

MR. RASENBERGER: This is February 4, 2008, and we are resuming the oral history of Judge Silberman, notably the Addendum to it regarding his activity since our last discussions in 2002. And I wanted to ask you, Judge, whether you have any comments on the reactions to your appointment to the Commission. I don't think I asked you that the last time we were together.

JUDGE SILBERMAN: No, I don't think you did. Well, I was rather surprised that the day I was selected, the *Los Angeles Times* came out with a rather negative story based in large part on a book by David Brock. Actually, that is not adequate. It was based on a press release, or a white paper, that the People for American Way sent to newspapers all across the country criticizing me, and their white paper was drawn from the David Brock book, plus a slight rehash of an accusation that I referred to in my earlier sessions with you, and that was my involvement, or non-involvement as the case may be, with the fantastic October Surprise story. So, I should like to deal with both of those now. What actually happened is, I believe the day after the *Los Angeles Times* story appeared, the minority leader of the Senate, Harry Reid, and his – I think it was Senator Conrad, who had a position in the Democratic leadership – strongly criticized my appointment as a partisan and referred to the Brock book and the matter that was covered in the October Surprise investigation.

MR. RASENBERGER: What was the name of the Brock book, if you remember?

JUDGE SILBERMAN: *Blinded by the Right*. I have written a response to the Brock book. It is on Michael Barone's blog, but I will give you a copy and I would like it to be incorporated within this.

MR. RASENBERGER: Done.

JUDGE SILBERMAN: The Brock book was a rather fantastic tissue of fantasies and lies. But I will get to that in a moment. In fact, let me stop for a second while I get a copy of that. I was rather shocked by the *Los Angeles Times* story and Harry Reid's criticism. It was quite unfair that the *Los Angeles Times* wrote the story without my response, although I said I would get back to them the next day. It turned out that they wouldn't wait. As it was confessed to me later by one of the reporters, they wouldn't wait until the next day because they had already arranged with Harry Reid that they were going to go with the story, and then Reid was going to criticize me or attack my appointment based on the story, so it was all on schedule. To their credit, the next day they wrote my response, which I think largely demolished the story – not totally, but largely demolished the story – but they didn't print one thing which would have totally demolished the story. Take a step back. Why did the People for American Way send that paper to all the newspapers? Or to put it – why did they commission a study of me done by Ron Ostrow, who is a retired *Los Angeles Times* reporter. It was based on the David

Brock book, and why would the People for American Way levy an attack on then a sitting senior judge, hardly in a position to cause any trouble for the People for American Way. Well, it turns out that the People for American Way were quite annoyed with me – furious at me – because I had spoken out against judges answering questions in Senate confirmation proceedings, which probed into doctrine – judicial doctrine. It was often said by senators they couldn't ask a nominee how he or she would decide a particular case. On the other hand, not surprisingly, senators would push hard to try to get an indication from nominees as to how they would decide individual cases by probing into doctrine, or probing into their view of past cases and so forth. I had been the leading spokesman against the propriety of judges answering those kinds of questions and I had been successful in persuading Stuart Taylor, who is a centrist and very respected writer, that I was correct. The reason for my view was not because of the general nostrum that judges shouldn't answer questions that will jeopardize their ability to decide cases coming before them in the future. The real problem was, and is, that in answering those kinds of questions, judges are drawn into the position of giving little tidbits to senators – hints, if you will – as to how they would treat past cases which is, of course, a suggestion as to how they would treat future cases. The difficulty with this is not so much that it jeopardizes their ability to be fair to litigants who come before them, although there is a little bit of a problem there, the more important problem is that it diminishes judicial independence because it gets into a trading mechanism whereby nominees with winks and

