

## THE YALE “LIVES OF LAWYERS” ORAL HISTORY PROJECT

**Name of interviewee and YLS class:** James Hamilton, 1963  
**Place:** Bingham McCutchen Offices, Washington DC  
**Interviewer and YLS class:** Josef Ansorge, 2014

### **Biographical paragraph:**

James Hamilton was born in Chester, South Carolina on the 4<sup>th</sup> of December 1938. He attended public schools in Chester before enrolling at Davidson College in 1956. At this time Davidson College did not admit African-Americans or women and was a dry campus. At Davidson College Hamilton participated in ROTC, was an editor for the school newspaper, and was a member of the 1960 Southern Conference tennis team. After graduating from Davidson in 1960 he was accepted at Yale Law School. Immediately following his graduation from Yale Law School in 1963, Hamilton served his ROTC commitment in Germany as a 1<sup>st</sup> Lieutenant. After completing his military service in 1965 he attended the LSE for an LL.M degree. Upon completing his LL.M Hamilton moved to DC to work as a lawyer at Covington and Burling in 1966, where he worked for Gerard Gesell. He has spent his entire career working as a lawyer in Washington DC and was, at the time of the interview, a partner at Bingham McCutchen.

Hamilton was Associate Counsel to Sam Erwin at the Senate Watergate Investigation from 1973-1974 and tasked with investigating the break-in and cover-up. He published a well-regarded book about congressional investigations called *The Power To Probe* in 1976. His involvement in the Watergate investigation established him as an expert on congressional investigations. He subsequently was the Deputy Chief Counsel in the Alaska Senate Impeachment Inquiry (1983) and represented Sen. DeConcini during the Savings and Loan Senate Ethics Investigation (1990-1991). In 1992 Hamilton was the Clinton-Gore transition counsel for nominations and confirmations, which began his career as vetter of high-profile Democratic political appointees. In 1993 he vetted Ruth Ginsburg and in 1994 he vetted Stephen Breyer; he vetted vice-presidential candidates for Bill Clinton (1992) Al Gore (2000), John Kerry (2004), and Barack Obama (2008). In 1998 Hamilton successfully argued Swidler & Berlin v. United States before the Supreme Court, a case which extended client-attorney privilege past the death of the client.

### **Topics discussed in the interview:**

James Hamilton’s childhood in a segregated South; the experience of attending Yale Law School in the 1960s; the shifting norms of legal practice in Washington DC; the decline of bipartisanship and civility in Washington DC. The modern practice of political vetting; representing clients in congressional investigations.

**Interview highlights and other comments:**

Hamilton provides an interesting overview of and insight into the modern vetting process as well as congressional investigations—both of which he is a renowned expert in.

**Audio file names and time lengths of files:**

**Overall length of the interview:** 7hrs 36 mins

**Video file names and time lengths**

**Date of interviewee's release:** (copy attached)

**Date of interviewer's release:** (copy attached)

**Subject matter of transcribed content:** (copy attached)

Attending Yale Law School and doing political vetting.

**Length of transcribed content:** 30 mins

**Title and format of analytical work:** (copy attached)

**Additional materials and remarks:**

*JA: What is your earliest memory?*

James Hamilton: Two things come to mind. One was breaking a jar of jam on my front steps and wondering whether I could eat it. But one thing I do remember that maybe is a little more interesting is during the second world war we had some soldiers bivouacked in a field down the end of our street and I remember a couple of those coming to dinner one night. That made somewhat of an impression on me. I was pretty young then. I was born in 1938, so I am not sure when exactly it was during the war, but it was probably when I was five, or six, or seven years old.

*Did you have members of your family that were in the military service?*

No. I didn't. But obviously everybody was interested in the war and these troops were down the street bivouacking on some kind of maneuver so they came over.

*Could you tell me a bit about your family? What did your father do when you were growing up?*

In Chester South Carolina, where I grew up, he was a small town businessman. His main business, which was sort of unique in a small town, is that he sold municipal bonds. That was the main thing that he did. He had clients in North and South Carolina. He was from Chester, but he had started off in Charlotte as a teacher and then he moved into the investment business. When he came back to Chester he mainly did work in municipal bonds. He also did some construction. You know, in a small town you do a lot of things to make a living and he did some construction work. He built some houses around town. I think he got into that after we built a new house in the early 50s. Before we lived with my grandmother actually. But he built a new house and he got the bug and he was pretty good at it. He built a number of houses around town.

*Would you be helping him build the houses?*

I would go over and watch it. He was not actually doing the carpentry or anything like that. He was the manager.

*What about your mother?*

My mother was a homemaker.

*Where were they from in the country?*

My mother, actually it is kind of an interesting background, she was from Charlotte. But her parents were English. They had come over here about 1898 and my grandfather was on the way to Australia, but he was a chemical engineer and when he arrived he got a job I think first in Connecticut and then he moved down to Charlotte and became a very

successful businessman in Charlotte. He was a very prominent citizen of Charlotte. Two of his three sons lived in Charlotte and they also became quite prominent businessmen.

*Chester, South Carolina population 7000: what was it like growing up in such a small town?*

It was 7000 when I was born, 7000 when I left, and it is still 7000. A different 7000, but it is a very small town. It is a very traditional southern town. It is an old town. There are three or four main streets they all converge at the top of the hill in the middle of town, where sits the confederate war monument and also the Aaron Burr rock. When Aaron Burr was arrested, I believe in New Orleans, for treason and he was being brought up North for trial, he came through Chester and he jumped out of the stage coach and hopped up on this rock and gave the masonic distress signal and hoped that the masons would rescue him from the feds. Which they did not. But there right in the middle of town is a rock that is carved with the history of this event. It was a very small southern town. An interesting fact about Chester, in the mid-80s there was a CBS miniseries called "Chiefs" about three police chiefs in a southern town. It was a pretty big deal actually. Charlton Heston was in it, Billy Dee Williams, Victoria Tennant—actors of great note, particularly in the 80s. The story started in 1910 and ended in 1963 and was filmed in the mid-80s. They needed a town that really hadn't changed in 80 years and they looked all over the South and they chose Chester because it hadn't changed. The same buildings that were there at the turn of the 20<sup>th</sup> century, in 1900, were still there. They were still the buildings on the main street. The confederate war monument made a pretty good prop for the movie.

*And you went to high school in Chester?*

I went to Chester High School, which was a County School so we had kids from all over Chester County and at that time it was segregated. That's where I went to school. Some of my good friends did go off to prep school, to Virginia, to Woodberry Forest, places like that. Looking back on it, those types of schools always slowed down a little bit because you had all kinds of diversity in the class, some very good students and some not so good students. But there were some very talented kids in my class. Interestingly, my best friend also eventually ended up at Yale Law School. And the son of my dad's best friend, who lived right across the street from us, ten years before me had also been at Yale Law School. Which is a little bit unusual, I think.

*Did you already know about Yale Law School, as you were going to high school?*

I wasn't thinking about Yale. The only school I focused on in high school was Davidson. I knew that I was going to go to Davidson because I had spent my summers in a place called Montreat, North Carolina. My grandfather, my mother's father, had built a house up there in 1908. Montreat at the time was a conference ground for the Southern Presbyterian Church. During the summer there were a lot of young people around there. They had programs for kids that I participated in, both as a member of the club and later on as a counselor. A lot of the kids up there went to Davidson. I didn't apply anywhere

else. Davidson was known as probably the best small liberal arts school in the South then and it probably still is. It is a great school. Consistently ranked at the top ten liberal arts schools in the country. I didn't think about going anywhere else. So that's where I ended up.

*What were your favorite subjects in high school?*

I would say probably the English courses that I took. The interesting thing about small towns is there are disadvantages; a lot of things are not going on so you have to find things to keep you entertained. But one thing you could do in a small town is find out what you were good at and what you were not good at. I found out pretty early that there were some things I was good at. I could write a good sentence and I had a good backhand on the tennis court. I could shoot a pretty good jump-shot. But I wasn't very good at singing bass in the choir. I did it but I wasn't very good and I wasn't very good at playing the saxophone in the band, even though I tried to do it. I could do it, but it was clear to me that I was not going to be a jazz musician. You learn a lot about yourself and what you are really interested in. I did a lot of writing in high school. I did a lot of writing for the school paper; I was the sports editor. I enjoyed the English courses that I took and did a little public speaking.

*By my math you are 16 years old when Brown vs. Board of Education comes down. Could you say a few words about what that was like?*

It had absolutely no effect for many years on the Chester public schools. I remember that when I finished Yale in 1963 the school was still segregated. I came down to South Carolina and with me came one of Yale's most famous graduates, Gerhard Casper. Gerhard Casper became a friend of mine. He was getting a masters at Yale in my last year and Gerhard, as you may know, went on to become the dean of Chicago Law School and the President of Stanford and he remains a very good friend. I was communicating with him a couple of weeks ago. Wonderful fellow, the most urbane man I have known in my life and I have often said he is my wife's favorite man—my wife is Scandinavian—because he is so European and charming and all. Gerhard came down to South Carolina and had long conversations with my dad who was a typical southerner. He was just amazed that Brown v. Board of Education had made no dent in Chester, South Carolina, even in 1963.

The experience in Montreat was a very good one for me, because as a conference ground would bring in speakers, pastors, preachers from the North to speak. This was in the early 50s mid-50s and these folks were preaching the social gospel. They were preaching theology too, but this was the time of the civil rights movement and this was a set of new ideas for me. I quickly adopted some of those ideas. So pretty early on I became fairly liberal, at least by South Carolina standards. They would have these bible conferences, and I know this sounds like the typical evangelical South and all that, but these were very sophisticated people. There was a Dr from the New York Avenue Presbyterian Church in Washington would come down and preach, and there was a professor named Boyd from the University of North Carolina that would come up there and lecture on the bible and things like that. But infused in all of these lectures and talks

was the social gospel and it made an impression on me. I remember particularly when I was in high school and I wasn't working I would spend my mornings listening to these folks preach or lecture and it made a huge impression and influenced my thought for a number of years.

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*Was the first time you were in a class with women at the Yale Law School?*

Yeah.

*Was that significant at all for you at the time?*

Well, I had been in class with women in high school. I enjoyed having women in my class. It was very interesting. When we had our 45<sup>th</sup> reunion a number of the women came back and they talked about how intimidated they were to be at Yale. Which was surprising to me, because I always thought that they were quite special and spectacular. One of my classmates was a woman named Barbara Babcock. And I remember, Barbara had been the national debating champion and she won the moot court and I remember walking in to the finals in moot court and listening to Barbara argue and deciding I was in the wrong profession. I was intimidated by her rather than—I don't think Barbara is intimidated by anybody, but some of the women in class were. But she was just spectacular at a young age. And another story I remember—I am going to clean this up because you are recording this—first time I ever met Eleanor Holmes Norton. She graduated in 1964 but started in my class. Eleanor is a friend and she has been a very fine representative here in the district. But I remember the first time I ever spoke to her I was looking for some book, because we actually read books back then. You would congregate in the library and you would walk around. If you were writing something you would have 20 books stacked up at your desk. I went by this desk where Eleanor was sitting and there were 20 books stacked up and I started flipping through the books, without even speaking to her and I probably should have. But I started flipping through the books just seeing if there was one there I wanted and I picked out one and looked at it. Eleanor looked up to me and the first thing she ever said to me—she became a friend—she told me that if I didn't put that book down she was going to do something to my anatomy. I put the book down. I put the book down. There was some other women in the class who did very well and of course the one who in my view has been the most prominent is Marian Wright Edelman.<sup>1</sup> Marian and I were the only two South Carolinians and I often said that that is my claim to fame, that I was the only South Carolinian in the same class as Marian. She is one of the most prominent women in America. She has remained a friend too, she lives here in Washington. I think Marian has gotten 40 doctorates or something over the years. She is just a wonderful, wonderful person.

*It feels like there is a misalignment of your account with the notion that women are downtrodden at Yale Law School during this time.*

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<sup>1</sup> Edelman was the first African-American woman admitted to the Mississippi Bar.

Eleanor, and Barbara, and Marian were not back at that reunion. There were other women there and they were talking about how they really felt intimidated. And some of the professors used to do that. The one that was the most notorious was J. William Moore, who I thought was a wonderful professor, who was one of my favorite professors. He used to really give the women in his class a hard time. He would call on them and they would speak quietly and he would just boom out: “Speak like a lawyer!” I remember one day in his class he called on this woman, and I won’t mention her name, but she was a bit shy, he called on her. I had my head down taking notes and she started speaking and all of a sudden she stopped speaking. So I looked up and there was Moore, who was very short, standing on his chair, leaning forward like this [cups his ears] totally intimidating this poor woman, who was a very nice person. But that was sort of the way it was. It was a rougher time back then. I mean Alex Bickel was not known to be too kind.

*What were his classes like?*

I only took one of them. It was my first semester and frankly it was the worst grade I ever made at Yale but I just wasn’t prepared for the volume of work that he gave us. I remember I got down to the end I just hadn’t read half the stuff and unfortunately a lot of the exam came out of the stuff I hadn’t read. Bickel was very smart, extremely sure of himself. I guess some people would say a bit arrogant in class. A snappy dresser. He was entertaining. A couple people in class were confident enough to take him on a little bit. I mean there were some very bright people in my class. John Ely<sup>2</sup> was in my class. John was a good friend of mine too, we were actually at the LSE together later on and we remained friends, not close friends, but friends until he died. John was confident enough to back and forth. There was another classmate Alan Novak, who lives here in town and I saw him about two weeks ago. But Alan was an extraordinarily bright guy and has basically become a real estate developer, although for a while he was at one of my law firms. He was confident enough to discuss things with Alex Bickel but most of us did not.

*When you look back on your own time do you feel that you were also confident enough to “give back” to some professors?*

Later on. Charlie Reich was one of my favorite professors and I remember in Charlie’s class saying some things. I will tell you my favorite story from law school. It was first semester in Professor Moore’s federal procedure class and at the end of the semester—this was after Christmas, they had exams after Christmas, which was torture because you couldn’t enjoy the Christmas vacation. Moore, after Christmas, went into the common law forms of pleading and nobody had spent Christmas reading about assumpsit and all those things. Moore realized that people weren’t very interested in that but he got up in class and he said “Alright we’ve gotta move through this material of the common law pleadings. I am General Sherman and I want to get to the sea and we’ve got to get through this.” He calls on somebody, I forget who, and they say “Well Professor I don’t know the answer to that.” He banged on the table. He used to beat on the tables. He says “Come on. I need an answer to these questions. I am General Sherman. I’ve got to get to the sea.” And he called on somebody else who didn’t know the answer and he said, “I’m

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<sup>2</sup> John Hart Ely is one of the most cited legal scholars in the United States.

General Sherman, I've got to get to the sea". Banging on the table. He looked at me and he said, "Mr. Hamilton, can you answer this question?" Of course I had no clue what the answer was. I said in my best Southern accent, "Professor Moore quite frankly I am not very interested in getting to the sea." I got a standing ovation. Its interesting people still—30, 40 years later—remember that. Even Moore liked it.

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*When you are doing a hearing like the Keating Five hearing, your primary professional responsibility is of a lawyer to your client.*

To my client, to Dennis DeConcini.

*But isn't it a different situation or a slightly different relationship than if your client is AT&T or somebody like that?*

Well, it's different because you try to influence a great variety of audiences. First of all, I have done this type of case, this is the third, fourth, fifth politician that I've represented and right before the Keating Five, we did a public hearing for at least a couple days. What you are trying to do with these, you've got the committee sitting up there making judgments. But the committee is only one audience. DeConcini s a politician: so you are talking to the committee, you're talking to the Department of Justice which they probably got somebody there listening to every word of this and wondering whether they can prosecute any of these senators. You are talking to the press which the room is filled with – you have maybe 50 to 100 press people every day. And then you are talking to DeConcini's constituents. So I say there's at least four audiences that you are talking to. You have to play it so you would be able to try to persuade everybody. Sometimes that's difficult because you might do something for the constituents that the committee doesn't want to hear and they're going to try to cut you off a little bit. So you are thinking about what you are doing at all times.

*Are you doing that consciously? Does your client know that that's what you are doing as well? That you have all these different levels to this and one reason why we're doing this right now is for the constituents?*

Sure, sure, sure.

*So the strategy is different. It requires a different know how. It's more complicated.*

Well, the main thing you need to do is make sure that the committee doesn't do anything to kick Dennis out of the Senate or censure him or something like that. And they didn't. He got off with a mild slap on the wrist so it was successful in that respect. And he might have actually won reelection because he was coming back up in the polls but then he was the deciding vote in the Senate on Clinton's budget in 1993. When he did that, his polls dropped down again. He figured he was not going to get reelected so he didn't stand for reelection. He wasn't the only one who got slammed with that. The deciding vote in the

House was Marjory Margolis, a congressman from Pennsylvania who is a friend of mine, was then and is now. She was defeated the next time around because she was the deciding vote for the budget in the House. It was very, very close.

*One of the things people say about Clinton's biography is that he often writes so and so was a good friend of mine, another friend of mine, a friend of mine and then after a while, there like wow, you have so many friends. And that's one of the things I've been struck by in our conversation as well, there is a proliferation of friends. You seem to have a lot of friends.*

Listen, you have to be careful in Washington because everybody says "my good friend" this, "my good friend" that. And some people are friends and then some people are good friends. Marjory Margolis I see her once or twice a year. She is my friend. She's not a very close friend but she's a friend. The Clinton's at one time were pretty good friends, close friends but given what they have done since, we just don't see them very much. Hillary is all over the world.

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*I am fascinated by vetting, both in regard to your personal experience but also in its wider role. Could you tell me more about that?*

Let me tell you how I got started in it and what I've done. When Clinton ran for president I wanted to be of help. As I said, we were good friends. So I did several things. There were a group of about five or six lawyers that kind of guided the campaign and I was one of those lawyers. I gave advice and this and that. But then when it was clear he was going to get the nomination, he had to start thinking about a vice president and Warren Christopher was assigned to help him choose his vice president. And working under Chris was a guy named Dick Moe who was a very prominent fellow and at the time, I think was at Davis Polk and then went on to be the head of the National Historic Trust, I think. He wrote several books about historical matters. He was sort of lining up people to vet vice presidential candidates. So I said okay, I'd be happy to do something for you. So I ended up vetting two of the candidates back in '92 for vice president. Neither of whom was selected. In doing that, I had a lot of interface with Warren Christopher. So when Clinton won, and Christopher was put in charge of transitioning, he asked me to vet the cabinet and the White House staff which I did, with teams because I don't do it by myself, that would be impossible. But if I have somebody to vet, like Christopher for example, or Zoë Baird for that matter, you pick a team leader and then the team leader will go out and pick maybe 10 to 15 people to work with him or her and then those people are approved by me. I'm going to make sure that I'm not getting somebody that's biased and got some flaw themselves. We want to make sure that the team is balanced from an agenda standpoint or racial standpoint. We're pretty careful about who is on the team.

