartmouth.

JUDGE SILBERMAN: They did. And my daughter-in-law's father went to Dartmouth.

MR. RASENBERGER: Your daughter-in-law's father—

JUDGE SILBERMAN: Oh, I forgot, my son and daughter, my daughter-in-law, and my daughter-in-law's father.

MR. RASENBERGER: Should we spend just a minute comparing your views about Dartmouth as of today with then, or maybe college education generally then and now. There have been changes obviously. I don't know whether you have reflected on them or have anything to say.

JUDGE SILBERMAN: Well, as you know, I have been very critical of

Dartmouth and the lead academic institutions generally, because I think they have become incredibly intolerant of any kind of conservative views, astonishingly intolerant. And I worry a good deal about that. I was briefly on the Alumni Council for Dartmouth College after I became a judge, and it was only briefly because I resigned after the first meeting. I proposed that we have an Alumni-Faculty Committee to encourage diverse philosophic and political views at Dartmouth, which was the kind of diversity I thought important, and to encourage toleration of diverse views. This was shortly after Jim Freedman became President, and he made clear at that meeting that he was opposed to any such group. I think the subtext was that there was a good deal of hostility to the *Dartmouth Review*, and he didn't want any tolerance toward diverse political views. I was truly astonished—because of his opposition my proposal was defeated by a close vote in the Alumni Council. I realized afterwards that the colleges had become such political institutions that it was inappropriate for a judge to be part of them, but I was also heartsick that Dartmouth, as well as other institutions that I've been associated with, have become so incredibly intolerant at what is half of the political views in the United States.

MR. RASENBERGER: Sort of an aspect of political correctness, or maybe political correctness is an aspect of it, I suppose.

JUDGE SILBERMAN: No it is political correctness, that's what I'm talking about, the lack of toleration of anything that remotely resembles conservative views. It may well be that the key to that is affirmative action, which you may know I had a great deal to do with the invention of here in government.

MR. RASENBERGER: No, I didn't know that. I want to get into that.

JUDGE SILBERMAN: Surely I'll go back into that when we get to the

government part.

MR. RASENBERGER: Okay, right.

JUDGE SILBERMAN: But the political correctness movement is, I think, generated in no small part to protect the affirmative action policies because the colleges do not want open discussion of that subject.

MR. RASENBERGER: Yeah, I hear what you are saying.

JUDGE SILBERMAN: In any event, I have been very disappointed in Dartmouth. In some respects it's better because there is much more of an intellectualism at Dartmouth than was true in our day, but this intolerance I find horrifying.

MR. RASENBERGER: Do you think it may have something to do with the fact that while faculties have always been somewhat—or not always, but for a long time—been more liberal than the student bodies? We now have senior faculties who are basically Vietnam generation, baby boomers, or whatever, and are much more polarized by spending a youth in that environment. But that possibly may pass with another generation.

JUDGE SILBERMAN: I would say two things in response to that. The first point is, it is not true that historically academics have been to the left of the student body or the public as a whole. As a matter of fact, the faculty of Ivy League colleges and universities back in the '20s was probably more conservative than the population as a whole. One should never forget that when the Nazis were trying to come to power in Germany one of the first groups they were able to gain a foothold in was the German universities, the academics. So I'm not sure that general proposition is correct. It is certainly true even when we were at Dartmouth the faculty was generally liberal, but I don't think they were intolerant, and I don't think it was impossible

for a conservative to get on the Dartmouth faculty. I'm thinking, for instance, of Vince, the fellow who was a Harvard Law School graduate and who taught political science for many years?

MR. RASENBERGER: I think I know who you mean, but I can't recall his name.

JUDGE SILBERMAN: He taught my kids and I've forgotten his name. He was a conservative.

MR. RASENBERGER: Starzinger?

JUDGE SILBERMAN: Yes, Vince Starzinger. But today, someone with my philosophic views, who is a graduate of Dartmouth and a PhD at Harvard with the highest grades anybody had in twenty years, could not get on the Dartmouth faculty. And that is very troubling. Now, part of the reason is the point that you made about the Vietnam generation. Those young people who went on to the Dartmouth faculty or the Harvard Law School faculties believed everything was politics; therefore, it was appropriate to try to prevent anybody whose political views were contrary to theirs from even getting on the faculty, and that's what's so troubling to me. I remember the summer before I entered Dartmouth, Eisenhower gave that wonderful speech against McCarthy: please don't join the book burners.