nods and hints and suggestions give senators impressions as to how they would decide future cases and it diminishes the very dignity and the independence of judges. I don't blame senators for asking questions. The Supreme Court and the federal courts of appeal have become deeply involved in, for better or for worse, all sorts of political issues, and it is not surprising that senators press hard, but I had been a voice arguing it was wrong for judges to answer those kinds of questions. The People for American Way, with a Republican president, wish senators to ask very probing questions and force nominees to answer them, or else vote them down. My speaking out on the subject was regarded as troublesome, even obnoxious, and so they commissioned Ostrow to do a white paper on me long before there was any thought of my being nominated for anything. He wrote that paper. He called me – I have known Ron from my days in the Justice Department – and I was perfectly prepared to cooperate with him until I realized he was no longer with the *Los Angeles Times*, but was being commissioned by the People for American Way. It didn't seem to me to be appropriate for a judge to talk to a flack or an organization that is deeply involved in judicial politics, as opposed to a reputable newsman, so I refused to have anything to do with him. He nevertheless wrote the white paper from the Brock book and certain interviews in the Brock book – interviews from Brock. I never paid any attention to it. I wrote a letter saying I would have nothing to do with it. When I was nominated to be a co-chairman or selected to be co-chairman of the Intelligence Commission, then People of American Way sent that white paper out to every newspaper

in the country. Fortunately for me, the only paper that paid any attention to it was the *Los Angeles Times*, and as I said, they wrote a rather nasty piece which was utterly false in many respects and I was able to – the next day – denigrate those stories, and I understood that Harry Reid, the next day, told the journalist that he was through, that he was backing off, and he never said another word, nor did Conrad.

MR. RASENBERGER: You wrote a letter back to the paper in response?

JUDGE SILBERMAN: No I didn't. I responded the next day orally to the questions.

MR. RASENBERGER: Oh, I see.

JUDGE SILBERMAN: Yes. The second day they did a rather fair treatment, except it was very amusing. One of the accusations – the most dramatic accusation – in the Brock book was that (and I'll give you a copy of what I wrote in response to the book) after consulting my wife, Ricky, concerning the famous or infamous article, *Troopergate*, that he wrote for the *American Spectator*, as to whether he should publish that article. Ricky, who had helped David write the book, *Anita Hill, the Real Anita Hill*, she had edited it for him and was quite motherly about David, protectively advised him not to publish the article for fear of physical harm. He subsequently came to me, at Ricky's suggestion, and the three of us met together and I told David that I didn't think the allegations that the Clintons would engage in violence was worth any consideration at all. I thought that was complete fantasy. He told me the

nature of the story. I didn't know the details and he asked me whether it was a legitimate news story, and I told him that it reminded me very much of Sy Hersh's book, *The Dark Side of Camelot*, in which Hersh had criticized the press for not disclosing similar activities on the part of John Kennedy. Hersh, of course, is not a conservative, but he argued that it was improper for American journalists not to disclose Kennedy's wild sexual behavior because it involved two governmental concerns. First it was incredibly indiscrete and opened him up to blackmail from foreign intelligence agencies, and secondly, he was using government resources to gain women. That was Sy Hersh's argument why the press should have disclosed his amorous activities. I told Brock that, insofar as Clinton's behavior was extremely reckless, and might, continue, it could present a national security interest. So journalists who believe Hersh was right would think that was a legitimate story. And the second part, insofar as he used state troopers, that would be a misuse of government resources. But then I told him that I didn't think there was any doubt that after his book, *The Real Anita Hill*, he would be perceived as a conservative, not a centrist, and, therefore, he would certainly be attacked from the left. I told him that I thought the Anita Hill/Clarence Thomas dispute reminded me very much of Alger Hiss and Whittaker Chambers, that all conservatives believed Clarence and all liberals believed Anita, at least that was the way it was originally. I think, as time goes on, more and more people believed Clarence. But, in any event, I told him that I didn't think insofar as he was concerned about being subsequently boxed as a right wing

reporter, I didn't think there was any chance he would be perceived any other way, particularly after his book, *The Real Anita Hill*. Still I strongly advised him not to publish until the *Los Angeles Times* published. The *Los Angeles Times* story on me never mentioned this, even though I told them. Two reporters of the *Los Angeles Times* had been working with Brock. They were all three pursuing the same story down in Arkansas and I advised Brock, before he published in the *American Spectator* (he had more detail), he should let the *Los Angeles Times* go first because they are a mainstream paper which was strongly tied or allied with the Democratic party. If they wrote the story first, it would be very hard to criticize him. He subsequently claimed that I encouraged him to write the story. The truth is the exact opposite. I told him to hold the story until the *Los Angeles Times*. I told that the second day to the *Los Angeles Times*, and although they treated me more fairly, they did not include that.

MR. RASENBERGER: Oh, is that right?