Then the team goes out and does the vet. There's a very extensive questionnaire that's been used by the White House forever that's a very good starting point in terms of the questions that you ask. They ask about finances and personal questions and they ask

questions about your club, lawsuits, anything that's embarrassing. You kind of are looking for the bad stuff even though when I do it, I also look for the positive stuff because I know how to ask that type of question.

I did that for Clinton and it was actually nice – Clinton told me that Chris said it was the best vet in history. And I think it was pretty damn good. I had wonderful people doing my vetting; the best lawyers in town were working on this. And then as soon as he got in, Blackmun who is a good friend of mine, actually I said I've got to do my first Supreme Court case. He appointed me to do that bankruptcy case. I didn't know anything about bankruptcy. I knew he was going to ask me to run a bankruptcy case but if you want to go back to it, I can describe that case to you because it was quite unique.

Blackmun retired and so there is a spot on the court so we vetted the candidates and we vetted Steve Breyer, we vetted Ruth Ginsberg. I'm not talking out of school. Bruce Babbitt who was the Secretary of the Interior. I had already vetted the secretary of the interior. Rich Arnold who was a prominent judge, a circuit court judge in Arkansas, 8<sup>th</sup> Circuit. Richard actually was a prime candidate because he had been a friend of Clinton's. Richard had a form of lymphoma and you want to a Supreme Court justice to be around for a while and while there were some doctors that thought it was manageable, there was a large reason he wasn't chosen I think. He actually died of lymphoma two or three years ago.

*So you interview the candidate and that's the primary thing you do?*

You look at every aspect of their lives. I spent hours and hours and hours with Breyer, Ginsberg, Arnold, Bruce Babbitt. And then we looked at a bunch more. Those were some of the serious ones but we looked at more. Steven was in the lead for a while and then he had some issues came up about some tax matters, not paying Social Security tax was the crime de jour back then. That's what knocked Zoë Baird out from being Attorney General. So at the last moment, Ruth came in, actually I vetted Ruth over a weekend, which was interesting. I did that, and with the administration there you don't do too much because the White House staff becomes involved with the whole thing. And I think I probably, I think they did bring me back in to help couple people get ready for confirmation and I think maybe I did some work with somebody who was going to be Surgeon General and I think he didn't make it.

Then in 2000, Gore was going to get the nomination and Christopher was in charge of the transition process so he asked me to run the vetting for the VP position, which I did. We vetted a number of candidates and Gore lost or he didn't or he just didn't recover.

*Were you his counsel?*

I was not his counsel. I participated. Hundreds of lawyers went down to help. I recruited about 40 to go down there but I did not go down to Florida. They had some very good lawyers helping out. In the first Supreme Court it was Larry Tribe and the second one was David Boies. He was quite well represented I guess. In any event, then Kerry was going to get the nomination and the close friend of Kerry, is this fella named Jim Johnson who used to be CEO of Fannie Mae. Interestingly I ended up in the Fannie Mae mess

representing Johnson. Jim asked me to vet Kerry's vice presidential cabinet, so I did that. And of course Kerry lost.

Then we got into the race of 2008 and as I said, I was a Hillary supporter. And Hillary had asked me to vet her candidate and then she didn't win. And at the same time, Johnson who was very close to Obama, called me up and said would you do that? I said well Jim, I can't do it. I'm a Hillary supporter. If Hillary fails, I will help you. He said we need to get started, who do you recommend? And I recommended you've heard this name now three times, Bill Taylor who had represented Cranston. Bill got started and then when Hillary faded, I kind of came back in and Bill was already there so I just did it with him. And so we vetted Obama's cabinet with large teams. Of course, he picked Biden. If you are interested, there is a *Vanity Fair* article about Biden about his selection. Biden goes into some detail about my questions to him during the vetting process.

*Can you talk about the questions little bit?*

For example, I think I probably asked him so why do you want to be vice president? His answer was I don't want to be vice president. And I'm not sure I totally believe that answer. But he went into great depth telling me why.

*Can you speak a little bit more about the logistics of vetting? You mentioned that you have a large team?*

Yeah.

*They check all the public record checks, I guess. Are there private investigators? How deep do you dig?*

Over the years I've gotten four rules. One is totally, totally thorough. You go into every aspect of somebody's life. Now, to some degree that runs into conflict with the second criteria, which is totally confidential. I've done between 75 and 100 vets. I've never had a leak, largely because I threatened my vetters with mayhem but also because I pick the right people.

Warren Christopher is an interesting character. He is very, very private and plays everything close to the chest. I got along very well with Warren because I, well, Chris as his friends call him. I would not say Chris is good friend but I got well with him. And the reason I got along well with him, I would never ask him a question. I figured he'd tell me or he would let me know so I never have to a question. And I think I got what Chris considered high praise in one article about the process when Lieberman was picked when he referred to me as very discreet. And that was Chris's high praise. But anyway, that's the second criteria or standard.

The third is you've got to do it expeditiously because you just can't wait around on these things. I try to get these things done. I said, the VP is really about as intense as you can be, in about two weeks if I can do it. And sometimes you can push to getting stuff done quicker but you've got to take some time. And particularly doing the Supreme Court. When we did the vet back in 1993, we read 3000 judicial opinions. I had 200

lawyers around town with me. 3000 papers. We looked at other people besides Ginsburg and Breyer and they had written a lot of opinions, some were State Court judges.

You read everything everybody has ever written, everything they've ever written. And some people have written four or five books. You read the footnotes. You remember Lani Guinier? She was going to be the Assistant Attorney General for Civil Rights and people started reading what she had written and she had written one article that in a footnote she said something that seem to be pro-quota and that knocked her out. It knocked her out of the job because of what she said in a footote. I did not vet Lani. So I was kind of glad once they found is missing footnote and it got picked up in the Senate. And I think the Republicans were in control of the Senate. Am I right about that? I could be wrong about that. My memory is not bad but sometimes the details slip.

So you read everything somebody has written. You were thorough, confidential, expeditious. And the other one is you've got to treat the people you're vetting with respect because you are vetting people that are at the pinnacle of American life. Joe Biden, had been on the Senate for 30 years. This is not talking out of school, but John Kerry was a candidate in 2000 as everybody knew. The people had chosen Joe Lieberman. A lot of people had trouble with Lieberman's politics, and certainly now, but he is a prominent guy. And particularly when you are looking at people from the Supreme Court. They are the leading lights of American law. So you treat these people with respect and you want them to, when the process is over, to think that you've been fair to them, that the process overall is fair. They have confidence that you're not going to go out and leak everything that you hear. And as I said, I've never had a leak. As I said to some people it fortunate I'm probably suffering from dementia of some sort because I do forget stuff. I remember but I've vetted so many people and a lot of the details just slip away and I can't remember what somebody told me about something.

The interesting thing is everybody that I've ever vetted has something that they would rather forget. The cleanest guy I've ever vetted was Dick Riley. He had been in the government of South Carolina, the Secretary of Education under Clinton, if he'd wanted it, probably could have been on the Supreme Court because Clinton loved him. Riley is a wonderful man he remains a good friend of mine. But even Dick had one or two things in his family that he would just as soon leave out. Not him personally. And these people just got to have confidence that you're doing things that are in a fair way.

*So it's a dual task where you have to uncover secrets and then keep them secret, too. That's real interesting.*

Yeah, that's right. You want to know everything and it's amazing what people tell you.

*Do they mostly volunteer the information?*

Well, not so much volunteer but if you ask them a question, you get the answer. I mean, I can't tell you how many affairs people have admitted. A lot of times I didn't report them up because – maybe I should. But I made some judgment that something is important or not whether somebody had an affair 20 years ago. I decided, what the hell. Probably wouldn't want it to come out and if it did, it didn't make a damn. Sometimes you do report it. It's amazing what people tell you because there's two reasons. One, they

recognize if they don't tell you something and it comes out, it's going to be terrible for them as well as terrible for whoever's the nominee at the party or who's president or something like that. So they realize that there's a real sideshow. And two, I guess a lot of times they figure something's going to come out anyway because I've got 10 people scrounging around looking into their background, looking at 10 years of their tax returns, reading everything they've ever written, talking to their accountants, talking to their lawyers, talking to their doctors. When I do a vet I get a doctor on the staff who reviews their medical records.

*Do they have to release their medical records?*

If they don't, they aren't going to get it. If you want to be vice president, let me have your medical records for the last 10 years, 5 years.

*You must have incredible insights into the psychology of a certain group of people who are, as you mentioned, at the top of American society. And what have you found? Not detail wise, but are there habits of highly successful people, are there certain things that are constant amongst them? Or maybe it's just too much and too disparate to be summed up, but I just feel there's not a lot of people that have that insight.*

I never thought about that question, I mean, look. There are some constants. Most everybody that I have vetted has, maybe not everybody but most people are very smart. Most of them, not all of them, but most of them have been very careful in their public life. Most of them, I think have been exceedingly honest and most of them have been really dedicated public servants. They believe in public service and they are not just there for their self-aggrandizement—even though, with any politician that's a part of it. Most of them, as far as I can tell, just given what they've told me are candid. They don't seem to be lying to me and they seem to be volunteering things, sometimes to my utter amazement with what they would volunteer.

*How do you deal with a criminal matter if you come across one under those circumstances?*

I haven't come across many but you do – you have the FBI and they cooperate in this. They do a record search. The FBI quickly can see if there's any type of arrest record or criminal record out there. And even if they are not in office, they will come and help you out.

*I was thinking if somebody confesses to something or volunteers information about a matter which would clearly be criminal but it's a private matter. Obviously that's disqualifying but what happens to that information afterwards? Does it go away or can it lead to a prosecution?*

Well, does it go away? Most of the reports, with 99% of the reports that I have done, you don't make a written report. I had one gal who insisted on doing it one time and I think maybe she did that because she wanted to boost herself a little bit. But I didn't tell her not

to do it. Most of the time what happens is that the members of the vetting team come to me and tell me what they think is important and then I will make the report or I will go with them, the head of the vetting team, to the person I'm working for and make the report. And then sort of at the end of the line maybe go to the candidate. Here's another story I'll tell you.

We made a report; I can tell you who it was because he was picked. We made a report on John Edwards for Kerry. And I went to the meeting with Jim Johnson, I mentioned him; and another friend of mine who unfortunately passed away about four or five years ago named Jeff Liss who was the COO of DLA Piper, a good guy, a good guy. This obviously was a classified and confidential report. So we went on to Kerry's office and sat down and got whoever was supposed to be there but Kerry was late. And about a half an hour later, he arrived and everybody knew he was going to be the nominee before the convention and he was trailed by the Washington press corps. There were 20 or 30 press just followed him right on in, everywhere he went because they knew it was vice presidential picking time and they wanted to know who was going to get picked. And this was the thing I showed you where the *Post* jumped the gun and said Kerry picks Gephardt which I liked by the way because, I'm digressing but I liked it because they showed their confidence. I had that framed up and I gave a copy to Jim Johnson and Jeff Liss.

In any event, Kerry arrived and we made a report and then we were done. But the press corps was still out there and if I walked out of that building with Jim Johnson, and everybody knew we was running the vice presidential thing, we would have been besieged. So what we did is, Kerry's office was in the Russell office building and his office was right next to Teddy Kennedy's. And I don't know anybody in the Russell office building but if you go out the windows of the Russell office building, there is a ledge about probably two-thirds the size of the width of this table.

So what we did is we crawled out of the window in Kerry's office, got out on the ledge and this was prearranged by telephone. Walked 100 feet down on the ledge to one of Teddy's windows, crawled in Teddy's window and went out Teddy's door and the press never knew what happened.

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This is testimony I gave before the House Judiciary Committee in December 8, 1998 in the issue was whether Clinton should be impeached. And I will sort of read selectively from that testimony, trying not to read too much here.

"I wish to focus mainly on the abuse of power allegations made by Mr. Starr in items 10 and 11 of his submission to the Committee. Read it together and by Mr. Shippers in item 14 of his reformation of the charges. Read together their assertions are that Clinton, in addition to committing perjury, abuses power by various other actions. First, by lying to the American people and the Congress about his relationship with Ms. Lewinsky. Second, by lying to his wife, the Cabinet and his present and former staff about that relationship which caused them to repeat his falsehoods to the Grand Jury, the public Congress. Third, by repeatedly and unlawfully invoking executive privilege to conceal his personal misconduct from the grand jury and forth, by refusing six invitations

to testify before the grand jury and by declining to answer relevant questions when he did testify in August 1998.

A central question before the committee and the Congress is whether these alleged abuses of power, assuming they are proven true, rise to the level of impeachable offenses. In my view, they do not. The proper starting point is the abuse of power allegations in order in Article 2 of the Impeachment Resolution against President Nixon that caused this Committee to vote 28-10 to impeach him. The contrast between President Nixon's conduct and President Clinton's conduct is striking. The Committee voted to impeach Nixon for the following five abuses of power; one, for causing the Internal Revenue Service to initiate audits and investigations of Nixon's enemies and to provide his associates with information about these enemies for the President's political benefit. Two, for causing the FBI, the Secret Service to engage in unlawful wiretaps for the President's political advantage and for causing the FBI to conceal that wiretap evidence. Three, for maintaining a secret investigation unit, the plumbers that using CIA resources and campaign contributions engaged in various unlawful covert activities including the break-in of the office of Daniel Ellsberg's psychiatrist. Four, for allowing conduct that impeded the investigations of the break-in at the DNC headquarters and the ensuing cover-up of misdeeds. And five, for interviewing with the FBI, the criminal division of the Watergate Special Prosecutors Office and the CIA for personal advantage. This interference included Nixon's firing of Special Prosecutor Cox and his attempts to abolish the Special Prosecutors Office in order to stymie the investigation.

Mr. Chairman, this conduct, rightly, was considered to constitute high crimes and misdemeanors and justify an impeachment. To use the words of George Mason who proposed the phrase, 'high crimes and misdemeanors' Nixon's conduct constituted great and dangerous offenses against the state that amounted to subvert a constitution. The notion of great and dangerous offenses against the state captures the essence of what an impeachable offense should be. 'It must,' as Alexander Hamilton said, 'relate chiefly to injuries done to the society itself. A president should not be impeached to subject him to punishment but rather to protect the state and society against great and dangerous offenses that might recur if he is allowed to remain in office.' I respectfully submit that the alleged abuses by President Clinton did not indicate that he is a danger to the nation."

And then skipping a bit, "Mr. Chairman, because this nation requires a strong, secure presidency, this Committee and Congress should be chary of making impeachment too easy. Long ago in 1691, Solicitor General, later Lord Chancellor Summers told the British Parliament that the power of impeachment 'ought to be like a sheathed sword kept in the temple and not used but on great occasions.' In a similar vein, Justice Story wrote that 'impeachment is intended for occasional and extraordinary cases where a superior power, acting for the whole people, is put into operation to protect their rights and to rescue their liberties from violation.'"

*The contrast is stark. It draws attention to your earlier work on Watergate and really shows that there is a pretty serious threat to the system if a sitting president can do these things. Nixon's actions were simply criminal on a lot of different fronts.*

And let me go back and tell you two stories about Watergate. In the Ellsberg break-in and I think this related to the Ellsberg break-in; again, you can check. But we had before the

Committee a general named Cushman, a four-star Marine general who had been the Deputy Director of the CIA. I interrogated Cushman in a private hearing and then later in a public hearing. But Cushman had had a conversation with Howard Hunt and I believe it was before the Ellsberg break-in, it could have been after but I believe it was before; where Hunt had asked Cushman to have the CIA provide him with devices that would allow him to disguise himself or somebody to disguise himself. If I remember, a red beard and something that altered your voice sound and things like that.

So I was interrogating Cushman and he was sitting there with a bird colonel who was his aide and I said, "General, do you have any notes of this conversation? Or do you have any recordings of any kind of this conversation with Mr. Hunt?" And he thought a minute and he said, "Yes, I have some notes. I have some notes." And I said General, "I'd like to have those notes." And he said I'm not going to give them to you. And I said, "Well General, as you know, the Committee has subpoena power and I'm sure that we can get these notes on the supportive subject and Jim Irvin would authorize a subpoena to view. And I would hate to send a subpoena to the General who is the Deputy Director of the CIA. But I'm sure that won't happen." So they went away and they said that they would think about it. And a few days later, I got a call from this bird colonel who said General Cushman has decided that he would provide you with his notes. So a few days later, I got a package from the CIA and in this package, I didn't find notes. I found a verbatim transcript of this conversation because Cushman had recorded the conversation. And if you look at the Watergate report, a good bit of that transcript is in that report and a good bit of it was used or asked about at the public hearing when I interrogated Cushman.

The other story that I guess now falls more into the amusement category. When the committee was winding down, Mike Mansfield who was the Majority Leader of the Senate, hired me to orchestrate Nixon's trial before the Senate. As you know, the House impeaches and the Senate tries and that's basically what happened with Clinton, too. And he won the trial in the Senate. Mansfield hired me to be sort of the orchestrator because I knew low lot about Watergate, and figured maybe I could be of some assistance. The day after I started work for Mansfield, Nixon resigned. And I have always said it was cause and effect. I started working and Nixon resigned. I think that's probably somewhat of an overstatement but in any event, I think it was a good thing that Nixon did resign and the Senate was not put to the burden of a full trial.

*When we contrast these two moments—Watergate and the Clinton impeachment—and of course they are different kinds of offenses, but they are also marked by different political cultures. One of the things you drew attention to was that during the Watergate Commission a culture of great bipartisanship existed, whereas the entire Clinton impeachment is driven by partisan politics.*

Yeah, let me say two things about that. Back in Watergate, you have to remember that Nixon resigned after a delegation of Congressman and lots of Senators went to – again, you can check the Internet; but went to the White House and told him he was going to lose to the Senate. And my recollection was the major one pushing that, at least one of the principal Senators who went to the White House was Barry Goldwater who of course had run for president.