MR. RASENBERGER: Right, at Dartmouth.

JUDGE SILBERMAN: At Dartmouth. And I despised McCarthy for his intolerance of political views on the left, and it was conservatives who eventually overthrew him on the right. I have been sorely troubled that liberals in the United States haven't taken up the cudgels to prevent the universities from becoming so intolerant against conservatives.

MR. RASENBERGER: Okay, well let's go on to Harvard Law School where we have sort of a parallel in terms of the issue we just talked about. But let's first talk about your

own development at Harvard Law School. I gather it was not only a place that you had always pointed towards, but you were not disappointed in when you got there, in terms of what it offered you, and what you were able to do with what it offered?

JUDGE SILBERMAN: I loved Harvard Law School. I loved the legal education, and I loved the atmosphere of the law school, and I really liked the people that I was with enormously. I was able to go back and teach a course in Administrative Law in '98, which was the 40th anniversary of the year that I entered, and it was a particular thrill. It was logistically difficult to get up and back—so one time was enough—but I really got an enormous kick out of it. The first year my grades were rather ordinary because I had assumed that if I just went to class and took notes, which I hadn't done through college, that I would be so far ahead of how much work I had done in college that I would be all right. The problem was that I didn't take very good notes, I never had taken notes before, and I was relying on my memory, which had worked always in college. But Harvard changed the rules because we didn't get exams until the end of the year, and I found my memory wasn't as good for a whole year as it had been for a semester at Dartmouth. The second and third year I did much better after I learned how to—

MR. RASENBERGER: Did you like Socratic teaching?

JUDGE SILBERMAN: I did, and I use the Socratic method at Georgetown. I've taught at Georgetown, NYU, and Harvard and used the Socratic method the whole time in Administrative Law. Next year I'll be teaching Labor Law as well at Georgetown. And you might be interested in the student evaluations that I typically get and that I got this year. All but one of the students heartily approved the Socratic method. Again and again I regret that more professors don't use it.

MR. RASENBERGER: That's interesting, I mean there was a period, I think, when students thought that it was abusive of them to subject them to Socratic dialogue.

JUDGE SILBERMAN: Precisely.

MR. RASENBERGER: So either you do it differently or the students are changing in terms of some generational thing.

JUDGE SILBERMAN: Could be. I had 80 some students, and there must be a certain self-selection process—that people that don't want the Socratic method don't take my class. A number of them said in their evaluations that they were afraid of the Socratic method, but they found it to be enormously useful and helpful to them.

MR. RASENBERGER: What do you think it does for a lawyer that teaching outside the Socratic methodology doesn't do?

JUDGE SILBERMAN: I don't think a lawyer learns properly, analytically, without a Socratic method of one kind or another.

MR. RASENBERGER: You mean the give-and-take of it? Is it learning the give-and-take that law practice involves, or is the give-and-take something that is the only way you can learn?

JUDGE SILBERMAN: You force a motive analysis which lawyers need to employ. The oral give-and-take is enormously useful for litigators—for all kinds of lawyers I suppose—but indispensable to litigators. More importantly, the Socratic method hones the analytical skills in ways in which a lecture could never accomplish.

MR. RASENBERGER: Yeah, point well taken. Did you have any particular teachers at Harvard Law School that you thought were influential, effective, particularly

memorable?

JUDGE SILBERMAN: Funny, Merrick Garland was just asking me that question this morning, yes. Henry Hart and Al Sacks, who taught the Federal Courts and Legal Process, were brilliant teachers, as was Louie Jaffe, who taught Administrative Law. Those were the ones that I remember as being absolutely outstanding.

MR. RASENBERGER: It wasn't the courses, it was the teachers that—

JUDGE SILBERMAN: It was both, I think. I loved those courses, too, but those teachers were absolutely wonderful.

MR. RASENBERGER: Did you discover anything about yourself in terms of either writing or oral skills in law school that you hadn't known about? I gather you were able to develop yourself in both areas, but was anything particularly surprising to you in terms of the product that came out of law school compared to the one that went in?

JUDGE SILBERMAN: The truth of the matter is that I don't think I really ever learned to write until I was Ambassador to Yugoslavia.

MR. RASENBERGER: Really?