JUDGE SILBERMAN: They did not include that. They said something to the effect that Judge Silberman denies encouraging him, but they didn't point out that I specifically advised him to hold it until the *Los Angeles Times* wrote the story. Moreover, I didn't have any knowledge of the details of the story. I emphasized to him again and again that his reputation as a journalist would depend on it being truthful.

MR. RASENBERGER: Now this whole Troopergate story you are telling is an aspect of a subject that came up in the criticism of you in connection with your

employment.

JUDGE SILBERMAN: Right. That is why I go into it. And with the advent of the internet, I read on the blog some of the most incredible things, incredible statements of criticism based on Brock's book, and it is very rare that people pick up my response, which appeared in Barone's blog. There are apparently ways in which you can, using Google, raise somebody's comments or lower somebody's comments depending on computerized hits, and there are actually companies hired to do that. So in other words, if somebody wrote a newspaper story about you that was negative and a group wanted to keep it constantly in play at the top of Google's list, there are ways to make sure...

MR. RASENBERGER: It stays at the top of the list.

JUDGE SILBERMAN: By hitting it. It is really rather scary, but I never paid much attention to that until I realized that becomes a permanent record. Google becomes a permanent record, even more than the newspaper stories because newspaper stories don't appear on Google for very long, but the blogs do.

MR. RASENBERGER: Oh.

JUDGE SILBERMAN: Now, at the same time as the Brock, I will give you a copy of what I gave Michael Barone and my couple paragraphs in which I point out that Brock's allegations were not only false, they were demonstrably false. He mixed up Judge Wald and Judge Mikva. In one point in his book, he described me as hating Judge Wald. He got that absolutely backwards, as you well know, and he also made a number

of other false statements. He also claimed that I had manipulated Judge Sentelle into concurring with me in the *North* case, but we wrote it per curiam to hide my authorship. Well, that was ridiculous because I dissented openly on three or four grounds on which I couldn't get Sentelle's agreement, so I would have reversed the conviction for three reasons rather than the one reason.

MR. RASENBERGER: This is the Oliver North case.

JUDGE SILBERMAN: Right. Finally, at the same time, the People for American Way rehashed the accusation against me that was based on the October Surprise story. You will recall I mentioned it a little bit in the prior session, but it dogged me for two or three years and it really is an extraordinary story. I am responsible for it myself, in this sense, that Bill Safire, an old friend of mine, once had a conversation with me some years ago when Iran Contra first blew in which he indicated that he had heard something about Bud McFarlane, who is not a favorite of his, having brought some individual to see Dick Allen and me in the L'Enfant Plaza during the campaign in 1980 regarding the hostages that were then being held in Iran. I told him, "Yeah, you are right," and I told him exactly what had happened, that I had been back here in the summer of 1980, when I was co-chairman of Reagan's foreign policy advisors, to meet with Dick Allen and a group of people concerning, as I recall, it was specifically concerning Reagan's desire to openly advocate the recognition of Jerusalem as the capital of Israel and we were concerned that that was not a wise thing to do, that it would interfere with

negotiations. But while we were discussing that – I may be repeating myself – but at twelve o'clock Dick Allen asked me whether, as an ex-deputy attorney general, I would accompany him to a meeting in L'Enfant Plaza that he was a little apprehensive about. We got in his little sports car and drove over to L'Enfant Plaza. I had a plane to catch later that afternoon, but I had time for this meeting. And Bud McFarlane walked in with a Middle Eastern, or I thought was a Middle Eastern, a rather swarthy fellow who suggested he had certain contacts in Iran. I thought he was a Moroccan. One thing was clear to me, he was not an Iranian. He had certain contacts in Iran and he thought they might be induced to get to the Mullahs to, in turn, get the Mullahs to release the captives – the hostages – to Gov. Reagan rather than to President Carter, so as to humiliate Carter. This guy was a pro-Shah supporter and mad at Carter. As the House of Representatives subcommittee determined, I said pretty quickly that we have one president at a time and cut off the meeting and we left. Thereafter, there was constant talk about our meeting with an Iranian.

MR. RASENBERGER: This meeting...