*Yes, they had some history.*

And was still a leader in the Senate and the most respected conservative voice. There was a lot of partisan politics regarding the impeachment manner. I am sure that there were some Republicans that were offended by Clinton's conduct. There was a number of Democrats; I expect a lot of Democrats that were offended by Clinton's conduct. If you read my testimony, I was not very kind to the president myself.

But it was very close and I remember being totally relaxed for this testimony because I figured I was not going to change one mind. I was going to make a record; I was going to make a point. Maybe what I had to say would make some difference in the Senate but in terms of the House Judiciary Committee, I knew I was not going to change one mind. And I remember Lindsey Graham, now the senator from South Carolina, was a junior congressman on the committee. And I recall he paid absolutely no attention to what I was saying. His mind was made up. So when you go in there realizing that, there's not really a lot at stake at least in the immediate situation because minds are made up, you could feel pretty loose about what you have to say.

*Of course you are friends with Clinton when you testified...*

Well, that's an interesting thing. We were friends and this was interesting the way Clinton reacts to things because he's very tactile. He is a hugger and he shakes your hand and pats you on your back. And I remember after I testified, and if you look at my testimony, I called his conduct deplorable and reprehensible. The next time he saw me, he gave me a hug. I think it's sort of unusual that you call somebody reprehensible and he embraces you the next time he sees you. I think he appreciated me sticking my neck out and testifying, which I was glad to do because I did not think he should be impeached. I had written an article about it, I was actually kind of an honor to be in this group, but we wrote an article in the *New York Times*, I wrote an article with Lloyd Cutler, Ab Mikva and Nicholas Katzenbach that was around this time in the *Times*. You can find that, Joey. But what we basically said was Clinton should not be impeached but he should be censured by Congress to show strong disapproval.

## Interview with Paul Lazarus III, '63

Conducted by Isabella More for *Lives of Lawyers* (Fall 2012)  
on November 23, 2012  
at the Lazarus Residence – Miami, Florida

Isabella More: *You mentioned earlier that you teach a class entitled Reel History, in which you and your students analyze the portrayal of history through film. What are your feelings on the way that history is being portrayed in movies, and what is a moviemaker's responsibility in maintaining a certain level of historical accuracy?*

Paul Lazarus III: I don't think any. I think it's apples and oranges. I sometimes bring in a classics history teacher to guest lecture in the class, and he said, "I love to show my classes *Spartacus*." *Spartacus*, to me, is Tony Curtis saying, "Yonder lies the castle of my father." I asked him, "why do you show this?" He said, "there is no better depiction of the Roman legions than when they come up and mass across this wide valley." Ultimately, Kirk Douglas rolls burning logs down at them. He uses history, the professor said, to create a visual image and send people back to original documents.

My feeling is that the filmmaker's job is to make a successful movie that, at its best, captures the spirit of the moment. So, there have been Civil War movies where some of the freed slaves carry the lash marks from punishment from the plantations. But movies may merge those different groups, slave and free, and the various units that they fought with. It's rare that you see a movie like *Patton* that has the good and the bad of an iconic figure. Movies are made around heroes and villains, and most of history is much greyer than that and hard to parse through.

I executive-produced an independent picture here called *Florida City* that was based on the historical conundrum of whether Roosevelt knew about the soon-to-be raid on Pearl Harbor. The argument goes that he did not say anything because America was so isolationist and resisted going into war in Europe and needed a precipitous act to get America into the war, which he and Bill Donovan both thought was imperative. Well, viewers can Google and find theories and documents on both sides. It always was an interesting question to me. As interesting as whether Truman should drop the atomic bomb. So, I liked it as a hook for an independent picture.

When you play with biopics, you can make a movie like *Chaplin* with Robert Downey Jr., who I think is a brilliant actor, and yet the picture fails because it endeavors to cover all of Chaplin's life. If you look hard at successful biopics, they cover a segment of life that is supposed to be revealing of who that person is. When you look at an historical subject, you are never going to be able to get all of it in there, and you may have to invent a villain, an antagonist, someone to go against, and I don't think there is anything the matter with that. If you go to a feature film, you expect to be entertained and get your money's worth. I am not sure what I think if it gets closer to home. Let's say, a film that takes the position that there was no Holocaust and that it is a conspiracy by the Jews to get sympathy. I guess we have just seen that in the Quran movie, which I haven't seen and probably will never see. Those things seem to be basically idiotic, but I guess I believe more in the "market place of ideas." If that is what someone wants to make, fine.

I have more faith in public taste than that. I believe, after Yale, in the “market place of ideas.”

If viewers get inspired by a movie, as the better academics say, do a little bit more work. You don't have to go to a library. Look at it on Google. If it interests you, find out a little more about it. That is my own position. It's not shared by everyone in the class. In that course, unlike some others, I do encourage them to form their own opinions and conclude what they want to conclude.

As I told you, it is a rude shock when they learn that documentaries are not balanced. You look at Leni Riefenstahl's *Triumph of the Will*, which is a propaganda piece for Hitler. It is revealing. Something that I didn't realize is that this odd-looking guy with the odd mustache and hair cuts a sexually appealing figure to a lot of women. Huh? I realize my own politics gets in the way of me ever seeing him as a sexually attractive figure.

*What do you think are the strongest arguments on the other side? For example, people who say “yes, these historical films should be accurate because people rely on them.”*

They shouldn't rely on them. They should look at them as Hollywood movies, which at their core are efforts to make money. Period. That's what Hollywood is. It makes no pretense otherwise. God knows, as you see with all of the books that come out on the just-concluded election, you can read one side or the other. There are as many books on the Republican side as there are on the Obama side.

*What are some other issues in film that, as a scholar and professor, you like to talk about and research? I know you have done a lot of interviews on film and violence.*

I don't like the indecision that surrounds the ratings on a number of levels. I don't like to see sex and violence treated the same way. We still have this oddly puritanical fix on sex. I once said on a local television show, in which we were talking about ratings, that I found it very odd that you can watch a man cut off a woman's breast and it will get a PG rating, but if he kisses the breast, it's an R rating. I said, “I don't understand that,” and they asked me to leave the program. I have read enough works by lesbian filmmakers to believe them when they say there are separate standards applied to lesbians in filmmaking as opposed to either straights or gay men. The position of the MPAA, the ratings authority, is that they are reflecting America's taste. I don't believe that. A few years ago, there was a PSA run in theaters describing the different ratings from G up to NC-17. It showed a family, a husband and wife with what appeared to be two teenaged children. As they moved into the R rating, the mother covered the girl's eyes. I thought “Huh? Where are they coming up with this kind of logic?” I don't know the answer to that.

I only had one brush with the ratings board, and it was when I made *Extreme Close-Up*, which was our inexpensive Michael Crichton independent film. I committed to deliver no worse than an R rating, and they rated it X. We had no nudity below the waist. No

“F” words. I thought, “What’s going on?” I went in and I said, “What do I have to do to get this to an R?” Well, there is a sequence where a woman sits astride a guy by a pool at night, and through a camera over the guy’s shoulder, we see her naked breasts. She’s moving back-and-forth on the guy. It’s perfectly clear what they are doing, but I’m not showing anything except her breasts. They said, “That’s an X.” I said, “Why?” and they said, “she’s moving rhythmically.” I tried to be polite. He said, “If she moves disrhythmically, he said making up the word, then it will be an R.” I went back to the editor, and I told him to make her move disrhythmically. Sure enough, they gave it an R. You tell me.

*It’s very arbitrary.*

It’s weird. You can appeal these things. I just think the whole thing is wacky. Ratings represented a big change from the old production code, in which you were prohibited from putting certain things in films. Anything having to do with drugs or prostitution or profanity, you couldn’t put in the movie. If you had a couple in bed, one of them had to have one foot on the floor. In any event, when in 1967, we moved to the alphabet system of rating, things changed to “we’re not going to censor it, but we are going to inform viewers, and particularly parents, what the content is and let them determine what films their children should see.” Only the standards are less than clear, and the treatment of sex and violence is too obscure for me. They start talking about the removal of 2 seconds of a scene. It just doesn’t make much sense. I like to spend time on that because I am a big First Amendment advocate, and again, that is part of Yale.

It takes second place in the Motion Picture Association, which is a trade association of the big studios. If you were to make a film and your father were to finance it, you don’t have to submit it for a rating. It’s only studio pictures that get rated. You could put out your own film and give it a XXXX rating, or whatever you wanted. With that as background, the MPAA is much more concerned about keeping self-regulation as opposed to government intervention. And about getting foreign countries to not impose barriers to their importation of American films, which does threaten national films across the world. Yes, people want to see the big pictures and the big stars, so many countries limit the number of American films just to allow their own cinema to prosper. I just think we need a more enlightened look at ratings if there are going to be ratings. I would be quite content if we went back to what it was before the alphabet system. A movie would be “Suggested for mature audiences.” If you told an audience why—graphic nudity, extreme violence—and let them know on what that is based, then let others judge. Churches don’t shape that anymore. They used to with the Roman Catholic Legion of Decency, which drifted away. This is something that warrants a major change.

Actually, one of the big issues today concerns the Indian cinema, Bollywood, where for years, they have taken American copyrighted films and added another hour of music and dance and claimed that it is not the same film anymore. They are trying to hide under the exceptions of copyright law, such as satire and parody, where clearly they are parodying a copyrighted work, but it’s okay. No one gave a damn when this was only shown in India. Now, with DVDs, it’s all over the world, and it’s millions of dollars. That’s in the

courts now and is being tested. Are Bollywood films that deal with our same plot and our same characters, just now recast with Indians and music and dance, a violation of copyright? It's an interesting question. I think it is. Others do not.

*Are there any changes that you notice, certain trends perhaps, in the film industry?*

The big problem is the cost of films. It is said that the golden era of sound films was the 1970s, which sounds a little bizarre. It was an era where you could make *The Godfather* at \$6 million, which did something we all take for granted after *The Sopranos*. It told a story that humanized the mafia and gave them real problems common to all of our lives. Nowadays, the average studio picture costs \$65 million, and the average cost of marketing is \$35 million. So, every time you push the "Go" button for a movie, it's a minimum of \$100 million. If you are making one of the superhero, summer, comic book pictures, it's \$200-300 million, with marketing at least doubled up to \$70 million. That conditions a case of extreme conservatism, a lack of willingness to take chances. As long as everyone goes to see *Ironman 3*, they are very happy with that. For those of us who want to see movies we haven't seen before, it gets very difficult to find movies that you really want to see.

Then, you get that fine line—*Tree of Life*, Terry Malick's film, winner at Cannes of the Palm d'Or award. Most of my students think it's the worst picture they have ever seen. I understand that, but it is a really interesting and challenging film. If you didn't have to make money with it, it would be an interesting exercise. When you are governed by much bigger behemoth communications companies, and you are a division and you are told "make money," you are going to find more and more conservative products.

The other thing I would point out is that, when I got here, film was a separate silo. You trained people to be filmmakers, writers, directors, whatever. It is no longer a silo by itself. It is part of a "transmedia entertainment" industry. The consequence of this is that, if you have an idea for a movie, you are going to find people saying "Well, could it be a game? Could it be a ride in an amusement park? How will it work abroad? Can it be a television series? Is there a built-in sequel?" No one wants to spend all this money and not try to develop a franchise. Suddenly, you are getting considerations that go well beyond whether it is a really good story with a great main character. There are other guys in the room with other points of view, all of which are financially generated.

My first studio job was at Palomar Pictures in New York. They named a divisional executive vice president who came from the record business, Sam Clark. His first words to me were "I don't know anything about the movie business. Don't embarrass me. Make movies." Within 6 months, he would tell me that his wife hated an actor and would ask me to cast someone else. It doesn't take a lot to consider yourself opinionated in movies. Everyone has tastes, and the balancing of risk and reward are very different. The more corporate the people running this show, the more you are going to get into trouble on that level, and I think ultimately the less interesting films are going to be. I would say those are the biggest changes, and the one operative piece of advice I would give to students is, as much glamour as there is in the movie business, if you are

unwilling to take chances, find something else. It is a business about risk. It's a batting average in movies. You're not always going to guess right. The execution is not always going to be what you saw in your head. You've got to live with that. You've got to embrace the risk. Take the chance and move out there. When *Star Wars* was turned down at Columbia and Lucas went over to Fox, they wouldn't give him much money. Instead, Lucas agreed to take the sequel and merchandising rights. \$1.5 billion later, handing merchandising rights over to Lucas is one of the worst deals in the history of Twentieth Century Fox. He took the chance.

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It is a difficult balance in movies between art and money. You aspire to art, but you must make money. You talk to any Hollywood executive, and ask them whether they would rather do *The English Patient* or *Dumb and Dumber*. There is no question. They would far rather do *Dumb and Dumber*. It doesn't matter that *The English Patient* won Best Picture. It was the lowest grossing Best Picture ever. So, that is what motivates them. There are certainly people with taste and there are people with an eye for profitability. It becomes an interesting balance for how to reconcile the needs of one and the needs of the other, and factor into that risk and reward. If you want to make a wonderful little movie like *Sideways*, it may increase the sale of Pinot Noir 53% in the country, and it may barely break even, but you would be proud to make that movie. It's a neat little movie.

*How difficult did you find it to assess the potential profitability of a film?*

Not hard. The risk-reward analysis is a little easier because you can analogize it to other comparable projects. You are not always right. No one is always right. It's a batting average in this game.

*What are the most important factors in this analysis? Is it who you can envision playing the characters?*

Sometimes, but god forbid you pay someone \$25 million and the movie bombs. It becomes a matter of anticipating the audience's taste. Inevitably, with the most frequent moviegoer between the age of 15 and 25, the taste of a 75-year-old man is not always going to be the same as the taste of young people. This also pertains to the casting. One of the reasons I left Hollywood when I did was a strong belief that this is a young person's business. It should be. You should be in the heads and, most important, the hearts of young people. It's not to say that you can't make a movie that cuts across all four quadrants—age and sex, and not to say you can't make a successful movie with older people for older people.

I was responsible for putting together a movie called *On Golden Pond*. I was the studio executive who selected the picture and oversaw it. It came about because Jane Fonda, who was then the biggest female star in the world, wanted to make a picture with her father, Henry, who wasn't well. The thought occurred to me that they should do *On Golden Pond*. I called Jane's lawyer, and I told him I had a great idea for Jane. He

called her and told me she would do it and deliver her father. Fabulous. Katherine Hepburn was the icing on the cake, and we made this movie.

The movie went over to Universal. I get a call from a former colleague who was their head of advertising. He said, "I don't have good news for you." I asked him what the matter was, and he said, "First of all, my management hates this movie. They think it's for old people and old people don't go to the movies, and secondly, they ordered me to sell it with Jane coming out of the water under the float in her two-piece suit." I said, "wait a minute, you are selling *On Golden Pond* as a T&A movie?" He knew I wasn't going to like it.

The next day, *On Golden Pond* appears on the cover of Time Magazine. It said, "If you see one movie this year, see *On Golden Pond*." And now, suddenly Universal got behind it. It became a \$100 million picture. It got nominated for Best Film.

*How did it end up on Time Magazine?*

They screen everything. You can't sell them. They give two covers a year to movies, like a Star Wars generally. It's subject to preemption. If there is a war outbreak, then gone is that movie cover for that year. But that's how it happened. Universal did a 180-degree reversal and pushed the picture. People loved it.

Tyce Walters  
Lives of Laywers  
Fall 2012  
Partial Transcript of Interview with Alan Novak

*TW: What was your experience like growing up in Far Rockaway?*

Alan Novak: Wonderful. We're talking about in the 30's and 40's, prewar. I never left Far Rockaway until I showed up one day in New Haven at Yale. It was a pretty homogenous experience. The only travel I did was to the "city," to Manhattan, to go to the movies when I was a teenager.

I never met a White Protestant till I went to Yale. I mean there were Blacks, Jews, a variety of Catholics, Polish, Italian, East Europeans – but no Romney voters at all.

*I imagine that was a shock then getting to Yale, where there were more than a few White Protestants.*

Well, yeah—I wouldn't say shocked. I really didn't tend to pay much attention to most things. I really wasn't a very perspicacious person. And so I just noticed that they all seemed much more educated than I, they used to get drunk every night, they had been to exotic places like Andover and Exeter, and they were dressed totally different than I was, you know?

*Did you pick up that clothing style?*

Not really, no. I guess I was never totally white shoe. I didn't shop at J. Press. But you know, I had very close family—my sister and I. I think these things are largely a matter of genetic luck. Neither of my parents finished high school. They ran a dress shop; they had never been anywhere. There was never any mention of college. My sister ended up being the leading American arts scholar in the country, chair of the Columbia-Barnard art department, and a brilliant writer. Some of her books are really quite important in the history of art. And I had a lot of schooling. So how did that happen? I have no idea.

*When did you decide that you wanted to apply to university, and to Yale in particular?*

I didn't really. My sister came home one day and said, "you're going to get drafted into the Korean War. And you might get hurt. And I've heard about something called the Navy Scholarship. If you have one, they pay your way through college and you won't get drafted, but you have to make a deal with them." So I applied and I got a scholarship, and I had to decide where I wanted to go. Oddly enough, I had been called once by a Yale alumni scout, who saw me play football and invited me to a barbecue in Westchester County where there were a bunch of Yale Football players. I thought it was very impressive, and since no one else had ever invited me I chose Yale as my first choice,

and I got in and that's how I got to Yale. I got in to every place I applied, because I was very good at that kind of intelligence in school.

*Did you end up playing any football for Yale?*

Not for the varsity, though it was quite amusing: they invited me up before school began to start practicing for the freshman team. And I had been working as a lifeguard and a cabana boy for the summer in Far Rockaway, and I wasn't conditioned at all. I got up there, put on my stuff, and gigantic guys in perfect physical condition literally stood on top of me for about eight years. I went back in the dorm and said, "that's it, I quit." So I never tried out again for a varsity team, but you know at Yale they have the residential college system, and I played for three years for my college team [Trumbull] and did very well.

....