JUDGE SILBERMAN: Well, to write well. Oh, I wrote briefs as a practicing lawyer, but I think I didn't really learn to write as well as I think I do now until I was writing cables all the time. Then, when I left government and went to AEI, I started writing articles and taught myself to write better than I had earlier.

MR. RASENBERGER: What do you mean about writing well? I mean how can you—

JUDGE SILBERMAN: I'm not sure I can.

MR. RASENBERGER: Communicating more effectively?

JUDGE SILBERMAN: I think I became much more conscious of writing style and structure. I always could write—as you can see from my background, I have written a lot of articles, including newspaper articles, and so forth—and I’m told I write rather clearly as a judge. But I didn’t really learn to write until I started writing cables as Ambassador. I think when I wrote briefs I was very conscious of legal reasoning but not as conscious about expressing myself in the best way possible. Law school doesn’t teach you how to write, as you know.

MR. RASENBERGER: But suppose you were on *Law Review*. Were you on *Law Review*?

JUDGE SILBERMAN: No, I was not. I didn’t have good enough grades. Nowadays, probably even in my day, *Law Review* doesn’t teach you how to write well either. In fact, *Law Reviews* generally teach young men and women how to write badly.

MR. RASENBERGER: You think so?

JUDGE SILBERMAN: Yes.

MR. RASENBERGER: Because of the emphasis on being concise and footnoting.

JUDGE SILBERMAN: No, they are not concise—they are turgid. They are not concise. They are much too verbose. Dick Posner has written a law review article about judges’ writing, and he talks about formalistic writing, which is the euphemism for clerks’ drafts that judges don’t write on their own. That’s the way many law review articles come out, and they are really just awful.

MR. RASENBERGER: I agree with that. I was thinking of the case notes and

things like that. I remember learning how to hone down my thinking in my writing, writing case notes.

JUDGE SILBERMAN: Yes, that's true. That teaches you how to think properly, but not necessarily how to write well.

MR. RASENBERGER: Right. Well, to write well first you have to be able to think well.

JUDGE SILBERMAN: No, that is correct. But even after learning how to think properly, you should develop your own style and be a little less turgid, formal, and almost constipated in a way, as lawyers often write.

MR. RASENBERGER: As a judge I'm sure you see both kinds.

JUDGE SILBERMAN: Yes, it's amazing what a difference there is in skills and writing. Oral expression, I think I've always instinctively known how to do that, and did very well in law school. As a matter of fact, one of my classmates said there was a private bet that I might be first in my class. I didn't even come remotely close to it, but I did much better in class than on exams, in the first year anyway, for a number of reasons.

MR. RASENBERGER: Well the give-and-take of Socratic dialogue is something I think that seems natural to you.

JUDGE SILBERMAN: I think it was natural, and I think I usually understood the thrust of where the professors were going.

MR. RASENBERGER: Let me ask about the way you write, while we are on the subject. Are you a one-draft person, or are you a rewriter, or are you something in between that?

JUDGE SILBERMAN: As a judge, I have been pretty close to one draft. What I

typically do is get a draft from my law clerk, then in 95% of the situations I will sit down and rewrite the opinion. Perhaps I'll edit the statement of the facts, but I will rewrite the analysis, then when I'm through with that I will give that draft back to the law clerk for editing, and arguing. Then I'll get back those edits to my draft and I will make some changes, but I would rarely rewrite the whole thing again.

MR. RASENBERGER: Right, right. Well sometimes, I know in my case, I don't know what I think until I see what I have written. Does that ever happen to you?

JUDGE SILBERMAN: Absolutely. Absolutely. Which is why I rewrite even when I get a draft (I may be getting lazier now as a senior judge). For most of the time as an active judge, if I got a draft that looked good to me I'd sweat, because I knew that if I didn't rewrite it I wouldn't really think it through myself. And so I would usually worry about it for a couple of days and then say, no, I'd better rewrite it. And, of course, the structure usually came out entirely different and occasionally the result was different because it wouldn't write properly. I think that's a big difference between federal judges who write their own opinions, or at least rewrite an opinion from a draft, and those who don't. There are exceptions. Pat Wald, for instance, can write beautifully, her speeches were wonderful, but, she would be the first to say, she didn't very often write her own opinions, although she had a great deal of control over the opinions nevertheless. And there are some judges who do. I couldn't do that without rewriting it, because I wouldn't be able to think it through.