JUDGE SILBERMAN: He was never an Iranian. I thought he was a Moroccan. It turned out that Dick Allen - when I left the meeting (I was nervous about it because I was afraid it might be some kind of a setup or some kind of attack), I told Dick to write a memo of the meeting. He did write the memo, but for four years he couldn't find the dratted memo, and when he found it and the FBI authenticated it as having been

written at the time, it turned out the guy was not from Morocco, it was Malaysia. The only thing I remembered – it was only a 5 or 10 minute meeting – all I remembered was the M, but my memory is superb. Nobody else remembered he was not an Iranian. But you can still read on the blogs that we met with a representative of an Iranian government. It is absolutely false. There is not a word of truth to it. After Safire wrote a column in which he pointed out in passing that Bud McFarlane hadn't used very good judgment in bringing this person to meet with Dick Allen and me, a reporter for the *Miami Herald* by the name of Alfonso Chardy got hold of the story and twisted it around to make it a story that we had sought to delay the release of the hostages, which was, of course, would have been horrible. I was stunned at the time when the story came in the *Miami Herald*. I wrote a letter to the *Miami Herald* denying it all and explaining what happened. I was particularly shocked because my son was a gunnery officer on a frigate in the Persian Gulf during the hostage crisis. I would have cut my throat before I would have done anything to endanger his own life, and I couldn't believe that that story would even get started – it was such a fantastic story. Remember, at one point, it had Bush traveling to Paris to seek a meeting with the Iranians. The whole thing was spun out of the sky, of Alfonso Chardy's imagination. I was picked up by various Democratic politicians, including Jimmy Carter, who was so anxious to try to figure out some reason why he could blame somebody for having screwed up the hostage crisis. It ended up with a House and Senate investigation. Hamilton was the congressman in charge of the House

investigation and they finally concluded that we were telling the truth – there was nothing to the story, but they had one little criticism, “You should have told the State Department about the meeting because then there never would have been any phoney story that developed.” It thought about that and thought, boy that was ridiculous because I wouldn’t have touched it with a ten foot pole. To tell the State Department about it would be to verify it. Besides, if we had told the State Department three weeks before the election about this meeting, they would have probably leaked a story that the Reagan Administration was in contact with Iranian officials and poor Reagan would have been in trouble. It was baloney. This guy was a nut. Those kinds of people show up in campaigns all the time. No good deed goes unpunished. I did exactly the right thing. I said, “We have one president at a time,” and walked out. The left-wing blogs still spread the story that we met with a representative of Iran, yet we never met with an Iranian, let alone a representative of Iran. I suffered through three or four years of that, including constant comments by Jimmy Carter and Hodding Carter. There was a long series of correspondence between me and Hodding Carter.

MR. RASENBERGER: It just would not die.

JUDGE SILBERMAN: Until the House finally killed it.

MR. RASENBERGER: That’s what put it to rest and that is your vindication.

JUDGE SILBERMAN: Although, by the time the investigation by the

House had gone ahead, a fellow by the name of Steve Emerson had written a piece for the *New Republic*, in which he totally destroyed the story, but it was almost for political purposes, it was almost too good a story not to be true.

MR. RASENBERGER: That's right.

JUDGE SILBERMAN: Those stories dogged me for a long time and then the Brock book was grist for the People for the American Way and their criticism of me when I was appointed to the Intelligence Commission.

MR. RASENBERGER: So this had surfaced again at that time in the *L.A. Times* story.

JUDGE SILBERMAN: That is the only time it surfaced because the People for the American Way had done this study on me but they couldn't get anybody else to write anything, and as I told you, they were really mad at me because of my view on what judges should – or what nominees should – or should not do when they testify before the Congress – the Senate.

MR. RASENBERGER: Well, we have had some good and bad examples of what judges have done before the Senate. By and large, do you have any criticism of the way Roberts and Alito handled their particular...

JUDGE SILBERMAN: I think they did very well, but even they went beyond what I thought was appropriate. The other reason that People for American Way were mad at me was that I disclosed that I had acted as Nino Scalia's counsel when he

went up for confirmation and we had agreed that he would not answer any questions that went into doctrine, including even when he was even asked the question whether he agreed with *Marbury v. Madison*. He called me on the phone and said that the White House fellows say this is ridiculous – I should answer that question. I said, “No, no you don’t because if you answer one question there is no stopping point.” So...