*What was your overall experience like at Yale?*

It was great. I liked Yale. I had good friends. Every summer I went on a midshipman mission, which was an eye-opening experience for me because I'd never been anywhere. My first summer I was on a destroyer, second summer we flew airplanes in Texas and amphibious landed in Virginia Beach in Virginia, and my third summer I was in Marine Corps camp down at Quantico. So my summers were interesting. As I said I wasn't very social, I didn't join a fraternity. I was tapped for a senior society, which I guess was the first thing I ever joined. I enjoyed Yale – my only regret is that I didn't study very much. At the end of it, after I went in the Marines Corps and had a chance to think about, I sort of concluded that I had shorted my education, just because I had been continuing what I had always done, which was to demonstrate to people that I could do well in school without being a nerd. Which was something that really was important in Far Rockaway. You know, there was a peer pressure to appear normal or regular, and though there wasn't the same peer pressure at Yale I behaved like there was. So at the end of school I had done very well, but I hadn't really gotten what I considered a proper education. There was no depth there, I wasn't really seeking so much to learn as to score well.

*You were an economics major?*

Yeah, I was an economics major. "Intensive economics" they called it. I did learn, I was a reasonably good student. I continued that at Oxford, where I went after the Marines Corps. As a result of this observation I made about myself, I decided to apply for a Marshall at Oxford.

...

*Did you know when you were in the Marines that you were interested in law?*

No, not at all. I didn't have any career ambitions at all. It's a shame to say that, but I was just having a good time, just taking another couple of steps. I didn't even have that interest in the law subsequently when I went to Oxford. It was simply a matter of, at the end of my two years, I had to do something. I thought about staying in Europe or being a writer, like Ernest Hemingway. Or I met a girl who I was marrying in Europe, and I was bringing her back here. A way of putting off what I wanted to do was to apply and go to law school, where once again because I had always had good grades I could get a scholarship and get in. And then she taught French at the university – at the college, at Quinnipiac College. She was 20 and her students were 22. And so that's how I ended up at Yale, not really because I wanted to be a lawyer. I didn't know much about what being a lawyer meant.

*Who does, really?*

I still don't. I've been a lawyer—a member of the bar—for fifty years and I don't know what that means, being a lawyer.

*What was the environment at the law school like?*

Yeasty. I loved it. I was married, I lived off-campus first in Branford, then we moved down to one of the main streets – you could walk to the law school. I'd read philosophy and politics and economics—PPE, the American major—at Oxford, and I'd really been quite serious about it, I think because I had gone there to get an education. And I did get an education. I found the British system, for a motivated person, perfect. They'd give you twenty books to read and then you wrote an essay for your tutor. And since I was thirsting to actually get serious, this worked out very well. And of course the holidays were insanely good, traveling all over Europe.

But when I came back to law school I found I was *somewhat* at a disadvantage—I was older—but much of the material that was somewhat new to even the brightest of the guys who had just come from college, I'd done graduate work in it and it was relatively easy for me to relate to what the professors were talking about. So I started off feeling relatively comfortable with the material.

...

I was elected to the Law Review after my first term, so I began that experience, which was interesting. And I wrote my first piece for the Law Review as a freshman, a note that was a spoof. At that time, there was a birth control statute in Connecticut that was the subject of a case called *Griswold v. Connecticut*. It turns out that that statute did not mention the predicate of who was proscribed from taking birth control. At the same time, I had noticed in the New York Times an article that they had developed an oral contraceptive for dogs, which inhibited the menstrual cycle of the bitch. So I thought, why shouldn't I write a piece called “Man, His Dog, and Birth Control: A Study in Comparative Rights”?

...

*How politically active was the student body at the time?*

Good question. Compared to now, not very active. Very liberal group of people, not so much [active]—and this I think indicative of the change in society. What are we talking about, 1960-3? John Kennedy had just been elected President, so it's the start of Camelot. But the kids are mainly into their law. There's not that much activity. There certainly aren't as many groups as there are now. Right now there's probably a hundred societies at the law school. Everyone's a member of this, that, and the other thing. Not true then. I mean, I don't know, I didn't join anything, but I assume, my recollection is that, if I did join there wouldn't have been that many to join.

*You worked in several Democratic administrations down the way. Did you consider yourself a Democrat at the time, in law school?*

Not really, though I was attracted by John Kennedy. My first summer, I went down and worked for the Assistant Secretary of State for Economic Affairs, in Washington, which was a Democratic administration so in that sense I was a Democrat. My second summer, I got a fellowship from Gene Rostow to go study the common market.

...

*What was your experience like [as a Supreme Court Clerk], and what was your relationship like with [Justice Stewart]?*

...I guess everybody thinks their year was a fantastic year, but ours was a fantastic time. The civil rights cases were at the height. *Sullivan v. New York Times*, the Barnett case, several of the civil rights cases, *Baker v. Carr*...it was just lively because the Warren Court was an incredibly activist court. But you were in the company of giants. Hugo Black, Bill Douglas, Earl Warren himself. Brennan, Goldberg, Tom Clark. Byron White was just new, and the great John Marshall Harlan, and Potter. I think that was all of them. In any case, that was pretty impressive. I must say, I don't think the Court today has people like that, and I don't even like the way that some of them behave. But there was no misbehavior—except Bill Douglas's private life—in that Court, and it was just stunningly interesting to be a part of it.

Potter Stewart was just a class act. Wonderful guy, wonderful family. We weren't that different in age. I'd been in the Marine Corps, he'd been in the Navy. He was very generous: he asked my wife and I to babysit his house when he went to Vermont, to his summer house, so we became intimate with both his house and his children. And it was a friendship that lasted until we left, so in that respect it was very special. I also had a special relationship with Justice Brennan because his son had been in the Marine Corps with me, Bill the Third, so we were social friends of theirs and would go to dinners at his

house and celebrated holidays with them, and I retained that relationship too for a long time. And Byron White, he was just a friendly guy. We used to play basketball—you know there's a gym in the Supreme Court—and he was all elbows and all muscle. He was a mean guy, but he had a twinkle in his eye; he was a wonderful guy. I don't know that there were any of the justices that you could say anything about. And as I said, Hugo Black, a fantastically important figure in American life.

[Brief interruption from telephone].

The Justice, sadly, is most remembered for a case that he didn't even write the opinion in, called *Jacobellis v. Ohio*. Do you know that case? *Jacobellis v. Ohio* is a pornography case. In his bit of dictum that he wrote in the concurring opinion, he said he knew it when he saw it. And that came from the fact that Brennan had written a rule in the case of *Roth v. United States*, which talked about the prurient interest of the majority of the community, and so forth. And it was just an insane rule; you couldn't figure it out. So in those days what you did is that there was a week where you just saw porn cases. And so at the end of that week, he came in that Saturday morning, and he said "boy, what a week" and so forth. And we started talking, and he was saying he didn't know what to do: he was going to vote with the majority in *Jacobellis* but he didn't really think he was applying the rule—he just thought he knew it when he saw it. He talked about some things he had seen in the Navy, and I talked about some things I had seen in the Marine Corps, and we both agreed that we knew it when we saw it. He walked into his office, and about half an hour later out comes this one-line opinion which he didn't think anything of, because it was a concurring opinion, pure obiter, and he was just being honest. And now, if somebody says Potter Stewart, they'll say "oh, the justice!"

The funny things about that story is that twenty or thirty later they give a chair—I think we paid for it, the clerks—helped produce a chair for Potter Stewart at the law school. We picked a guy—they picked a guy—to be the first Potter Stewart Professor. I think his name was Paul [Professor Paul Gewirtz]. The guy, Paul, decided to have a forum or a panel discussion around what Potter Stewart meant, as a jurisprudential matter, by "I know it when I see it." My wife and I went up, because it's Potter Stewart's chair, and I got up and I said "I can't help but say that I was there at the making, and this is a little heavy in terms of what he was thinking." But so be it.

...

*What did you end up doing for Ted Kennedy?*

I was his legislative assistant. . . . It [moving to Washington and beginning work for Sen. Ted Kennedy] was part of not having any commitment to being a lawyer. Obviously, if I had gone to Cravath and said "my highest ambition is to be a partner at Cravath"—which of course, in retrospect, if I had done that I would have been extremely wealthy—but I didn't have that feeling. Given that I'm a sort of passive guy that way, I probably would have stayed at Cravath unless someone had come to recruit me. I wouldn't have gone out to look for another job. So what does that prove, for the thousands that are going to watch

this in the archives? It proves that life is full of bends in the road, and many of them are totally gratuitous in terms of the outcomes. I had a good friend, in the actor Paul Newman, who I worked with on these Hole-in-the-Wall Camps, and Paul always used to say, “life is luck—95% luck.”

...

*[How did you end up working under Gene Rostow at State?]*

Following my generally passive nature, I didn't do anything other than missing a phone call from Gene Rostow, saying he was going to be undersecretary of State and he would like me to be his top assistant, and would I discuss it with him, which I did. And once again, it was an offer I couldn't refuse. It was the seventh floor of the State Department, and really tremendous responsibility.

*And that grew out of your relationship with him at the law school?*

Yeah. I didn't really have much of a relationship with him at the law school, but he was the dean. I must have got—I didn't apply to get this fellowship to go spend the summer fooling around in Europe. He asked me, he picked me, and I didn't really know him, and I never had dinner with him or his family. We subsequently, he and his wife and my wife and I, became very close friends. I think basically he knew my record at the law school, he was aware that I was Kennedy's aide, so he put two and two together and said “oh, he's politically aware and he's not dumb.” Whatever. I never really asked him what his decision tree was or whether I was his first or his fifth choice, but he offered me that job. I asked where would I fit on the ladder. And the highest that you can make anybody is FSO-1, Foreign Service 1, which is a GS-18, just below career ambassador. And I was only 31, so I wasn't going to ask to be a career ambassador, particularly just as an aide to him. But he did take me in at that high level. So I said yeah, ok, I'm going to leave the Senate. Everybody was shocked. Most people don't leave the Kennedys, in general, and you know Bobby was there and we were all sort of part of the team...

*So you got the call from Gene Rostow at State -*

So then I went over there. I feel bad, I haven't reported any bad experiences yet. But as a young man, everything would come up roses. I was really blessed; one thing led to another and not really appreciating it, I was enjoying and traveling in a fairly rarified way. The experience with Rostow was super, just because that stuff *is* interesting and we were operating at a fairly high level and there were important things going on. Not the least of which of course was the war, which was a terribly heavy thing for both Dean Rusk and Rostow and Katzenbach, who was the other Undersecretary, to carry on their shoulders. It was relentless, because in those days you'd read the cables, and there'd be ten cables that were bad and one cable that was good. You'd grab the one cable and say “look!” because you couldn't really carry on unless you could find some good news. And there wasn't much. David Halberstam's book, which is as good as you could get on what happened to the best and the brightest. I mean, Dean Rusk he had a philosophy: if the

United States pushes something will give, was his basic philosophy. Except in Vietnam it didn't really work, you know.

But I think you mentioned in your questions to me about Rostow and the war, there were sort of - it's hard to say there were "two Rostows," but you know Gene Rostow who was a brilliant student, who was a very successful antitrust professor, his sidekick was Lloyd Cutler who started Wilmer, Cutler, and Pickering (actually that firm started as sort of an adjunct to Cravanth). But anyhow, Gene was a great antitrust lawyer. I guess he was appointed Dean in 1955 or something like that. And the '55-'65 era, he brought in many of those great law professors, and so everybody joked in that era about "Gene the Dean." He dressed beautifully. I remember I used to go to London to go to his shoe store, they made wonderful handmade shoes. He always had a vest on, he had a certain distinguished dignity that came from being a child of that era. It was very British. He acted as if he was British, but he wasn't. He was Jewish I guess, though I don't think he practiced anything. He had this nasty brother, Walt Rostow—Walt Whitman Rostow. He was Eugene V. Debs Rostow, his father was clearly a socialist. Walt was national security advisor to Lyndon Johnson, so he was really in the thick of the war. I knew all about the war before I came over there, because both Kennedy brothers were deeply involved in getting the real take on the war. By the time I moved they had already decided they were going to become more and more against the War, Bobby in particular. Teddy was more conventional, but Bobby in particular. Fortunately for me, when I went over there I didn't cover that. There was another legislative assistant, a very well known guy. His name was Tom Enders [Thomas O. Enders], he actually was the guy who directed the bombing of Cambodia. He became ambassador to I think Yugoslavia, then Spain, and then to Canada. But at that time he was the other legislative assistant to Rostow, and he sort of handled that area. What happened was Rostow was appointed chairman of a taskforce, a national fifteen-agency taskforce, to study and recommend a new national telecommunications policy, which was something that not too many people know. He asked me to direct that, and I put together a great group of guys. I didn't know anybody in the telecommunications field but I knew a bunch of former Supreme Court clerks. So I put together a staff that had six former Supreme Court clerks on it, and we did what I think was an amazing study of telecommunications, which worked out to be the blueprint for what subsequently became the evolving telecommunications policy of the country. It led to the breakup of AT&T, and the development of cable television, and the cell phone revolution because we did a chapter on the frequency spectrum. And for the first time talked about the fact that there could be people walking around with little phones mobile-y, if we managed the frequency spectrum the way the military did. And the reason I could write that chapter was one of my staff had just come over from Defense, and that's what he was doing over there and he just helped us write that chapter.

So Rostow to me was benign, and I know he went back to Yale and to a shitstorm of controversy and I feel—I felt—bad for him that he did it, because his positions were patriotic positions. And they were based on the fact that as an international lawyer he believed that the rule of law, in the absence of a judicial body that could actually adjudicate those disputes, had to be enforced. Otherwise there would be chaos. So his notion was—and we could argue about the theory—was that forces for good like the

United States would be the enforcers. And people would say, well you can't be the nation's police force, I mean the world's police force, and he would say well there *needs* to be a police force, and so we're the next best thing. And that was a fair—I mean it was a genuine feeling; he wasn't a nut. Invariably the people who get involved in these wars get castigated and pilloried, and it's too bad because very often they're honorable men, distinguished, honorable men. I know a lot of people will say, "well, that's fine. But if he did that he gets judged for that, and he gets judged bad." And Gene got a lot of that. I think he suffered in his later years; nobody likes to be treated badly, particularly on his own campus. I mean, Yale was his home. He did his undergraduate school, he did his graduate work there, he did his law work there, and he was a professor there. Nobody was more of a Yalie than Gene Rostow.

*I know he was accused by at least one professor there of being a war criminal.*

Well that's what you say, same thing about our president. If you're in that kind of war, and there are people dying, then they accuse the guy who's in there of being a war criminal. He had very little to do with Vietnam policy. And that's not an excuse. He just wasn't in that line. He did have a hand in our Israeli policy. While I was there, there was the '67 War. He was the guy who said, "we're neutral in word, act, and deed," or something like that ["Our position is neutral in thought, word, and deed"]....But he worked very hard, and I'm sorry he got a bum rap. In my opinion, a bum rap.

*Did you have a strong position on the [Vietnam] War at the time?*

I was against the war, but I didn't have a strong position, because that's the way I was. I wasn't militant, although most of my friends were and they would go down to the Pentagon, stuff like that. I didn't do that. And part of it was because I was an official, and it was a little awkward to do that, so I didn't do that. But yeah, I was against the war because I knew better. I had heard the truth from the people who used to come to Bobby's and Teddy's office. And they would describe what was going on in Vietnam. And it was clearly only because the officials didn't know how to get out, that they held out the news as long as they did. And it killed them. You know, it destroyed Bob McNamara, the rest of his life. I mean, he lived a long time, and he ran the World Bank, but he did it with great guilt.

*Was that anything you ever discussed with Rostow?*

Oh yeah. I would tell him I thought we were losing. But he had perfectly good arguments to make against it: eventually, it was going to work out. Do you know who Henry Jackson was? A Democrat from Washington State. He was a liberal on social issues and a hawk. And there was a whole faction in the Democratic Party that were hawks, that were quite liberal on social issues, but they had grown up with the notion that the Soviet Union was the enemy, and Communism was the specter of danger and so forth, so they would come out on most issues in the same way that certain Republicans would. And that represented a wing of the Democratic party. It's like the neocons; they were the neo-Dems. Actually, Gene and a number of people like Henry Jackson founded something

called the Committee on the Present Danger. And if you go and study who's on that committee, it's all liberals who were hawks on the war. If that's your position...there were a lot of people in favor of the Vietnam War. Because they felt that if we didn't stop there, the domino theory and so forth. The fact is that they just happened to pick a place where you couldn't win. And we're still learning the lesson that American boots on the ground in any ambiguous situation is almost impossible end up good. So hopefully, no more boots.

## **Interview with Neal Pilson**

Conducted by Paige Wilson for *Lives of Lawyers* (Fall 2013)  
on November 15, 2012  
at the Yale Club of New York

PW: *When and where were you born?*

Neal Pilson: I was born in Manhattan, New York City, in 1940. We lived there for eight years, and then moved to Queens in 1948 when Queens was pretty much the frontier for New York City. Subsequent to that, we moved to Roslyn, Long Island, where I went to high school. After I got married, we lived in Flushing for a few years. My wife and I were from Long Island, and the first thing we agreed on is that we weren't going to live on Long Island. So we looked for a house in Westchester and moved there in 1967. At that point, we were about to have three children. It was the tradition at that time -- all my friends seemed to have their children very early in life -- so we had three children by the time we were both 26, which is nice, because now my son is almost 50. We lived in Chappaqua. First we lived in Arnsley, and then in Chappaqua, and now we live up in Richmond, Massachusetts. That was a quick summary of my travels.

*Can you tell me about your family?*

I would be happy to. One of the proudest parts of my life. Married for fifty years. My wife, Frieda, met her in college on a blind date. I was at Hamilton College, and she was at Cortland. We got married in 1962. I had one more year of law school and she taught in East Haven while I finished my third year. We lived at 84 Howe Street, just off the law school campus. I then got a job at a law firm in New York. I took the New York bar exam. We moved to Flushing, Queens, which was a subway ride into Manhattan.

I had three children. The oldest son, Michael, we had Dana, and our youngest is Julie. We had all three children in a period of four years, which my wife always reminds me was both a blessing and a curse. So our children now are in their mid to late 40s. We have six grandchildren, the oldest of which is a sophomore at St. Lawrence University, and the next oldest is a freshman at Hamilton College where I went to school. The third oldest is Gabby, who's a senior at Northwoods School in Lake Placid, and she's an accomplished hockey player. Then we have three younger grandchildren. Carly, age 12; Tammy, who's 10 1/2; and Katie, age 8. Our son has three children, our daughter Julie has two, and our other daughter Dana has one. One wife, three children, and six grandchildren. And I remembered all their names.

I have a sister, Susan, who's six years younger than I am. She lives in East Northport, Long Island. Thankfully she lives within five minutes of my son, so she has from time to time been pressed into babysitting services and pickup services. She's my only sibling.