MR. RASENBERGER: Right. I can personally relate to that very much. Before we leave Harvard Law School let's revisit it in terms of the modern, current-day Harvard Law School. Harvard has gone through some traumas with critical legal studies since you were a

student there. What's your take on all of that, what it did or didn't do to the school, the students, and where we are today in that area?

JUDGE SILBERMAN: I thought when I graduated from Harvard Law School it was indisputably the best law school in the country. One of the reasons I chose it over Yale was I thought its pedagogical methodology was better, and it was the most rigorously analytical place in the world, or in the United States. I think they've unfortunately lost a good bit of the comparative advantage they had, in part because of the influence of critical legal studies, which, I think, is intellectual garbage, for the most part. As I have written, it's basically Marxism with usually just a different choice of the oppressed class and the bourgeois, in other words, race or gender or so forth. It's all a Marxist construct, in which there is an oppressed group and oppressors. It's essentially simplistic, and not very intellectual or analytical, and certainly not very legal. One of the things that is so sad about the law schools is very few judges read law reviews anymore. They are useless. Chicago is probably a little better than anywhere else, but I haven't read a *Harvard Law Review* article in years. So there are some good professors, but the faculty at Harvard Law School today is nowhere near as strong analytically and intellectually as it was when I was there. That's true of most law schools.

MR. RASENBERGER: Think so?

JUDGE SILBERMAN: Yes. Chicago is probably better. I think they have a better faculty, and Yale is not bad.

MR. RASENBERGER: Do you think that's because of certain bias in the selection of teachers? I mean certainly there are those that are getting out of law school with academic teaching interests who are, maybe, I don't know, totally oriented in that direction.

There must be qualified people who want to teach who have sort of a balanced view of how you handle—

JUDGE SILBERMAN: Well, you have no idea how discriminatory the law schools are today.

MR. RASENBERGER: Really?

JUDGE SILBERMAN: Yes. A number of my clerks are teaching, but it's no accident that the ones who tend to get jobs most easily are either women or Asians. And it is very hard for a white male with a traditional view of law to get on the faculty of Harvard, Yale, wherever. So it's really very problematic in that respect, and many of the ones who do get on the faculty are teaching utter crap. But fashionably politically correct crap. So that's a very discouraging process. I hoped Bob Clark, when he was put in the position of dean by Derek Bok, would lead a counterrevolution. He's a traditionalist, not necessarily a conservative, but a traditionalist. But he has been hamstrung by a faculty which is more than a third either critical legal studies adherents or fellow travelers, and then they become a blocking force preventing traditional young people from getting on the faculty. Also, as you probably know, many law schools actually have a prejudice against young people who have practiced law.

MR. RASENBERGER: Yes. It's incredible, not all law schools, but I mean we have had some—

JUDGE SILBERMAN: The elite ones. They would much prefer people coming directly off clerkships on this court or the Supreme Court, and that's it.

MR. RASENBERGER: Yeah, they haven't been poisoned by association.

JUDGE SILBERMAN: The real world.

MR. RASENBERGER: The real world, that's right. Now let me just give you a proposition to see if you agree with it: critical legal studies is sort of an offshoot of deconstructionism in a way.

JUDGE SILBERMAN: That is correct.

MR. RASENBERGER: However it has taken a big political turn. Now deconstructionism is a theory, if I am understanding correctly, that you have to, when you look at history, you have to look at who wrote it, the context in which it was written, and it isn't all necessarily like it was because the writer adds his own biases, conscious or unconscious, to it. Do you think there's any merit at all in that?

JUDGE SILBERMAN: If that's all deconstruction meant, I would be in favor of it.

MR. RASENBERGER: You would be okay?

JUDGE SILBERMAN: That's not what it means, usually. Again, it's got a strong Marxist subtext.

MR. RASENBERGER: Yes, well that's what I'm trying to discern. It seems to me a concept that might have had merit had it not been politicized, has—

JUDGE SILBERMAN: But I think, to be truthful, Ray, it was always politicized. That was its whole purpose.

MR. RASENBERGER: I see. It could never winnow out just the non-political part of it.

JUDGE SILBERMAN: No. Of course not. And you never saw any critical legal studies people who were conservatives, or even traditionalists. They all had a quasi-Marxist or

Marxist agenda.