MR. RASENBERGER: Judge Bork, though, did like answering those questions.

JUDGE SILBERMAN: He was very foolish...very foolish.

MR. RASENBERGER: That was really his downfall....

JUDGE SILBERMAN: I think it was. I think it was incredibly dumb and I advised him against it. He said he had no choice because he had written so much, but I don’t think that was true. I think Bork thought he was smarter than all the Senators and therefore he could turn it into a Yale Law School classroom. The problem was that the Senators would just get their questions on television – they didn’t listen to his answers.

MR. RASENBERGER: That’s mainly what those hearings are like.

JUDGE SILBERMAN: I have a very strong view about this and it has nothing to do with partisanship. I am equally reluctant to see Democrat nominees answer any questions on doctrine because it cannot help but erode the view of the independence of the judiciary. It more and more makes us look like political actors. Arlen Specter said, somewhat horrifyingly I thought, that nominees have to answer as many questions as they

think they need to get confirmed.

Okay, now back to the Intelligence Commission. I was very gratified that the Reid attack disappeared after one day only. He was bitterly criticized by one columnist, as I recall Robert Novak, and Novak called me afterwards to tell me that Reid called him up and said, "I give up." I think Reid was running that year so he didn't want to be...

MR. RASENBERGER: Well, other than that, so does that take care of the whole area of your appointment? All the issues that came up with your appointment?

JUDGE SILBERMAN: Yes

MR. RASENBERGER: We were talking when we last met about the problem of your – of recommending an answer to the intelligence failures that we have had in the past, and I just wanted to go back for a moment to this – what seems to me to be a dilemma here. In a way, the problem we have is a half dozen agencies, not counting the Director of National Intelligence, Defense Department, State Department, FBI, Homeland Security and, in Defense, of course, different like NSA and other things. How is it ever possible, do you think, to coordinate all those agencies toward a common mission? I think you recommend something like that, and doesn't that coordination depend so much on the exact right combination of individuals being in the appropriate job at the right time for the coordination process to work? I mean, I am asking this as sort of a skeptic about any coordination that I suppose we could certainly do better than we did in

the case of weapons of mass destruction, but can we ever get as far as the kind of coordination that your Report recommends?

JUDGE SILBERMAN: Well, you will recall that our Report indicated that we were faced with a *fait accompli* – a legislative *fait accompli* – because Congress had put in the DNI structure based on the 9/11 Commission recommendation, and in the frantic atmosphere of the presidential election of 2004, we would much have preferred that they had waited a little while until after the election, because that was not a good atmosphere to think these things through, and we really wanted to have an opportunity to think it through ourselves. After Congress did accept the DNI structure, then we had to figure out how to make it work as best as we could. Now, there were two alternative possibilities facing the country. It was perfectly clear that in the aftermath of the intelligence debacle, with respect to the weapons of mass destruction in Iraq (and it was a debacle), that there had to be a better stitching together of the intelligence community and better leadership. It was exceedingly doubtful, in our views, that the CIA director could effectively operate simultaneously as the director of the intelligence community – he simply did not have the clout politically or institutionally to deal with the Defense Department and the Defense Department agencies. You may recall that when Congress was considering the legislation, before we reported Mike Hayden, then head of the NSA, and General Clapper, head of NGA, both testified, to the great disquiet of Don Rumsfeld, that their agencies should be pulled out of the Defense Department formally and put

under the DNI, as should the CIA. But Congress wasn't willing to go that far.

The British, which Dick Posner is inclined to follow, do have an intelligence coordinator as an assistant to the Prime Minister, but the British can operate that kind of loose structure more effectively than the United States because they have a fusion of legislative and executive power. In the United States, all bureaucracies are faced with a congressional moon and a presidential sun, or vice versa, both exercising gravitational pull, which is why we see the continued proliferation of political appointees down to lower and lower levels in the executive branch and the corresponding increasing of staffs in the Congress. So the notion of a loose coordinator who speaks in the name of the Prime Minister in the British model coming over to the United States does not strike me as likely to be very effective. There are some people, including some people who have gone through the last two years in the DNI structure, who believe that the only way this is going to work is to strengthen the DNI structure and move towards a more formal supervisory role of the DNI over CIA, NSA, NGA, NRO and even State Department intelligence and that we are sort of betwixt and between now. The DNI has responsibility without adequate authority. I had always thought that the amount of authority that the DNI had would depend totally on what the President wanted to give them. Statutes gave him certain authorities, but they weren't very significant. He could approve the appointment of the head of the NSA or NGA, but appointment isn't the key – the key is the power to fire.