*What was growing up in New York like? What was your childhood like?*

It was a pleasant, stress-free childhood. We lived under 186<sup>th</sup> St and Bennett Avenue in uptown Manhattan. My father was a Certified Public Accountant who worked for Price Waterhouse, which was a prestigious Wall Street accounting firm. And that really, in a way, shaped some of my career goals. He worked for a long time at Price Waterhouse and then moved to Seagram's where he was the CFO, and then to a company called Simplicity Patterns where he was the CFO. He was diligent, hardworking, integrity-type person, and it was his work at night with balance sheets, spreadsheets, and accounting financial numbers that persuaded me that I was not going to be an accountant. And as I will explain later, career choices are usually eliminating what you are not interested in and what you are not good at and eventually arriving at a professional career where you are comfortable, happy and where you have some skills. So accounting was the first profession that I ruled out around probably at age 8 or 10. Watching the hours my father worked, some of the travel he had to do, going to clients all over the countries. And travel wasn't easy in the 40s. You didn't fly; you got on trains.

My parents...single marriage. Stable marriage. My sister was born when I was 6. Within a couple years after that we began to move away from the city center. First to Queens, then to Long Island. I'm a child of the suburbs, having lived most of my life in the suburbs of the New York metro area but not in the city itself.

*And when you were growing up, where did you fit in among your peers?*

From an early age...I talk about this in terms of my adult challenges. My mother and father were the first generation college graduates. In fact, my mother didn't graduate from college in the 30s; she later graduated in the 60s when she was in her 60s. My father went to NYU; my mother went to city college. They were both strivers. They held me to a high standard. I held myself to a high standard. One of my failings is that I hold everyone else to a high standard that I hold myself and that leads to impatience. Something I've had to monitor my whole life. So I always expected to work hard, play hard.

At an early age I went to Hunter College Elementary School, which was a magnet school. I was bussed there from 186<sup>th</sup> Street. All the neighborhood kids went to the local grade school. I went to Hunter. In my early years, two things conspired to shape some of my attitudes and career. One is that I was born in April, so I was almost a year younger than almost anyone in my class. I started in first, second, and third grade six months or three months younger. In junior high school, I qualified for an SP program and I think it still exists. I went to a special junior high school in Forest Hills where we did three years in two. We did seventh, eighth, and ninth grades in two years rather than three. So I picked up another year. So I ended up going to high school when I was just a little over 13...I'm a sophomore in high school. And then I'm 16 and I'm a freshman in college. And at 20 I'm already in law school. So I compete with students who were 18-24 months older than I was, which meant that I had to grow up pretty fast if I was going to be part of the group. I had to have a more mature outlook. I had to overcome the dating issues. Most of the

girls in my class were at least a year older than I was. And that helped shaped my growth, my development, my perception of working and dealing with others.

I was perhaps overcompetitive. I tried to do well in school. I played just about every sport. I generally was the organizer of whatever sport we played. I got the kids together for softball, or baseball, or basketball. I'd have all their phone numbers. We'll meet at nine o'clock at the schoolyard. This was before little league, and it really forced the kids to develop their own game models, develop their own rules. We didn't have parents showing up and structuring the entire program, something that's been lost on the American public in the last fifty years. So we had to have more initiative. We had to be self-starting. We didn't just show up for tryouts. We *ran* the tryouts ourselves. If we wanted to play another school, we'd get a hold of kids our age at another school and book games between different schools. And I was in sixth grade, and this was the way you had to do it. You gathered your friends and you played. So I never realized it then, but this sense of organizing, prioritizing, time management as a sixth grader, as a seventh grader, are some of the skills that we bring to our profession. And they're some of the skills lawyers are expected to have when they deal with people who are non-lawyers.

You will find as a lawyer even if you never practice law, at a business meeting, you'll often times to be asked to set the agenda. What should we be talking about first, second, and third. You may not be running the business, but very often, lawyers with legal training end up being part of the management structure because a lot of the skills you learn in law school...fact finding...everything...what are the facts? You'd be surprised how many businessmen go often into a meeting not knowing really what he or she is dealing with and lawyers provide that.

So at an early age, I ended up having or exhibiting or acquiring what I call leadership skills. Not coincidentally, I'm in the fifth year of teaching a course at the Columbia Graduate School, because this was part of my upbringing. I can remember at a very early age calling kids to come to the schoolyard to play softball or baseball or basketball. Getting enough, making sure we had a first baseman, a second baseman, a third baseman and so forth.

I did three years in two at Steven Halsey Junior High School. I even remember the song: "We march along, we march along, to Steven Halsey Junior High!" Then my parents made a decision for me. I was scheduled by reason of where we lived to go to Jamaica High School, which was a very large high school in Jamaica, Queens. It had a college crowd, and a not-so-college crowd. There were stories and rumors about problems at Jamaica High School. It turns out that a lot of the guys I played basketball with in junior high school went to Jamaica and became national basketball players. A fellow named Alan Seiden, the captain at St. John's; a fellow named Rich Rodin, captain at Columbia...so I was in a good mix of good basketball players. And my parents were apprehensive about little Neal Pilson, age 13, going to Jamaica high school. So they moved to Roslyn, Long Island, which was a quiet suburb about twenty miles further away, thirty miles further out. Smaller high school, where I did make the basketball team. I played for three years at Roslyn High School.

It was a better environment for my sister. Her schools were quiet, suburban schools. Roslyn had an excellent reputation for schooling. Matter of fact my father ended up on the school board after I graduated. So I did three years at Roslyn High School. I ran for office. I wasn't elected. I lost my first election. But I was part of the Roslyn High School college crowd, which was a much larger segment than at Jamaica High School. I liked small high school. You may see where I'm going...and so I applied to several small colleges. I made a trip up to Hamilton College, which is a beautiful, well thought out, old men's school out in the early 1800s. They asked Alexander Hamilton for the right to use his name. It's set on beautiful quadrangles, high on a hill, overlooking central New York. I went up and visited the school and said, I want to go here.

*Were you thinking of going to any other colleges?*

I had applied to Colgate, Brown, and Amherst. I was rejected at Amherst, accepted at Colgate, and put on the waitlist at Brown because they thought I was too young to go to college.

*It seems like you were smarter, smaller, and younger than your peers. How did your peers view you once you started skipping grades?*

Fortunately I wasn't smaller. One of the things was, I would never volunteer my age. I had to be more mature to fit in with 15-year-olds while I'm 13. It gets embarrassing when you start getting your drivers' licenses. At age 16, you get a learner's permit and a junior license in New York. This was fifty years ago...more than fifty years ago. I didn't get my permit until two months before I graduated from high school, which meant I had to go on double dates with one of the guys who had his license. If I couldn't do that, my father had to drive me to pick up my date, who sometimes had a license, and I didn't. So there were a lot of awkward moments...and I had to deal with them.

I was a little behind socially, as a sophomore. But as a senior, I was comfortable. As a senior, I was editor of the sports page, the sports section of the high school newspaper. I had a girlfriend who was a year older than I was, which I think embarrassed her more than it embarrassed me. And I was a fit; I was part of the college crowd. A good friend went to Amherst; another went to Dartmouth. I was in that college crowd. We stayed together for sometime after. I no longer see my high school friends, but they were all college-bound.

I went off to Hamilton at age 16, where immediately I faced the drinking issue. New York at the time had an 18-year minimum, and no one checked. No one really cared. Out we go, the first few nights down to the local bar in Clinton, and I'm 16 years old. But I'm as tall, and I played basketball at Hamilton; I was 6'1, about 175lbs, and I passed for 18. I never got carded; it was always a source of amusement. A lot of times, my older classmates, who looked younger, were asked to show their driver's licenses. I never was asked, so I passed for 18. I couldn't have passed for 21, but the rules are much stricter now than they were then.

So I was a fit. I joined a fraternity. We all did at Hamilton. The first week of school was very unique. Now; not so unique then. Became part of the fraternity, played on the freshman basketball team. I was a fit. Again, though, we'd go off on dates. You'd travel to colleges around the Northeast. Often the dates were either fix-ups or blind dates. I was dealing with girls who were 17, sometimes 18. I would never ever signal my age at that point. So it doesn't mean I grew up as a concealer of my age, but there was a long period of time when my age was an embarrassment, and now it's turned out to be an advantage. I'm younger, fitter, have older children. I was already at a point in my career that most people would not reach. I was president of CBS sports when I was 41. Once I got out of law school, my age became a huge benefit. Until I got to law school, it was a benefit and a burden. But it helped shape my career, because I had to act mature even if I wasn't thinking very mature.

*Which fraternity were you in?*

Hamilton had a mix of national fraternity and local fraternity. They all had their own fraternity buildings. They were all basically governed themselves. We ate at the fraternity and slept at the frat. It's a system that the college has since abandoned, and I think properly so. I joined a fraternity called the Emerson Literary Society, which was a fraternity in every sense except that it was a local. It didn't have a national affiliation. It was called the Emerson Literary Society rather than DKE or Psi U or Sig or whatever. Our fraternity had the highest academic grade average of all the fraternities. But at the same time one of the years that I was there we won the inter-fraternity athletic championship. The captain of the football team was in the fraternity. Our fraternity was more attuned to scholarship and less attuned to the world of drinking and carousing. Not to say that the other fraternities didn't have smart people, they all do, but our focus was on both scholarship and athletics.

I was very comfortable there. I lived there for three years after my freshman year. Some of my closest friends lived down the hall from me and we still socialize. I met my wife in college and she spent a lot of time at the fraternity and going to class with me. It helped shape who I am, but I never forgot, although a lot of people at Hamilton did forget, that my principle loyalty was to the college and not to the fraternity. And Hamilton went through a very difficult time about thirty years after I left the school where they abolished the fraternities in terms of living quarters because at the same time they were trying to interest women. Coming to the school, we were all men at the time, and women didn't have that kind of social structure. It became a bit of a problem for the college, which they have since solved, because the grade levels and SAT scores of women were turning away from Hamilton as a kind of jock-y, old-time boys' schools. But now it's totally coed, that problem has gone away; girls live on different floors of the dorms and so forth. I'm very proud of the college and very proud that my grandson goes there.

*How did you end up at the Emerson Literary Society?*

This is a very confusing part of college life that doesn't, to the best of my knowledge, exist today, and I'm glad it doesn't. But literally a week after arriving on campus, all the freshmen were in the same dorm. The fraternities had parties and you'd rotate among the fraternities and you'd meet the brothers and look at the house and the physical location of the house and its reputation and all the different houses had different reputations. Some were exclusive and did not admit Jewish students; others did not admit black students. Some were considered the jock house; one house had the football players, and one house had the hockey players. ELS had a mix. They had black students, and there weren't many – there were only two in my class; consider that. They had an academic reputation, which they talked about. They were not exclusive in the sense that they didn't have restrictions on membership. Not that that was a big deal for me, but a lot of friends that I made in the first week at the freshman dorm also chose ELS, so within a week we started eating all our meals at ELS, all our social functions were basically around the fraternity.

We had fraternity touch football, volleyball, basketball, hockey...there was a full range of sports. I wasn't allowed to play any of the sport other than basketball because I was on the basketball team. They didn't want you playing inter-fraternity sports. But we had a nice mix of freshman in the fraternity. People I still see today. I was comfortable there. I respected their academic standards. I enjoyed the fact that they had competitive sports teams. I liked the physical nature of the place. And one of the nice things was it's located on top of the hill, so the fraternity is on the same level as the college, whereas many of the fraternities were down the hill...maybe a quarter mile to a half mile down the hill. Being a practical guy, I wanted to walk on a level stretch, especially at Hamilton, where we had about eight feet of snow every winter.

The principle was the kids, the other students who were there. I made lifelong friends there and I've been a supporter of Hamilton for fifty years. I mean, I constantly contribute to their fund. I travel there. We now live only two hours and twenty minutes from Hamilton so it's an easy trip over and back. It was one of the very fortunate decisions that I made. Choice of college, choice of law school, choice of wife, choice of business career. I have very little...I don't look back and say that I regret any of the big decisions in my life. Not many people can say that. At age 72, I'm very comfortable with what I've achieved, the friendships that I have, the family life that we have. Six children, three kids, and their spouses coming to Thanksgiving next week. A wife of fifty years who has been a partner.

They used to say behind every man is a successful women. I would say about a quarter step ahead of every man is a successful woman. We go off on walks and I'm constantly reining her back because she always walks about a quarter step ahead of me. I'm not asking you to walk behind me, but I just, I'd like to walk next to me. But she's always pushing; she walks four-minute miles. So our going out for a walk is like her going for a walk and me going for a jog. That's one of the characteristics of my life.

Ultimately, we're going to lead to how we got to Yale. But going to a small high school, where I knew all the professors and the classes were small, going to small college, where I knew all the professors and the classes were small...I think inevitably, as we begin to think about, well, what am I going to do when I get out of college, Yale Law School goes to the top of my priority list.

*What led you to study history at Hamilton. What pressures and expectations were you facing from your family?*

No pressures from my family whatsoever in terms of career. I wouldn't say pressure, but just the expectation that I would do well. I did well in high school. I did well in junior high school. They felt I would do well at Hamilton, and I felt like I would do well at Hamilton. I was Phi Beta Kappa; I was 7th in my class of about 150.

The secret was time management. Most of the guys would stay up late and watch television. Go to bed at twelve, one, two o'clock. Study into the wee hours. That wasn't my style. I would study in the mornings. Especially if I had an exam, I'd get up at five o'clock and go over the exam protocol, whatever I thought was going to happen. I'd write my papers during the afternoon. When I wasn't playing basketball, I had the afternoon up until four o'clock, because I wasn't a lab major and I wasn't premed. My roommate was premed and spent half his life in the labs. I wasn't premed so I didn't have to do that. So I'm studying between classes when I had an hour; that's when I'd get ready for the next class so I was right on top of what I was doing. I'd study in the mornings for exams, I'd do my work in the afternoons, and I'd take the guys, I had a car, we'd drive for hamburgers and stuff at night, and then I'd go to bed at 11 o'clock, so no one ever saw me study. I got very good grades. I participated in class and I really enjoyed that. That's one of the skills that Hamilton stressed.

//30min

**Casey Arnold**  
**Lives of Lawyers**  
**Fall 2012**  
**Partial Transcript of Interview with Robert “Bob” Nordhaus**

**Interview Dates: November 8 and 9, 2012**

**Location: Van Ness Feldman Offices in Washington, D.C.**

Bob Nordhaus: I grew up in New Mexico and spent my high school years in the East at Andover. I was one of the few people from my graduating class at Andover who went to Stanford. I spent 4+ years at Stanford, mostly in Architecture. I was an Architecture major until it became clear that there was a certain lack of talent there, switched to History, redeemed my academic average, and after a year off when I spent some time skiing and did some military service, I started at Yale Law School in the fall of 1960. This was the year that John Kennedy was elected president, and from our vantage point in New Haven, Washington during the Kennedy years looked like a very exciting place and many of us ended up interested in working in Washington, but my basic background was not at all directed toward law school until well into my college years when I decided architecture was not the profession for me.

*Other than deciding that architecture wasn't a good profession for you, what else prompted you to attend law school? Were there other attorneys in your family?*

Yeah, my father was a lawyer and a graduate of Yale College and Yale Law School, though there were very few things I agreed with...I eventually decided that law school was probably the best course for me, and I ended up at Yale.

*And when you started at Yale, or prior to starting at Yale, did you have an idea about what kind of law you wanted to practice, or did you just think “I want to try law school”?*

No, none. I had no idea what law school entailed and very little idea of what law practice is like, other than what the small-town practice of the kind my father had was like, which was not what I wanted. So, I arrived at Yale Law School in the fall of 1960. The first semester was one of the most intense and challenging intellectual experiences of my life, and one of the most rewarding, and I think, as I look back on it, probably the most challenging and rewarding part of it was the small section on Constitutional Law that was taught by Charles Black, and that was, I think, sort of the central experience of the first year, was that first year seminar that Charles Black taught.

*What was the environment at Yale Law School like when you were a student? Were students pretty politicized?*

For the most part, no, and I think this was the tail end of the Eisenhower years when the college students and law students, for the most part, were not terribly interested in politics, and were not highly polarized in the way I understand they are now. In the course of my years at Yale Law School, I think that changed, largely because of the excitement that John Kennedy and the Kennedy Administration generated as leading many of us to view Washington and government

service as something that could be exciting and rewarding and an interesting path to follow once we got out of law school.

*At the time, was there a divide between the students that wanted to pursue careers in private practice versus those who were considering government service or other career paths?*

I don't think, not the kind of divide that I think we see now. I think until the beginning of the Kennedy Administration that government service was sort of looked down on, as you know, why would anybody do that if there were other options? But I think the excitement of the Kennedy years led to a significant change in attitudes toward government service. I think a lot of my colleagues in the class of '63 were also interested in clerkships and teaching, and I think we produced a number of law school deans. I'm not sure whether our percentage was higher than other classes, but we certainly had a number of our people who were interested in teaching. The concept of public interest law was unknown then, so that there were not the kinds of opportunities to work with NGOs that we now see, and the public interest law movement was, I think, started by some of the people in our class.

*Was the class very economically diverse, and where did you fit in?*

I'm not sure. I think that there were some people from very wealthy families, some people from lower middle class families. We had a number of African American students, I think maybe fifteen, if I recall correctly, some of whom were from economically disadvantaged backgrounds, some of whom were not.

*There also weren't very many women in your graduating class, so what were the gender dynamics like at the time?*

Well, for that era, I think we probably had more women per capita, or a higher percentage of women in the class than any other law school at that time, but it was still a small percentage. I think you may have a better idea than I do, it was well under 10%, but I think there were fifteen women in a class of 180.

*How would you describe social life at the law school, and what did you all do you in your free time?*

Social life in the law school revolved around academics, pizza, some football, there was some participation in various undergraduate pursuits. I spent an inordinate amount of my time skiing, but I think that was a pursuit that was not widely shared in the law school. Socially, I would say because the law school was a relatively small group of people that it was a fairly close-knit group. There weren't cliques, as I recall. Certainly a number of lasting friendships, for me anyway, came out of law school.