MR. RASENBERGER: Yes. It's just pretty hard to understand in this day and age but—

JUDGE SILBERMAN: Oh no, but Pat Moynihan once—

**[END TAPE 1 - SIDE B; START TAPE II - Side A]**

MR. RASENBERGER: We were talking about Pat Moynihan.

JUDGE SILBERMAN: I should recall he once said that with the decline of the Soviet Empire, the only Marxists left were in the American Ivy League schools.

MR. RASENBERGER: [Laughter.] Truly incredible when you think about it. Let me ask you a little about your contacts or lack thereof with economics, either economics as a separate discipline, or economics as it interacts with legal thinking. I remember reading in your State Department interview how you said you had studiously avoided economics as a subject of study in school. To your regret, you eventually had to learn it. Can you talk a little about that subject?

JUDGE SILBERMAN: Sure, sure, that was part and parcel of my math or my arithmetic anxiety. Anything with numbers I assiduously avoided. I remember I was shocked at Harvard when I got an "A" in accounting, I couldn't believe it. In the middle of the exam, the professor had a little formula or computation, and when I got to it, I panicked and assumed the conclusion and went on. I think the professor saw me in the hall and he laughed and said I do that every year to try to catch the ones with math anxiety, they always just assume the arithmetic answer, it doesn't make any difference how you decide that. I was scared of anything with numbers, so I stayed away from economics. Partly as a result of that, I required my children to

take micro-economics in college, and Spanish, the only two things that I required. My little one refused to take micro-economics. She has much worse math anxiety than I do. But, in any event, I really began to learn economics from George Shultz and Jeff Moore, who was head of the Bureau of Labor Statistics, when I was Solicitor of Labor.

MR. RASENBERGER: George Schultz was Secretary then?

JUDGE SILBERMAN: He was Secretary of Labor and a labor economist. Jeff Moore was a brilliant economist specializing in the business cycle who was the head of the BLS. When I was Solicitor and then Undersecretary of Labor, I became more and more interested in economics and began to teach myself more. Some years later, when I was Executive Vice President of Crocker Bank, I had the economics department reporting to me at the end, which gave me a great deal of satisfaction. And I found I loved economics and understood it and still can't count and still can't do any computations, but I don't usually need to. Doug Ginsburg, who was very much a product of the law and economics school, once said to me that I understand economics about as well as any judge my age. What he meant by that was that those of us that were trained in law school in the '50s and early '60s were really not trained in economic thinking the way that law students are today, which was a big gap. Derek Bok taught me antitrust; though he had a master's degree in economics he really didn't understand economics the way one should to teach that course and we were not taught antitrust law with sufficient attention to economics. We lost out. He was the leading securities lawyer in the country but he didn't understand economics and it didn't impregnate his course.

MR. RASENBERGER: When you say economics are you talking about Chicago?

JUDGE SILBERMAN: Micro-economics and price-theory. They really didn't

understand price-theory, so they didn't talk about it enough. Of course it was Chicago that pioneered the understanding of micro-economics and introduced it into law.

MR. RASENBERGER: Do you think we are sort of, in terms of that kind of economics, do you think that we are at the end of history so to speak there? Do you think that, I mean, in other words, that it is so generally accepted? And certainly in our lifetime Chicago thinking has been.

JUDGE SILBERMAN: I think it now dominates. I don't think there is any real challenge to Chicago school economics. I find occasionally, however, I am in disagreement with my law and economics conservative colleagues because, although I hope I understand economics, I do not accept the notion that the Constitution includes a reference to Adam Smith.

MR. RASENBERGER: Right. What about cost-benefit analysis as a way of— ?

JUDGE SILBERMAN: Same thing. Although I believe, as a matter of policy, in cost-benefit analysis, often we deal with statutes which don't permit it, or don't call for it, and I'm prepared to disagree with my colleagues who sometimes feel an imperative to look for it. I've disagreed in writing on certain cases—which you may or may not be aware of.

MR. RASENBERGER: So economics doesn't trump the statute?

JUDGE SILBERMAN: No, it never trumps the law. There are times when economics can legitimately be brought to bear in analysis of a legal question, and it's always appropriate to understand the economics, but it is sometimes necessary to reject sound economics in favor of a legal structure, a legal opinion, or statutes which are anti-economic. In fact, most statutes passed in the United States for the last thirty or forty years have been passed by Congressmen and Senators who were trying to reject the rules of economics. Perhaps

ineffectively.

MR. RASENBERGER: Or create their own?