MR. RASENBERGER: And promote. Let me ask you this about the coordination process. Do you think it is possible for the President or his surrogate or whomever, to single out certain missions as to which the DNI would have absolute power – not absolute, there is no such thing as that – but I mean, would have far broader powers because of the importance of those missions specifically than he would have generally over the personnel of those other agencies?

JUDGE SILBERMAN: Of course. The President can do anything he wants with respect to the executive branch. Well, not totally, he always has to worry about the Congress.

MR. RASENBERGER: Would that work?

JUDGE SILBERMAN: The President could give the DNI much more authority than he has, there is no question in my mind. But there is a big problem. It is not unique to intelligence, but a problem throughout government. To illustrate the problem I will give you an example of a very, very smart senior fellow in the government, in the national security area, who I was interviewing about his ideas concerning structure of the intelligence community. I was with Chuck Robb and Scott Redd – Chuck, my co-chairman, and Scott, the executive director. And this fellow said revealingly, “We just got to do a better job of getting intelligence right.” And I thought to myself, that really reflects the view from the White House which is, they are not going to be as interested in the management of the intelligence community for the next 2, 3, 5 years, they are worried

about what is going to be on their desk next week and that is sort of a dilemma because what is desperately important for the intelligence community is certain long-range planning that deals with recruitment and training and incentives and interrelationships between the intelligence communities. It is very hard for the White House, concerned about what exactly is happening in Ramallah, Iraq, tomorrow, to be as worried about those things. That is why I thought the DNI might be – probably should be – a good idea, but only if the DNI could be focusing on the management of the intelligence agencies rather than the day-by-day stuff. I thought it was a big mistake for the DNI to take over the morning briefing of the President, which means he has to get up at 4 a.m. in the morning. The truth of the matter is the kind of creative energy we have in a day is probably 75% in the morning, so if he is getting up at 4 or 5 o'clock in the morning to go through the intelligence to brief the President at 8 o'clock, how much energy does he have left in the rest of the day to deal with the trackable management problems.

MR. RASENBERGER: It underscores the emphasis on daily intelligence, which is not his mission.

JUDGE SILBERMAN: Right. I thought that the DNI should attend at 8 o'clock but shouldn't have to be the briefer because we found out from George Tenet how much of the time he was spending on that and made it really impossible for him to do the coordination of the intelligence community jobs that were required. But the President gets what he wants, and he wants the DNI to give him that daily briefing, so that is the

way it is going. I would be very surprised if the kind of management problems which we thought were quite troublesome in the intelligence community were being addressed with the force they should. At the same time, the DNI has developed this monstrous bureaucracy which I did not think was a good idea. I would have had a relatively very small number of very able, bright people who were secured from the intelligence community for maybe 2 or 3 years.

MR. RASENBERGER: But not jeopardizing their career.

JUDGE SILBERMAN: On the contrary. I would set it up so that you didn't get to the top of the intelligence community unless you spent time in the DNI, just like the Joint Chiefs of Staff. Just like Goldwater/Nichols. But what happened was, and this was a dreadful mistake, I think, the intelligence community had enormous – a big – staff, community staff. They were located out at the CIA. I think it is fair to say that the people who were volunteered by the agencies to work on the community staff were not necessarily the hot runners.

MR. RASENBERGER: Why would they give their best people away.

JUDGE SILBERMAN: So the DNI ended up taking that whole community staff over to the DNI. I am not sure that was smart. I would have liked to see a very lean staff, as lean as possible but effective on a few areas. I would have liked to see people brought in from the agencies to work on problems instead of building up a big bureaucracy. Lean and mean. And working hard on the really, really tough issues. I

mean that is not to say that day-to-day intelligence isn't tough too, that's tough too, but you have to be focusing on acquisition because you are talking about major, major, major billions of dollars of cost that has to be worked out - you have to be fighting sometimes with the Pentagon.

MR. RASENBERGER: Perhaps all the time.