*Other than that first semester seminar that you had, the Constitutional Law seminar, what were some of your other classes and professors?*

Well, I think the other sort of major influence in my... [checks video camera] can you see me? I would say was, we had a program then where in your third year, you specialized in a particular area of law and did a third year paper. My area was, I think it was called "Regulated Industries," and I worked under Robert Bork and Ward Bowman, who was an economist. That really, I think, I didn't know it at the time, but it turned out to be really important from the point of view of where I ended up, what I ended up doing as a government lawyer and as a private practitioner, and though I rarely agreed with Professor Bork, I think he had tremendous influence on how I approached problems of economic regulation. This was before the era of environmental regulation, so there wasn't really anything akin to what we know now as environmental regulation. Most of that, or almost all of it, came in the 70's, some years after I graduated from law school, but the basic concepts of federal regulation were already embedded in the New Deal legislation that was the subject of a lot of our work.

*What sorts of pressures did you face while you were in law school?*

I think that certainly in the first semester and the first year, the major pressure was just understanding what law was all about, and I'm sure then and now, everybody goes through that experience, and I think that the one thing that still sticks in my mind is Civil Procedure, and I think the first or second class, we were to...our reading consisted of a 13<sup>th</sup> or 14<sup>th</sup> century common law decision, and we read it and re-read it and couldn't make heads or tails out of it, and it wasn't until weeks later that its context became clear, but I think that much of the first year, and I imagine it's not too different now, is looking at these totally mysterious materials and trying to figure out what their relevance is to what you thought law and law practice was like before you entered law school, and the process of assimilating, trying to put these various pieces, these textual artifacts into some larger context was, I think, the major challenge of the first year, and I imagine that most lawyers or law students go through that. That was the most challenging part of law school, getting oriented into what law was about and how the legal system worked.

*Was the student body competitive? Was there competition for grades or anything like that?*

I think in that era they were certainly competitive, but they went out of their way not to appear to be competitive. I remember I had a roommate at one point who, from 8:30 to 11 every night, would play poker, and then he would sneak away from the poker game and study from 11 to 2, but wouldn't let anyone know that he was studying, and that was not unusual. The attempt to try to do very well, but make it seem like you were doing it effortlessly, and it's a more subtle form of competition than what you see in many law schools today.

*Did you all live at the law school?*

After my first semester, I did. I lived off campus for the first semester and then was at the law school dormitory for the remainder of my tenure.

*Ultimately, by the time graduation rolled around, did you feel like law school had lived up to your expectations?*

Well, I think, going back, I'm not sure I had a very clear idea of what to expect, but whatever my expectations were, by the time I had finished, I thought it was an incredible experience, but much different than whatever I thought law school was going to be like. That wasn't what it was like.

*How, if you had any aspirations going into law school, perhaps career-wise or what you wanted to be like as a law student, do you feel like you met those, and how did those aspirations change while you were at Yale?*

I think when I started at Yale, I assumed I would go into private practice. I wasn't sure where, knew I didn't want to go back to New Mexico, and by the time I left, I was much more focused on working in Washington and being part of the Kennedy Administration. As it turned out, I ended up not going to work in the executive branch, but for the Legislative Counsel's Office in the House of Representatives for reasons that I will be happy to explain, but I think that that period was just a very exciting time for somebody coming out of law school to be in Washington, and there were periods, and in the 50 years since I finished law school, there have been, sort of, periods when it's been exciting to be here and periods when it's been depressing. I'm not sure, I think we're in one of the depressing periods now, but then it was a very attractive place to be.

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*So, when we left off yesterday, Reagan had just been elected, and you had left FERC (Federal Energy Regulatory Commission). Following your departure from FERC, you joined Van Ness Feldman, and when you were considering what your options were, knowing that you were going to have to leave FERC, did you consider trying to remain in government in maybe a non-partisan office, or did you know that you were going to switch to private practice, and what other job possibilities did you consider?*

BN: Well, at that point, I was a political appointee, and it would have been very difficult, certainly, to get a political appointment in the Reagan Administration, having worked for Carter and the Carter White House, and would have been also, I think, difficult to get a career position in another executive agency. It might have been possible to go back to the Hill, but I think at that point, I was ready to do something else, so I did talk to a number of law firms, had several other offers, and I guess the principal other offer was from a small, boutique antitrust firm the name of which I can't remember which wanted to expand its practice into energy law, and I had a colleague who was working there already. They made me a very nice offer, quite a bit more than what Van Ness offered me, but ultimately I decided that I wanted to work with people I'd worked with on the Hill and at FERC, and to work, rather than build a practice on my own, with people who already had a budding energy practice and people who were very much in the center of things on public policy issues. So I came here. I had considerably less compensation than the other firm offered me. It turned out to be a much wiser decision than I realized because the other firm went under about a year and a half later when their antitrust work dried up as a result of changing antitrust policies from the Reagan Administration, so it turned out to be very fortunate, just from a survival point of view, that I ended up here. It turned out to be a very rewarding place to work because we had a very viable energy law practice, both regulatory and legislative, and really had a good time. One of the things we did in that era was to start up a PURPA

practice, this was a practice dealing with renewable energy and combined heat and power electric-generation facilities that had been given access to electric power markets under a statute enacted as part of the Carter energy legislation, the Public Utility Regulatory Policies Act. When I was at FERC, we worked on the implementing regulations, and once here, had a chance to actually work on real projects that were affected or were seeking rights under these implementing regulations, and it turned out that this was the first wave of independent power producers, which have become, at this point, a little more than half of the generation in this country is controlled by independent power producers. The first of those were the clients that we represented in the immediate aftermath of PURPA, so it was sort of exciting, and this client group, they were the functional equivalent of oil wildcatters, they were entrepreneurial, not the staid utility executives you were accustomed to dealing with, and most of them went under, but a number of them ended up becoming very central in today's industry. So, I spent twelve years after the demise of the Carter Administration here at the law firm doing mostly energy law, some environmental law, and we built, we did what we lovingly call "FERC work," and built a FERC practice in those years, which is the mainstay of the FERC practice today. Toward the end of my first stint at the law firm, with the election of the first George Bush, environmental law came back to the forefront with the Bush proposal to rewrite the Clean Air Act, and as I mentioned, I'd been rather deeply involved in the original statute. We ended up doing a tremendous amount of work on the 1990 Clean Air Act Amendments for a variety of clients, and I guess drafted, I don't know, five or six cap and trade programs for clients. This is the acid rain program, cap and trade programs for various clients and for offices on the Hill that couldn't get the help they needed out of the House or Senate Legislative Counsel's Office, so we drafted a number of version of the acid rain cap and trade program for members on the Hill. That was eventually enacted at the end of 1990, and we spent the next two years working on implementation of that statute and also on the next major piece of legislation in our area going through Congress, which was the Energy Policy Act of 1992, which made major changes in federal regulation of electricity and natural gas. At the end of 1992, of course, we had the 1992 election, Clinton was elected. I inadvertently became a major financial force in the Clinton campaign, or at least was so regarded. What happened was, I got an invitation, or I got a request to sponsor a fundraising event for Clinton and Gore in October 1992, from some friends at another law firm, and I called them and said "Well, I can't do it because I'm going to be trekking in Nepal then," and they said, "Okay," and the next thing I know, this was before I left for Nepal, the invitation comes out listing me as a sponsor. And I'm outraged. I never agreed to sponsor. And I call them up, and I say "I didn't agree to sponsor this, why is my name on it?" And they said "Oh, well, we're very sorry, but, you know, we can't change it now, would you really mind?" And I said "Well, alright," and then I get a bunch of calls from people who want to know about the fundraiser, and I said "Well, you ought to go, it's a great fundraiser," and somehow I got credit for all these people who called and asked me whether they should attend, even though I'd objected to having my name on the thing in the first place, at which point I became a sort of minor player in the Clinton fundraising universe, and actually, on a white list in the White House Personnel Office, which I didn't know at the time, so anyway, that was an amusing incident during the campaign. After Clinton was elected, during the transition, he named Hazel O'Leary as Secretary of Energy Designate. She was somebody I had worked with back in the Carter Administration, and she approached me and asked me...[moves out of frame] oops, sorry [laughs]...she asked me whether I wanted to be General Counsel for the Department of Energy, and I thought I knew a lot about the Department of Energy, because I had actually, when I was working in the Carter

White House, one of my drafting tasks had been, in the middle of drafting the Carter energy program, providing a lot of drafting assistance on the Department of Energy Organization Act, which was, they were working on at the same time, and had worked pretty closely with Jim Schlesinger and his lieutenants in the early days of the Department of Energy. So, I took the job, or said I would take the job. It took five or six months to get me nominated and confirmed. Once there was an announcement that I was to be nominated as General Counsel, I went over to DOE as a consultant, and the first day I got there, DOE was in the middle of a battle with the Treasury Department over the design of what was known as the BTU tax, which was the centerpiece of Clinton's tax and energy program that he put forward in the early months of his presidency. So, they plopped this thing, luckily I had a pretty good tax background, they plopped this thing, I'm just a consultant, not even General Counsel at this point, plopped this thing down in front of me and I was the only person at DOE who understood anything about, enough about tax law to understand what was going on, and to advise them on what to do. Next thing I know, I'm marched into, the next morning, into a meeting with the then-Chief of Staff, a meeting at the White House with the then-Chief of Staff, the guy who was running their legislative operation, where we got into the middle of what was going on on the Hill and the BTU tax and the middle of the battle over how to design it. Two days later, I was in the Oval Office with Gore and Clinton when they made a decision as to how to design, on the design issues of the tax. They actually went our way, which was an early victory, but I think the last victory we had at the White House in the entire four years I was there. Anyway, once I was confirmed, what became clear about DOE was that it had very little to do, the work there had very little to do with energy. I used to describe it as the "Department of Bombs, Garbage, and Science," and that was because most of its budget went to the nuclear weapons program and for clean-up of former nuclear weapons manufacturing sites, and then the next largest chunk after those two went to a major science program which funded operations at some fourteen national laboratories. Energy, as it turns out, was a bit of an afterthought, and as General Counsel, I spent most of my time really on clean-up, legal clean-up from the weapons program, and we had a series of...I'd say most of my time was spent not on energy law, but on tort law, because we had a series of huge class actions that had been brought against DOE's contractors, and those contractors had contracts, full cost reimbursement contracts with DOE that made DOE liable for all judgments against them, no matter how much they were at fault, unless it was intentional misconduct or bad faith. So, we were on the hook for all of the, a whole series of contractor missteps, going back to the Manhattan Project, and the reason they were still being litigated for the most part was, as the veil of secrecy over the nuclear weapons program was lifted over the years, the facts about the various accidents and incidents that occurred that had resulted in radiation exposure to large populations surrounding these facilities around the country had become public. So, we spent most of, I'd say the biggest single thing I had to do as General Counsel was deal with these class actions. We also had a rather striking incident or case that came up while I was General Counsel. It was what was known as the "human radiation experiments," which had been conducted during the Manhattan Project in 1945. These were experiments where the doctors, mostly for the University of California, then and now a contractor, then to the Manhattan Project, now a contractor to DOE, where the physicians from the University had injected human subjects with plutonium to figure out how long it would take to pass through their bodies and what the exposure, what damage to their bodies the exposure to plutonium would do. Now, the problem of course was these were what they thought were terminally ill patients, they didn't bother to tell them that they were being injected with

plutonium, and it turned out that a number of them weren't terminally ill and lived for a number of years afterwards, but this had been kept secret for almost fifty years, and the secret finally came out in the early 90s. The families, the plaintiffs' lawyers located the families of the various victims, and we had a huge flap, lawsuits, an advisory committee that was set up, questions as to what the standard of care was, or the standard for conducting experiments on human patients was in 1945, and the standard, as it turned out, was the standard that was developed by the Nuremberg Tribunal in trying Nazi doctors. So, by that standard, we had violated, the University of California, had violated the norms for human experiments even then. That took a number of years to resolve. We finally settled it, along with several of the other class actions. A number of the class actions were not settled. A number of them are still going. It's now fifteen years after I left DOE, and I'd say, I think at least two of them are still in the courts. But that was one of the more interesting aspects of, and I'd say more surprising aspects, of the DOE work, was the spending a lot of time on basic tort law. Another example of that was at one point in the late 40's at Hanford, which was the Manhattan Project nuclear weapons facility in eastern Washington, it was then the Atomic Energy Commission decided it needed to find how out, if they had an accident, how radioactive iodine would disperse in the atmosphere. So they deliberately dispersed some radioactive iodine from, I think, a stack at Hanford, contaminated five or six Western states with it, never told anybody about it, came to light years later, in which case a massive class action was brought to compensate any victims, anybody who had developed thyroid cancer as a result of this exposure. As far as we could tell, nobody had actually developed it, but it was a class action claim for medical monitoring, which would have imposed huge liabilities on the government, liabilities on the contractors who did the work. But those liabilities would have to be indemnified by the government under the then-applicable contracts. So, this was another example of how we ended up spending most of our time working on tort law issues while at DOE. And these cases, we tried to settle the cases, we spent a lot of time on litigation management. At one point, in the Hanford case, there were eleven firms representing the contractors, two for each contractor, there was six contractors who had been involved over the years in this, and each of them was allowed two law firms, and one of them had only one, so we had eleven law firms representing the various contractors. We finally had to consolidate the defense and fire ten of the eleven, which saved us \$25 million a year, and actually had a more efficient defense. So, that's an example of some of the more bizarre work we did at DOE. There was also more traditional energy law work, working on climate issues, working on, trying to work on energy efficiency standards for appliances, one of the great disappointments when I was there was that we never got a single standard out because the bureaucracy at DOE was so tangled that they were incapable of actually getting out energy efficiency standards. But that was, I would say, an interesting and usually frustrating period of time. Coming away from it, I felt that we had done a lot of work, as good work as one could expect, given the circumstances, the hand we had been dealt, particularly in litigation, but the results were not always, in contrast to my stint at FERC where we won virtually every major case that had gone to the court of appeals, DOE'S track record, where, of course, where DOE was represented by the Department of Justice, FERC had its own lawyers. DOE's track record was terrible, and it wasn't just the lawyers. I think it was the underlying decisions that the Department made over the years made its life so difficult in the courts. DOE really didn't believe that NEPA applied to it, which of course it did, but they kept losing major NEPA cases. In fact, one of the low moments at DEO was when we lost two major NEPA cases on the same day, and these were cases, the underlying NEPA work had been done during the Bush Administration. We had this legacy of cases from

prior administrations that we had to deal with, and it was really quite difficult to deal with them successfully. So, anyway, that's a short discussion of the travails of trying to be DOE's lawyer.

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*Speaking of ethics, have there been any points in your career where you felt ethically compromised in any way?*

Well, I've certainly tried to avoid it, and I try to, you know, and I think I've been fairly successful in avoiding ethical challenges, but there have been numerous circumstances where I've had to be very careful, and I've tried, over the years, to not get too close to the edge on these things.

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*Do you have any professional regrets?*

Well, I feel very sorry that I didn't get appointed to the Supreme Court, but aside from that, no. I was kidding, I was very sorry I never made it to the US Open in tennis, of course I don't even play tennis. But, major regrets? I think there, you know, most of these opportunities, ones I've had anyway, have come, and I've been able to take advantage of them. So, I'm not sure there are major things I could've done, but didn't do. In California, the market surveillance committee work, I wish we'd been able to be more forceful about the problems with the California market. But, I thought we were pretty forceful, just nobody paid attention. But I don't think I have major regrets, like in the Clean Air Act, there's some drafting things that I wish I had figured out at the time, but you can't figure everything out.

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Jane Cooper  
Lives of Lawyers  
Fall 2012  
Partial Transcript of Interview with D. Battle Rankin Robinson

Interview date: November 9, 2012  
Location: Battle's home in Georgetown, DE

Battle Robinson: . . . Jane, I should warn you that I'm not the world's best speaker. I think a lot better when I'm writing than when I'm just speaking which is sort of surprising after all my training as a lawyer and my years in the courtroom. But I still find that kind of difficult. And I also thought, this morning I woke up and thought why did I get into this? Knowing that I'm wasn't a particularly good extemporaneous speaker. And I guess it's the way I've lived my life. Somebody says 'would this interest you' and I think 'Oh yeah! That sounds great.' So here I am. Anyway, I just wanted to warn you about that.

...

I grew up in Durham, NC. My father was a professor of political science at Duke University. He served on the town council in Durham for many years. My mother was basically a homemaker although she was a very fine musician and was an organist at several churches in Durham, organist and choir director. And directed the children's choir at our church. . . . I have one brother. I went to Duke, my brother also went to Duke. . . My brother was a very popular and very successful lawyer. He'd been with the US Attorney's Office in Washington and then been with United Airlines in Chicago, then he left all that to go to a small city in North Carolina and practice law with a law school classmate. And after he had been there for several years he had developed multiple sclerosis and was unable to continue practicing law. He is now in a nursing home in Durham. . . .

*Both your brother and you ended up as lawyers. Was there a family... was it accidental?*

Oh Jane, you will laugh at this. My mother would always say to people 'Oh it's just terrible, I ended up with two lawyers and I didn't have a single teacher.' She was hoping both of us would become educators and teachers. And I just was never drawn. . . I just never thought that was something I wanted to do. So I wanted a different kind of career. And I don't know why that was and apparently my brother felt the same way. And I think at that point in law school, people were very interested in law school and a lot of people were ending up in law school that weren't real sure what they wanted to do but thought that law would be a good tool for whatever career goals they would have.

*Was that true for you?*

Well that's funny because I always thought that I wouldn't be a real lawyer, that I would do something else, . . . When I went to law school, I thought I wanted to do career wise was to be an in-house counsel to a government agency, never leave the office, do legal work, never leave Washington. And instead I ended up my whole career being in court. So I guess you never know how things are going to turn out. So but that's one reason I went to law school,

thinking it would be good background for any type of career you wanted, and then I ended up with maybe a slightly different career from what I anticipated.

...

From Duke, after everything I've said about Duke [being progressive and turning out strong women graduates], I will say that the women who went to Duke were very traditional in that at that time in the 1950s, you went to college, you met some guy and you were married the summer after you graduated from college. Well that didn't happen to me. And all my friends were getting married. And I think I was just not interested in getting married and I didn't have a real steady boyfriend at that time. And I really wanted something more. I wanted to go to a big city, I wanted to just try some other things.