JUDGE SILBERMAN: Yes.

MR. RASENBERGER: Or whatever.

JUDGE SILBERMAN: Yes.

MR. RASENBERGER: Okay. Before we totally leave this subject of teaching, I didn't find anywhere in the State Department interview any sort of comprehensive understanding of what your teaching career has been like. You mentioned earlier going up to Harvard for a course. I know you teach a course at Georgetown. Can we just get into the record here the various contacts with the teaching profession, as a member of it, over your career?

JUDGE SILBERMAN: Certainly. I first taught a course, college level in Hawaii, back in the early '60s; I think it was on labor law. I started teaching at Georgetown about a year after I became a judge. I originally had a co-teacher who was an ex-partner of mine at Morrison and Foerster, and who came up with the idea of teaching a course. Bob Pitofsky, who was then Dean of Georgetown, wanted us to teach a course in administrative law, and I did it for a number of years at Georgetown with a co-teacher, but then eventually six or seven years into it decided I'd like to do it by myself. I had such partners as Paul Cappuccio, who is now General Counsel of AOL, and Sally Katzen, who taught it for two years with me. Then, as I said, I started teaching it by myself and the last perhaps ten years I've taught it by myself at Georgetown, but then I was beguiled away by NYU—which offered me a little more money—and I went up there and taught for two years.

MR. RASENBERGER: Good. Administrative law?

JUDGE SILBERMAN: Yes, same thing. And then Harvard asked me to come up one year, so I went up there. And now I have come back to Georgetown where I have been teaching the last three years; I guess overall I have taught about twelve years at Georgetown. Now that I am a senior judge I'm not limited in the amount I can teach. Next year I'm teaching administrative law in the fall and then labor law in the spring.

MR. RASENBERGER: Had you been teaching labor law only when you first started in Hawaii?

JUDGE SILBERMAN: Remember, I started out as a labor lawyer. I have always been fascinated by it, and I have had a number of labor law cases.

MR. RASENBERGER: So it was no problem getting—

JUDGE SILBERMAN: Well, I don't know, it's not going to happen until next spring.

MR. RASENBERGER: Why administrative law?

JUDGE SILBERMAN: Why was I asked to teach that in the first place?

MR. RASENBERGER: And why did you agree to do it?

JUDGE SILBERMAN: First of all, I always loved it. I actually was an administrative lawyer. First as a labor lawyer, but then in general administrative law and practice. Secondly, if one looks at an administrative law casebook one finds almost the docket of the D.C. Circuit.

MR. RASENBERGER: Yes, that is true. Do you have a particular point of view that underlies or runs through your administrative law teaching?

JUDGE SILBERMAN: I hope not. I try desperately not to impress students with

my view and generally the critiques or evaluations come back that I have been respectful of different views. Often I will teach against the class; so if I see the class is mostly conservative I'll shift left or *vice versa*—to try to get a dialogue going. I think it's illegitimate for law professors to try to impress their own philosophy upon students; on the other hand, I always acknowledge what I am at the beginning and tell them to take it with a grain of salt. But, I try very hard not to impose my views.

MR. RASENBERGER: Well there's obviously something about teaching that you like.

JUDGE SILBERMAN: Oh, I love it, yes.

MR. RASENBERGER: It's the interaction with the students? You get the stimulation from being a judge to some extent, I guess, but it's different isn't it, in a classroom than a courtroom?

JUDGE SILBERMAN: My students would come to court to watch me, and would say I'm much nicer to the students than I am to the lawyers.

MR. RASENBERGER: Well they're not being paid as well, so that's fair enough. Going back to your private practice, let me just review that. You first went with a firm in Hawaii out of law school.

JUDGE SILBERMAN: Right. I was going to clerk with a federal district judge. Derek Bok had arranged the clerkship. The judge died two weeks before I was to arrive. I had two children and an understanding that I would come to a Washington firm the following year. That firm has since merged two different ways, and I think it did antitrust generally. I was interested in both antitrust and labor law. The judge died and then Derek found me in the