JUDGE SILBERMAN: I should tell you about – have you asked me about what happened after the Report was issued and ...

MR. RASENBERGER: Well you did tell me that Rumsfeld thought you ought to take that job and you said, “We are such great friends,” or something like that.

JUDGE SILBERMAN: What I said is, “We would fight like hell,” and he said, “Oh no, we are such good friends,” and I said, “We would still fight like hell. There is no question.”

MR. RASENBERGER: And if you did your job right, you would have had to have fought like hell.

JUDGE SILBERMAN: There is no question about that. I did explain why I declined to be considered, didn't I?

MR. RASENBERGER: You did.

JUDGE SILBERMAN: The reason was, and if I haven't made it clear before...

MR. RASENBERGER: Yes, let's just get this again on the record.

JUDGE SILBERMAN: You can edit it out. The White House called me on several occasions to ask whether I was willing to take that job or willing to be considered to take that job and I said, “No,” and that is when I got pressure from Rumsfeld and various others. The President actually invited Ricky and me to a Valentine’s Day dinner, when I thought he was really going to put the arm on me. But the reason I did not want to do it was twofold. First of all, we were going to report unanimously that the Administration had not pressured the intelligence community to conclude there were weapons of mass destruction in Iraq. Indeed, the intelligence community had pushed both the Clinton and the Bush Administrations to the truth of that proposition. They had actually gone so far as to say there was a 90 percent certainty, as you know in the NIE, so it was sort of a myth – another one of those myths that it is too convenient to let the truth get in the way – that Bush lied about WMD. It is certainly true that the Administration tried to pressure the intelligence community to find the link between Al-Qaeda and Saddam, but if anything, the intelligence community pushed back even further. They leaned over backwards not to find that. So they weren’t pressured on WMD, but I thought, here, if we issue such a conclusion and then I am given the job of DNI, it would look like a payoff, so I am in a conflict of interest. Secondly, it would look bad to my fellow members because we were putting together these reports and I didn’t want my objectivity to be questioned by my colleagues. It was just the wrong time. I did tell you, however, that in the summer of 2006 – that was early 2005 – in spring of 2006

spring/summer John Negroponte was scheduled to move over to State as Deputy Secretary. Technically a downgrading, but I think John Negroponte was perfectly happy to go back to State. DNI was not just a tough job, but perhaps he was a better diplomat than a manager. He is a fine man. And then again, I don't know if I told you that I was asked again.

MR. RASENBERGER: No, I didn't know that you were asked twice.

JUDGE SILBERMAN: Actually, this time the Vice President called. It turned out [I didn't even know it] my wife, Ricky, had been troubled that I had turned down the DNI job first. She was sick, you know she had breast cancer, but she was a strong patriot and she thought I should do the job even though it would involve an enormous time away from her when she would rather that I be home. She privately told someone, without letting me know, that if Negroponte left, that I would be willing to take the job because I no longer had the conflict of interest problem. So that led – I never knew that until much later when she confessed it – to Dick Cheney calling me, asking whether I would do it this time again. And I said, “It is war time.” “How can you turn down the President?” So I said I was willing to do it and he ended the conversation. This was probably in August, and Josh Bolten had taken over as Chief of Staff and they were doing a number of things and trying to think about what they were going to do and maybe they wanted to wait until after the election. In the meantime, I decided that I had cases before me that involved the government and I thought I had to recuse myself from those

cases as long as I was being considered as a DNI successor and I didn't want that situation to continue any longer, so I met with Dick and said, "I want out," and he agreed I couldn't remain in limbo.

MR. RASENBERGER: I am not sure everyone would have done the same thing, but that was the correct thing.

JUDGE SILBERMAN: I don't think I had any choice. I had a big case involving the Justice Department and I had to either fish or cut bait. So one of the good things is that I don't have to get up at 5 o'clock in the morning to go to work.

MR. RASENBERGER: And do those damn briefings.

JUDGE SILBERMAN: And also once the Democrats took over the Congress it became a nastier situation, although one of my great friends and supporters was Jane Harman, who I knew back when she was Jane Frank and counsel to John Tunney. John and I were very close but I didn't realize Jane Frank was Jane Harman until I got a letter from her asking why was I being so distant. I had no idea, but I think she is just wonderful. She is first class. In any event, that's what happened there.