I guess since I had grown up in Durham and went to Duke, I never had the experience of being away from home and I'm sure that probably motivated me some too. Although I didn't think about it at the time, I just thought, "what am I going to do? I can just stay home and hope that someone comes along and marries me, or I can strike out on my own." So I went to Washington, I didn't have a job, went to Washington and interviewed at a lot of different offices and ended up working as a clerk-typist at the administrative office of the United States' Courts. I had to go down and take the civil service exam and I think I started out my career as a GS-3, which is as low as you can get in federal civil service. But I was in a wonderful office, it was located in the Supreme Court Building. So I was able to go upstairs from time to time and hear different arguments before the Supreme Court. I didn't really know any of the justices, I knew a lot of the staff members and I enjoyed working in the administrative office of the courts. There were a lot of lawyers, obviously, working in that office. And one was a young woman lawyer, and she was also a very motivating force in my life because I thought "Well, gee, she's a lawyer, maybe that's something I could do." And she encouraged me to do that and all the lawyers in that office said 'well even if you don't go to law school you should take a course in Federal Jurisdiction so you'll understand more about what our office does.' And so I thought, well that sounds like a good idea, that's how I've led my life, . . . so I enrolled at Georgetown Law School at night to take a couple of courses. And at that time you didn't have to have LSATs to get into law school, I just went over and signed up and they said "fine." So that's how my legal career started.

*Were your parents supportive of your move to DC after college?*

Yes, I think they were.

*Can you talk more about the pressure of marriage, about your decision to not just wait around?*

I was bridesmaid in I can't tell you how many weddings that summer after graduation but then I was not the only one. I ended up rooming in DC with several girls from Duke who had also not gotten married and who had come to Washington for various sorts of careers. So I was not the only one. And I suppose I just knew, I guess I just knew in my heart of hearts, that I didn't want to sit around and wait for someone to marry me, that I wanted to strike out on my own for a while. And so, the fact that I ended up in law school, I always thought I would go back and get a PhD in History or in English, which had been my interest in college. But I wasn't really sure I wanted to do that and I guess in thinking about law, I

thought well that's an intellectual challenge, but also would maybe play more into my interests in civic involvement and that sort of thing. So I guess that's another reason I was attracted to law. . . . Well I can't say I was really *attracted* to law, but I thought maybe that's how it would work out.

*In DC, were you looking at jobs specifically in the government or that would fulfill your desire to work for civic engagement?*

I think what I really wanted to do was work for a senator or a congressman. And I did interview in a number of offices. [Senator Stennis's](#) daughter had been a classmate at Duke and I interviewed in his office, and they offered me a job answering letters from people who were having problems with their social security, and I wasn't sure I wanted to do that. So I decided not to do that and I kept interviewing. And right now I can't remember what exactly led me to interview with the admin. Office but the deputy head of that office had been very active on the Hill and he had worked for Lyndon Johnson, so he was well connected and somehow we just kind of hit it off. So he gave me the job and it was an interesting experience. In fact, I probably shouldn't tell you this, but the other day I was looking through an old collection of keys I have and I have a key to the Supreme Court on an old key-ring I have. I'm sure it's been changed in the years since I worked there, but if I had to go in. . . I mean there just wasn't any security in those days, I could just walk in. So that was my great career at the Supreme Court. But it was fascinating.

I saw a lot of the justices in action. Earl Warren was still the Chief Justice, Hugo Black was a great hero of mine because he was from the South. Felix Frankfurter, um, Justice Douglas was on the Court. His secretary had grown up in Durham, so she was always very nice to me. So, and the clerk of the Supreme Court and the assistant clerk, I mean I was the kid of the building so they all kind of doted on me and that was a lot of fun.

. . .

I met a lot of impressive legal types. Before I even went to law school. More so then than since, I guess. So that was a very interesting job right out of college.

*The Supreme Court of that era is sort of held up as an activist court for liberal policies, I wonder how you saw that in terms of your own politics.*

You know, I don't know how much I thought about that at the time. For a Southern gal, I think I was very liberal at the time, and so I probably thought that I thought it was great, that there was a liberal Court, but I think that I was more interested in watching the interaction between the Justices. That was more interesting, because sometimes there would be little spats. You know, while they were on the bench. And I had a great deal of admiration for Earl Warren, I thought that he was a very impressive person and I've always been very interested in him. Although I've grown much more conservative and I understand the objections that conservatives have to his Court, but there's no doubt that he was a very strong leader. He would have been a great president of the United States. He just embodied just so many wonderful leadership traits, and a wide experience as well.

And as I've said I had a great deal of admiration for Justice Black, because he stood for a lot of things that weren't popular in our part of the country at that time. And when I went to Yale, I took a course, Constitutional Law, under Charlie Reich, and he had clerked for Justice Black, so I always enjoyed hearing him, and he remained in close contact with Justice Black and would recount stories of Justice Black and his family. And I remember that he once told me I reminded him a lot of Justice Black's wife. [Laughs.] I didn't know whether that was a complement or not, it might have been better to be compared to Justice Black, right?

*A comment from the era, perhaps, it was the closest he could come to saying...*

[Laughs.] I suppose you might be right. . . .

So, I worked in DC for maybe 2 years, and I went to law school at Georgetown at night. And after a while I was just exhausted trying to do that, but it was a really interesting experience because the whole night class was full of you know people who were really working to get ahead and to get that law degree. A lot of them were married and supporting families and it was just a different group of students than maybe I met at Yale. And I always thought that was a good experience, the way law was taught there was very different than Yale also. It was more you would stand up and recite. They would call on you and you would stand up and give the facts of the case and you would have this debate with the professor about the holding in the case and how the Court got there. And that was very different than the freer atmosphere at Yale. So I've often thought that was a very good experience to see both ways that law was taught. And I don't know which was better. Yale was more fun. Georgetown was a lot scarier, because being called on to talk stand up in front of the whole class.

*How large was the class?*

My recollection is that there may have been as many as 100 in torts and contracts. Some of the other courses were smaller but I took torts and contracts and legal research. And I guess a lot of other things at Georgetown, but those are the ones I remember. . .

*And the gender breakdown?*

There were maybe, you know I can't remember, maybe three or four women, among all of the students. So that was kind of scary too.

*Did you notice the professors treating the women differently from the men?*

Not particularly. You know, at that point in life and in history, I never thought it had to do with gender stereotypes, I thought it had to do with me. If I felt uncomfortable standing up and speaking in class it was because of me, it wasn't because I was a woman or there weren't more women around. Now that I look back at it I think well that was really naïve. But that's how I felt at the time. If I felt uncomfortable it was my problem, it wasn't the problem of the class or the professor. But I can never recall being treated disrespectfully by a professor. Although I did notice the professors were a lot chummier with the male law students. You know, they would pal around with them a little bit more. Some were offered jobs that

weren't available to the women law students, you know, at the law school. And of course Georgetown was a Catholic school, so that might have made some difference. . . .

I do remember one time, in contracts class, we had a case that involved, and I still can't say it well, whale oil. [Laughs.] A contract for the sale of whale oil. And in my Southern accent, the professor in that class had a lot of fun getting me to talk about that whale oil and came back to it during the course of the year. "Maybe Ms. Rankin can tell us about whale oil..." [Laughs.] Because of my Southern accent. I do remember that, but I see that it was in good fun and not being nasty or condescending. I learned that case very well.

But anyway, I would study whenever I could and I would just take my leave before exams and I would go down to the basement of the house I was living in DC and just cram for exams. And after I'd done this for two years I thought well this is stupid, I can't do this for two or three more years, the longest it would take me to get a law degree. So I decided I would transfer. I applied to several schools and I got accepted at Yale. Which was a big surprise. But there were about 7 people from my class who transferred to Yale.

So I was at Yale for only two years, the second and third year.

*How did you decide to attend Yale? Was Yale your top choice?*

Well when I got accepted at Yale I thought, well, I should do that. I got admitted to Duke also, and I was kind of drawn to go there to be back down south and be near friends and family, but I thought I should go, I should stay away, and take the advantage, and I'm glad I did. It was great.

*Were your parents supportive in all of this?*

They were always supportive. My dad was supportive, I think he was delighted. I think he was very proud of me. My dad was a very interesting person, and he encouraged a lot of minorities and women in their careers. He hired several women professors in the Political Science Department [at Duke]. One of whom, Margaret Ball, came from Wellesley down to Duke, very distinguished, I think she taught International law, and he got her to come to Duke. There were several black professors that he recruited and got to come teach political science at Duke very early in this whole movement. He was very supportive, and he was always very supportive of me. And I often wonder if it hadn't been for my dad if I would have done all these things.

But after a while he said, "you know, Battle, it's really great for you to have a career but I really think you'd be a lot happier if you got married." [Laughs.] I think he was getting worried that I wouldn't get married, that I'd just be a career gal. But I did eventually do that.

And my mother never worked outside the home, but she was a very smart gal. She had graduated summa cum laude from Duke, Phi Beta Kappa. She wrote several local history books. . . . She encouraged me too although her example was very different. And I think it's funny that in some ways during my working life, maybe my dad was my model, but since I've retired I think my mother has been my model, in being devoted to my home and my family and to local things and doing these little projects, local history projects, very much like

my mother did. I often wonder what my mother would have accomplished if she had a computer. She didn't even know how to type, she would write everything in longhand. And I often think that maybe in a different age, there's no telling what she would have accomplished. She was a very capable woman.

*Now, I'd like to hear about Yale. About moving to New Haven and your class. What was your first impression?*

Terror. [Pronounced "terra"] Um, it was scary. Well, first of all I never had any problem with New Haven because I grew up in Durham, NC, which was also a kind of an industrial town when I was growing up there. So New Haven always felt kind of familiar to me. . . . I always felt right at home in New Haven except that it rained all the time, it seemed to me. And I noticed that because I was living in the Graduate Women's Dormitory [Helen Hadley Hall] and I had to walk back and forth to the law school and it seemed to me it was perpetually raining. And I'm sure that isn't correct, but it's just how I remember it.

But it was scary. I mean, everybody knew everybody at that point, the class had kind of melded together as you do going through the first year. And here I was I didn't know any of the students. I didn't know any of the professors. I didn't have that first year with them. I had a very different experience. I had also been out working a couple of years. . . . I thought that gave me a little bit different approach, . . . that maybe you weren't quite as caught up in the competitiveness or whatever of the law school because you realized more about where all this was going. [Laughs.] And I had seen other things: I had seen another law school, I had worked with lawyers, so maybe I didn't get caught up in that aspect of the law school as much.

. . .

*You mentioned Helen Hadley Hall. I know that the law school had dorms, but did not realize women had to live elsewhere.*

Women had to live in Helen Hadley Hall and I think most of us did. I lived there almost two years and at the time I complained bitterly because at night, when the library closed you were tossed out onto the streets of New Haven and had to walk in the rain back to Helen Hadley Hall. But in some ways I think that was good too because I met a lot of women who were in different disciplines. There were women there who were at the medical school studying to become mid-wives. There were women studying economics and history, and so in a way, I thought maybe my experience was a little broader than if I had just been in the dorm, meeting law students all the time. . . .

*Do you have a sense of how many women there were in the school?*

Yes, there were twelve in my class, which is the most that they'd ever had in a law school class than they'd ever had in the history of the world. And it was like Western Civilization was threatened by so many of us. [Laughs.] But we carried on. . . . There were a lot of outstanding women in my class who have done very well: [Marian Wright Edelman](#), [Eleanor Holmes Norton](#), [Barbara Babcock](#), who's taught at Stanford Law. There were some great women in that group.

...

*[Following brief aside about men-only dining clubs.] Do you remember Mory's?*

I know Mory's, and I wasn't allowed in Mory's either. And in fact, that's interesting. [Fred Rodell](#), I took his class on legal writing, or writing about the law, and I enjoyed his class a lot. And that class always used to meet at Mory's. And when I joined and I think Jane Noble was in that class with me, and they had two women in that class so we couldn't meet at Mory's and had to meet at the law school. And I think that the guys kind of resented that. But that wasn't our fault, that was Mory's fault. . . .

I was very much caught up in studying and trying to get along, and I didn't focus a whole lot on discrimination. Really and I just think that was part of the era. If it had been ten years later I would have felt more discriminated against, but at that time, it was . . . it was my problem if I had any difficulties. Maybe that was good, I don't know. Maybe it made you work harder and overcome things. I don't know.

*Living in the women's graduate dorm, was there any talk of discrimination or did you all just focus on your studies?*

I guess we would sort of joke about it in a way but we didn't organize to demand anything. I don't think that ever occurred to us. We would make comments, cracks about Mory's but it never occurred to us to go over and picket Mory's or demand that the law school not have anything to do about it.

This is interesting: While I was in the law school, was when Yale announced that it was going to go co-ed. And I was in a drugstore there on the corner of York St. and Whalley, and they came over the radio, and there were students in [the drugstore] and they all started booing. I do remember that. People were very upset about that decision to go co-ed. I do vividly remember that and thinking, 'Well, that's stupid of 'em.' [Laughs.]

The few of us [women] who were there were pretty close. That's all I can tell you about that.

*You mentioned that one of your classmates at Duke became the president of NOW [National Organization for Women]. Was there a large women's rights movement at that time?*

I can't remember that there was any women's rights movement whatsoever. Either I was incredibly stupid, and caught up in my own little problems and totally oblivious to all this, which there's a good chance that was the case, in my 20s, or there just wasn't much of women's movement at that time. I mean it was later that she became the president of the National Organization for Women. And I can't remember, when... you know, it seems to me I was out of law school and in Washington working for the Justice Department when the women's movement sort of began to come into its own. And that [the language was added to the Civil Rights Act](#). Yeah, I was out of law school and in Washington before I really got caught up in that.

But you know, there weren't a whole lot of women going to law school and so in some ways the ones of us who had gone to law school, once we got out and were looking for jobs, I think it helped us that there were so few women, 'cause they were looking, actively looking for women to hire. So I think in some ways it was just helpful to the career that I was one of few women who had a law degree. To be perfectly frank about it. I don't know how I would have done if 50 percent of the lawyers had been other women. [Laughs.] I probably would be home raising kids.

So. . . I just don't remember much about a lot of discrimination at Yale Law School in those days. I know that there were few very women. I remember we didn't have our own. . . I'm trying to remember where our restroom was. We had to go, I mean it was far, far away and very inadequate for women. . . . But as far as the way we were treated in class or in moot court, I don't remember feeling like there was discrimination. You know, we might have joked about some things, but as I said we never organized to change things.

I always wanted them to change the seats in the classrooms because we all wore stockings to class in those days and I was forever snagging my stocking on the rough chairs. I spent all sorts of money buying stockings, and that's just so silly now, and I kept thinking they've got to do something, they've got to change this or all of the women law students will go broke.

But on the whole, it was a typical student experience with camaraderie amongst the students, the males and the females.

Lives of Lawyers: Justice Barry Schaller  
Interviewer: Amanda Elbogen  
December 12, 2013

What made you interested in law?

During my high school years, I had some exposure to lawyers in my hometown, but I didn't really know any of them very well, and didn't know much at all about law practice. For some reason, it was not a career I focused in on until the end of my college career, and then it was a decision to go to law school as opposed to having any specific idea of what I would do. That came about because my plan to go on and get a graduate degree, probably go for a PhD in literature—either English literature, comparative literature, maybe American literature—suddenly seemed to lack the kind of features I felt I needed in a career. I took a lot of courses, and I loved them all, but what I envisioned going to graduate schools for years, and then narrowing down a specialty in something very specific, and then teaching that, I felt that was much too narrow, and that I would be cloistered. I had, from other courses and other thinking, decided I needed to operate in the real world, in a very practical way, perhaps in some public service function. And it no longer suited me. By the end of my junior year, I decided that I needed to do something else, that I still loved it, and that I could do this on a secondary basis, but I had to find another career. Everyone was going to law school, it seemed, so I took the LSATs, and I must say that in general law studies seemed to embody the different kind of interests I had. But I then ultimately decided to go to law school without having any idea at all how about how I would use it. But I knew it would be a career in some way. I didn't also envision that it would be a backup thing that I would use from time to time.

Just to backtrack a bit, could you describe what it was like to grow up where you grew up? Did you have siblings? Talk a little bit about life in Connecticut growing up.

I grew up in a relatively small town of Manchester Connecticut, which is just outside of Hartford. I grew up in a working family – I wouldn't say that we were poor, but I would say that we lived extremely modestly, and my parents worked very hard for the living. I was an only child, I went through the public school system in that town, and high school, and had a pretty easy and successful time in school, academically and in sports. But I think it was a very narrow focus. I knew there was a world out there, but growing up in that small town didn't really give an opportunity to explore it very well. no one in my family up to that point had gone to college, and, although I think it was in my mother's mind that I should, it was by no means certain that I *would* end up going to college – it was something that developed along the way... several teachers in high school I have to credit with steering me – especially one, my freshman English teacher, who was a Yale graduate, who said “you just have to go to Yale. You just need to do that.” Ultimately I got into that college-bound track by that means, and then headed off. Life was good, it was fine there. But I knew I needed to get out there and explore the world, and find a good career.

How did you experience Yale College, and then Yale Law School, as someone from a working class background?

That's an interesting question, and it has led me to think about what it *was* like at Yale back then. At first, and I remember the first day I arrived- of course it wasn't very far from home but it did seem a long way from home, and I didn't go back very frequently, so that I could very well have been far away. It was rather overwhelming – it was a big place, and you know as always when you come to a campus like that, you see everybody else who seems purposeful and you feel like you're the only one who really isn't. but very quickly I discovered that it was a place where I felt 100% comfortable, whereas in high school and all the way through the school system, I'd always been in that town part of a relatively small group who really cared about grades and were really serious about school. And the group I belonged to for that reason didn't have very diverse interests. And so when I got to Yale, I discovered there were at least 500 people who shared my outlook, my goals, my personality, it was just a place I felt I belonged, and I loved those four years entirely. I didn't have much preparation in terms of guidance as to what kinds of choices to make and decisions to make, and I feel as though I missed a lot of opportunities and I didn't really have a sense of what to do. I felt my way along, and I think that those of us who came from public high schools often did that, unless we had a lot of predecessors who guided us, and I didn't at all. So I suppose I would have done some things differently, but all in all I thought it was wonderful and had a very successful experience – it just opened up the world to me. Especially in the field that I had chosen to take a lot of courses in. there were just some wonderful people – literature professors and political science professors who did give me some guidance.

What do you think you would have done differently if you had had the guidance of someone wiser advising you along the way?