business school library where I was working on a paper, and asked me whether I would be interested in going out to Hawaii, at least for a year. I said, Derek, I have been to Europe, I have never been west of Cincinnati. He had been out there for a couple of years practicing for the Defense Department, and he said, you will love Hawaii. And there is a firm out there that does basically all the management labor law for the state, and they are really good, and I think you would like it. So I interviewed them and they interviewed me and they gave me an offer and we went out there in 1961, two years after Hawaii became a state, which was a very exciting time to go there. I did very well. I became a partner in three years and a name partner in four. I really had a wonderful time and a wonderful practice, but I sort of always regretted that I hadn't worked for the government. I graduated from law school in '61 and your party was in power and I wasn't so anxious to go into the government. But I always felt, as Derek had once said, that if you are going to practice labor law you have to spend some time in the appellate section of the NLRB, where you do court of appeals arguments. At the bar convention in 1967 I had Arnold Ordman and Steve Gordon, the General Counsel and Deputy General Counsel of the NLRB, to dinner. I drank too much, they drank too much, and they said, you know, you've argued a couple of cases against us and you have won in the Ninth Circuit. What would you think about coming back and arguing cases for us? I said, oh my God. Why in the world? Well, you know, we are under investigation by Sam Ervin's committee for being too pro-union and we would love to have somebody, a Republican, a partner in a management firm, we would like to have somebody there who would give us a little protective coloration. And I loved appellate work. So I thought, why not? If I don't do something like this now, when can I do it? I talked to my wife, who loved Hawaii, but she said, fine, let's do it. We moved back and she cried for six months, not believing

what she had given up.

MR. RASENBERGER: When you moved back from Hawaii?

JUDGE SILBERMAN: Yes. She couldn't believe I left the partnership and went as a GS-13 or 14 careerist at the NLRB to argue appellate cases. I didn't think I would do it forever—although I had some interesting cases, I found it a little stultifying. The government legal practice was nowhere near as interesting as I thought it would be, in part because these cases just sort of came to me, I didn't have anything to do with the development of the case down below. I loved appellate work, but I loved it better when I was sort of constructing the case from the beginning. I found it sort of boring, and after about a year I was probably ready to go back to Hawaii when fortuitously the Administration shifted. Nixon got elected, and I was notorious around the NLRB because I was the only one wearing a Nixon button. And then all of a sudden I became a desirable commodity because when you are staffing a labor department in a Republican Administration, you want people who aren't objectionable in the AFL-CIO, and here I was, a Republican, a partner in a management firm, but I had taken a year's sabbatical as a neutral. So before I knew it, to my astonishment, I was offered the post of Solicitor of Labor. I was hoping I would get a job as a special assistant to somebody, or maybe deputy, but I had the advantage of looking ten years older than I was, and George Schultz offered me the job as Solicitor.

MR. RASENBERGER: Did you somehow know you were going to end up in Washington one way or another? Or had you not ever—

JUDGE SILBERMAN: No, I loved Hawaii. There were some reasons why it was fortuitous for me to take some time off from the firm because first, two of the partners were sort of fighting, and there was a bit of a squeeze and one of the older partners was being forced out. I

knew if I left there would be enough work for him, and he was the guy that brought me out there and I didn't want to be there when he was forced out, so there was a personal reason to do it. I also always grew up thinking of government. Dean Acheson had always been sort of a hero of mine, and I felt that I needed to spend some time working for the government. I was very impractical, as my mother suspected, so when my income dropped as dramatically as it did, my wife felt the brunt and I didn't.

MR. RASENBERGER: Well fortunately it wasn't forever. There is a policy element to the Washington practice and I wondered whether that had any conscious or unconscious drawing power for you? I mean, we are practicing law—

JUDGE SILBERMAN: Labor law is the same whether you are practicing in Hawaii, or New York, or Washington. It's very national in its impact, it's the same. After I left the government, I went to Steptoe and Johnson for a year between Labor and Justice, and then back briefly at Dewey Ballantine, and then with Morrison and Foerster. Then I practiced much more in the Washington environment—yes, that's certainly true. But I don't think I was drawn into that practice originally.

MR. RASENBERGER: No, but that's true. Labor is a national practice, except maybe Railway Labor Act.

JUDGE SILBERMAN: Yes, that's right. But, when I left the Labor Department and went to Steptoe and Johnson, I became ambivalent about practicing labor law because I had been a neutral as Solicitor and Undersecretary of Labor and I felt awkward. I didn't want to just go back as a management lawyer, and I gradually moved out of labor into other things, and then, bang, I was back in government.

MR. RASENBERGER: Right.

**[END TAPE II - Side A only - END OF 6-26-01 Interview]**