Well I think I would have tried harder to make the kinds of connections that would really benefit me. Whereas I chose to be on the literary magazine, I think that was a very poor choice. It was a very marginalized enterprise. I think I might well have tried to get on the Daily News and done journalism. I did some journalism in high school, but it seemed intimidating to me, and I didn't realize how important it was to make choices like that. I chose not to do a varsity sport, because I was really afraid of flunking out if I didn't work hard enough, so I did a lot of residential college sports. In retrospect, I would have played soccer, which I played in high school, and I think that would have been a good thing to do. Yale in those days was very different then from what it is now too. There was definitely a social divide – it wasn't a painful one, but it was very apparent to people like me, men like me, young boys like me, who didn't have much money, scholarship students, came from public high schools, didn't make all the right choices, didn't have the funds to go the fraternity track. Those days, there were two different social worlds operating –and I don't mean to oversimplify it, because there were certainly crossovers, and even among roommates—but there were people of my background, and then people who came from preparatory schools who seemed to know much more about what they were doing and did focus much of their social life around fraternities, and they had the money to do that. So that was something that I think all of us were very conscious of, and

I suspect that doesn't exist that way now – for one thing, residential colleges are important for everybody now. In those days, if you couldn't join a fraternity, you focused your social life around the residential college. But that was a process just beginning at that point.

Did that dichotomy exist at Yale law school? Did you notice a marked difference between people from different economic backgrounds in terms of what they went into and what they did at the law school?

I didn't see that at all at the law school – law school was a very different culture. I would say that if there was a divide, it was between those who were very equipped and focused to know how to deal with law school – or else they learned very quickly how to do that – and those of us who were less quick to really understand what it was all about and to understand what was expected of us. I think that in making a rather late decision to go to law school and having no focus of how I would ever use this education, I crossed over those few blocks thinking that I would just apply the same skills and do what I did in college. And I found that was grossly inadequate.

I found the same thing, if that's any consolation.

It was a big shock, and a big disappointment. It was the first time in my life when I face a lot of smart people and a lot of goal-oriented people. It was a competitive environment – the competitiveness wasn't out of hand, as I heard it was at other law schools, like the one in Cambridge, but it was definitely a competitive environment. And right away, I think the professors and the students identified a certain group of individuals who were right at the top, who just knew exactly what they were doing, knew why they were reading the cases, put it all together, and they seemed to quickly be the elite in the class. It wasn't wealth or background, but the elite were a dozen or so students who clearly rose to the top right away, and the professors discovered that quickly and a few who carried on a dialogue in class with those people and more or less ignored the rest of us completely. The first semester was not a happy semester. I realized pretty quickly that I didn't get it, and I didn't really know what it was all about, and I came there without the skills I needed. I was buried in self-doubt, wondering if I belonged there, wondering if I could do it, and I had never faced that before in my whole educational process at that point. It had always been pretty easy to get As, and some Bs, and all of a sudden it wasn't that easy. I didn't seem to know what to do. I had signed up rather late, making my choices of law schools – I had decided not to go to Yale Law School, because I wanted to get out of New Haven, so I applied to a number of places, but in the end I picked Yale, I just couldn't turn away because I knew it really was the best. The years have convinced me—I know it really was a good choice. The dorm space – everyone lived in the law school dorms in those days. Or, the men did. Our few women lived in Hadley hall and all the space was gone by the time I actually accepted, so they assigned me to the medical school dorm. That isolation really put the crown on my feeling of intellectual isolation and made it a very difficult semester. I recovered, finally, I caught on – the second semester was much better, and then I had a legal job after the first summer, and I really understood what it was all about.

What was your legal job?

I worked for the Connecticut General Insurance Company's legal department – I had been a trainee one summer out there. I worked in the legal department, doing a lot of insurance law and other kinds of things. I really understood—it really came together for me that summer.

But there's one thing about my first term experience, and that is in some small temporary way I felt the kind of isolation I now understand the women in our class faced. At our 45<sup>th</sup> reunion, the other co-chairs and I asked the women who were present in our class if they would speak, and tell everybody what their experience was like. We had never asked them before. I had not known the women in our class very well at all. All of them felt that they were very isolated – everyone else went to live in the dorm, but they had to go off to live in the Helen Hadley hall – the women's dorm for graduate schools. They felt much more was expected of them, they felt not treated equally, very isolated from the rest of their class. We were shocked – the males in the class who were at the reunion were shocked. We had no idea they felt that way. Maybe some had friendships with them – those of us who didn't have a close friendship, to find that out, were amazed. And of course they faced discrimination when they went to get jobs too, in a way that was shocking for the 60s. I knew it was true in the 50s and 40s – but what they had to face sometimes, the humiliating experiences, was really shocking.

Before the 45<sup>th</sup> anniversary, how did you remember the gender dynamic?

Well, the women in the class were just there. I just didn't have much contact with them, didn't have many friends among them. I don't know why – I think I was not really open to that necessarily, and I was pretty focused on my own work and didn't happen to seek their friendships. I didn't understand what they felt, and none of that was anything that I appreciated – I didn't see them treated differently. I felt some of them were extremely smart – they spoke in class – and I didn't realize that they were having that kind of problem. They were just other students as far as I was concerned.

Going back to what you said about professors. I was wondering if any particular professors stand out in your mind as particularly good or bad?

Well that's a really good question, and I haven't thought about that. A couple of professors pop into my mind. I liked very much Boris Bittker – didn't get to know him at all during law school, took his tax course. Then, in later years, at various alumni events I got to know him and found him to be a very nice person – very even and fair. I'm not sure I always did very well in his courses, especially Taxation I – a big lecture hall when I was called on – but he was always very even and fair. And I like professor Pollack very much – he seemed a very nice person, very laid back and very easy, although he did tend to respond a lot to the few students in the class who just really seemed to be on top of constitutional law. Perhaps the professor that I remember from my first semester – from my whole first year actually – who seemed to be much more attuned to one on one relationships with me. And one I got to know a bit was Abe Goldstein – he was always

really good to me, even at times that first semester when I really felt somewhat lost and facing this huge obstacle that I had never faced in my life. I had never taken any courses with Guido Calabresi but I did get to know him, and appreciated him very much. And I'm sure there were others – Gulliver taught future interests, just such a nice person. I think it was the professors who were willing to spend a little time with the students and relate to them, made the biggest impression on me. And Elias Clark – I took his concentration in estates and trusts – that's what I intended to practice – and I thought he was a great person too. He made a great impression on me.

So are there any experiences at Yale law that you remember molding your goals and aspirations, either as a professor or as a judge? Trace anything back to your experiences at YLS?

Well, that's a very challenging question. And I did forget one person – Ellen Peters – with whom I had two courses there, and didn't get to know her while I was there, but of course later got into the same judicial system as she was, and developed tremendous admiration for her.

I don't think of any specific instances that led me to the careers I ended up with. But I did feel, once I had gotten over that initial obstacle there, a real drive for public service and for public interest matters. But I was still focused on practicing law – I did not broaden my horizons to think about a judicial clerkship. No one had ever mentioned it to me.

Once again I think I was there at law school unprepared to know about the opportunities – and in fact I hear that from students today too. [ I felt similarly]

There aren't too many professors who do a lot of mentoring, who really work at that.

That was true then – even the professors who were very good, didn't say you know, have you thought about this or that. Here's what you ought to take. I'm sure it was my fault because I didn't seek it out – but I did, those seven years at Yale, and very definitely at the YLS, opened me up to the possibility of public service. I already got started in CT politics when I was there – worked on a gubernatorial campaign – so I was very much into politics at that point, through law school. One of my parents had been very involved in politics and I grew up with it and loved it. although my focus was on practicing law, so I ended up in New Haven practicing at a firm, I did envision a public career and public service was a focus from the very beginning. But it was more from the general atmosphere of the whole place – the stimulating people really did keep that alive.

You mentioned one of your parents was involved in politics? Can you talk a little more about that?

Yes. My mother – my father was a small builder and carpenter and not at all interested, worked very hard, especially to help contribute to my college education and law school, which I think he never envisioned doing until it happened. He had gone to trade school, and didn't envision it at all. But my mother was very active in the civic spheres – she was active in the Republican party, and I grew up being very cognizant of elections. When I was still in law school, I met a candidate running for governor, and was enlisted to organize statewide youth support . And he lost, ultimately, but I spent an awful lot of time at it. After graduation, I stayed in New Haven for two more years and got active in

New Haven politics. On some basis also in the state party, and that did lead to a political career for ten years, until it culminated in becoming a judge.

So I'd love to hear more about those experiences after law school and how they ultimately led to becoming a judge, or didn't... I'd love to hear both about the political career and your career at the law firm Bronson & Rice.

Okay, I'll start with that. I had several choices, and I decided to stay in New Haven. It was the firm that I felt most comfortable with. I expected to do what their main work was, which was estate planning, estates and trusts, corporate work and so on. Very nice firm. But after about three years, it was apparent that they had a lot of other work coming in too, and that they had some very elderly partners who one by one retired, and it was basically the three of us after four years. My other two partners at that point didn't like anything that was contentious – any form of litigation, didn't want to be involved in negotiating. So they basically said, is this something you'd be comfortable doing? And is aid yea, because I liked it when I had done it. I enjoyed that. So I took over basically everything they didn't want to do, and for the last six or seven years of when I practiced I did civil, criminal, family, cases...everything that came into the firm that involved litigation or adversarial process, plus a few other things but basically that was my work. I liked it okay, but the problem was, I never felt satisfied with law practice, because ire ally liked to do what I should do, what was the right thing to do, and that's what I expected to do. I didn't enjoy having to take positions that were against what I believed were the right thing to do. I felt most uncomfortable about billing people. I hated that process. I like doing the work, liked the satisfaction of having it turn out well, and then when I had to tell them what it would cost them, I felt terrible. Especially people I knew well – friends, acquaintances. So there was something about law practice in general that left me unsatisfied, although basically, it was okay. My partners didn't want to have the firm grow very much – they outvoted me to turn down a few opportunities to merge with other firms that would have created something much better for all of us, and I was really unhappy about that. In the meantime, I had been active in politics, had been on the Ward Committee in New Haven – the Republican Party in New Haven was very defunct.

Were you an Alderman?

No, I was just on the Ward Committee, but it was an interesting experience.

What exactly does the Ward Committee do?

Oh it's like – every ward in town has its own committee that does the campaigning and does the elections within the ward. It's like a town committee in an ordinary town. I was a very liberal Republican, but in those days there was a very progressive liberal element to the Republican party, and I supposed I just stayed with that party because I had grown up there, but I suppose my views were not in sync with the mainstream. But there were a group of 20 of us, who once a month, the progressive wing of the party, and ultimately that wing did nominate Thomas Mescal, who was really a moderate but also a ??? 28:10.

And I was very directly involved in their campaign – I guess that was 1970 – both successful and they both turned out to be very good to me ultimately, although I had no reason to expect that at the time.

Then I moved out to a small town – Branford – and quickly became the town chairman out there and managed a couple of state campaigns for a friend – gotten to know Governor Mescal better, and just before he decided not to run for office again, he said, do you want to become a judge? I've been observing some colleagues and friends and other lawyers who had become judges during the Mescal term and thought, there's something I would like to do – could envision myself doing. Teaching and becoming a judge, that would satisfy all my interests. Wouldn't have to worry about becoming a judge. But I was still pretty young at that point – I was 34 when he offered it. I wasn't sure I could get approved by the Bar association committee that approved judges.

Just because of your age?

The Bar committee did it because we didn't have judicial selection then. There was a ten year rule – had to practice for ten years – and I was a little over nine years in practice at the time this came up. but, I decided to go for it, and they did approve me, but it was for the lowest tier of our trial system. That was where most of my friends were getting appointed, because that's where there were openings. So I did take it. I got sworn in in early 1974. My partners were extraordinarily upset – it was like a divorce. I had a hang around the firm while I was waiting for my appointment to come to fruition at that point, because it was some months of, and it was very uncomfortable. It was also another time when I felt very uncertain about the choice I was making. I was leaving something secure, even though it wasn't entirely desirable, but I had another opportunity arise while I was making the decision – an offer to go to a different firm, which would have answered some of the problems. So I had to choose – do I go with this trial court, and it's not a very prestigious tier of the court – we had then three tiers in our trial court. So, it was a time of real decision making , a sort of decision making crisis about what to do. And I ultimately chose to go forward with it, and it was a great decision to make, and never regretted that decision at all – never wanted to go back to law practice.

It's surprising that your law partners were upset – surely they understood how great it is to be appointed as a judge?

They did. But I ruined their plan – they had a plan for the firm, and I was now leaving and not doing the kind of work they wanted to do. But ultimately we remained friends, and still are.

That's good. I'm wondering if you could talk a bit about the judicial experience. I noticed in an interview you said you wanted to write about the emotions that goes through a judge's mind as he or she is making a decision, and how that plays in to the judge's decision making process. I think its remarkable and wonderful that you are open about this, because it's a topic that fascinates me personally. So I'm wondering if you could talk a bit about that.

Certainly. Just by way of background, I was a beneficiary very quickly of a merger of the entire trial branch – it went from three tiers to one tier between '74 and '78 – and so every trial judge ended up on the superior court, although there was still a caste system. Those who were originally appointed felt superior to the ones who hadn't. But there are caste systems everywhere you go. I spent about 18 and a half years on the trial court all told. Well I'm still part of the appellate system, but until I reached my retirement years, spent 16 and a half years in the appellate system. They're very different worlds. On the trial court, I was very much involved in criminal work, because that was a major part of the trial courts. I enjoyed it, but – and I know I could focus much more quickly on your specific question about thinking – but I felt very excited about being a trial judge, and for a number of years hoped to get appointed to an appellate court. but it was frustrating, because given the political background that I was stuck with in a sense, there were virtually no opportunities until quite a number of years passed. One problem I think working for an institution even like the judicial branch is that you are autonomous in your courtroom, more or less, but not in terms of the kind of work you're going to be doing. And the court system became more and more institutionalized over the years, and I found that after several years of sitting on what we call 'parte' (??) 34:25 criminal cases – the highest level of criminal cases, with trials and that sort of thing – I suddenly got an assignment to a smaller district in which you were not assigned to a particular kind of work. And I found myself, because I was the only stranger in the group of judges assigned there, back in the arraignment court, which was boring to say the least. And I asked for work in the afternoon, because the prosecutors pretty much had the docket wrapped up by 1 o'clock. So I asked for civil cases in the afternoon, and sometimes I got them, sometimes I didn't. I felt very bored, and stale, and wondering about being on this plateau where there wasn't anything challenging to do for six months or a year.

Which years was this?

This was at a point when I had probably been on the court for 12 or 13 or 14 years – maybe even close to 15 years. So this was into the late 80s. During that same term I did ultimately get myself back into the judicial district courthouse, doing some civil matters, criminal matters, murder trial, and some other things. But it was a wake up that I'm not in control of what I'm doing. That's a point at which I decided that I needed to do something else for myself on the side, so I began teaching and then writing, and maintained that from that going forward, as something that was always my work to do that no one could take away from me, that was there to stimulate me even when during the daytime I wasn't getting that kind of stimulating work. So that's what led me back to teaching literature, first to judges and then teaching other subjects at various colleges and law schools.

What drives you to want more work and to fill your time and make sure that you have work is yours and fills the afternoons? It seems like you're a person who wants to keep busy, doesn't want to miss a day. Where does that come from, that drive?

I think we've both spoken about is a sense of urgency, and that's the way I characterize my sense of... I have always felt the need to do everything, to be involved in everything,

not to miss anything. And a parallel drive to constantly challenge myself to do something that I find uncomfortable or intimidating or that I'm not sure I can do. And I think that I've been doing this sort of thing since I was in, if not grammar school, certainly in high school, actually always taking on too many things. So part of the urgency comes from trying to keep up with all of the things that I've agreed to do and sought out. It's something I've done to myself in many ways. I think – and this has continued, and I did the same thing in college – some people would call it spreading too thin, and I do feel that way sometimes. In law school, it didn't. I had my hands full in law school, and I didn't do a lot of extra things. Except for the one year of being involved in a political campaign, which I guess you could say qualifies as creating urgency all the time. But I did it in practice, and I still do it. So I think it comes from number 1, over-committing myself, but happily so, and wanting to do it, and second, taking on things that are a reach for me. And I have always felt that, both physically – you know I still do triathlons, running races, and a new obstacle race this year, swimming competitions – it's not that I excel at all of them, but I just can't back away from something because I feel I can't do it well. Giving talks, speaking in public is not entirely comfortable for me, it never has been – I've always liked it, but it's never been entirely comfortable. So I insist on taking every opportunity to seek it out, to push myself to do something like that. And I think that as the years get on, there's an increasing sense of urgency to get everything done that I want to do. And since you asked, there's a new twist to that, that has just become an epiphany recently. I've read about and helped for the Bar foundation to exercise a program in the law and dementia, and issues like that. As part of it, I read a book about life's transitions which I thought was awfully good. And I read about the transition that a lot of people often make, and I think should make, somewhere in the 60s to 70s, and that is the transition from focusing entirely on yourself, your own career, to generally shifting your focus to wanting to leave something behind for other people, and to share what you have learned from experience – failures as well as successes – to the next generation. And I don't remember the exact term used for that, but I suddenly became aware that I spent I think half of my life now in a kind of mentoring process with law clerks, former law clerks, students at all the places I teach – anyone who needs that boost, because I've been helped over the years by so many people, I have felt an increasing need to give that back – can't give it back to the same people, they don't need it now – but other people do. And I've suddenly become aware that my self urgency is not so much self promotion, because that's somewhat limited now – you know, I don't add to the CV anymore--

It's long enough, I've seen it. (laughter)

I used to joke to the family that I was still building my CV after I retired from the Supreme Court... I've just absolutely stopped adding anything. But I suddenly became aware that my urgency is to pass along what I feel I've learned from my mistakes and for what I've seen in other people's successes, and what my experience has that I think people get as they age in predicting what can happen – sharing those predictions to people who aren't quite at the age when they can have those predictions. So the urgency is a little different now – it's an urgency not to just waste everything I've spent a lifetime learning but to try to pass it along to people who want it. Sometimes one's own children don't really want it, but it's outsiders who really want and welcome that kind of advice.

Is there anything else about the court as an institution and the change that it's undergone in the time that you've been a part of it that you want to talk about? I know the appellate division didn't exist when you started out?

Actually, when I started out, there was an appellate division of the superior court, which was not really a court in its own, but just a division to which superior court judges were assigned from time to time to hear appeals from the superior court, from their own colleagues. So we did have an appellate division, but the actual appellate court didn't get created until 25 years ago – I forget now how many years. Maybe the mid-80s or so. Then we got the separate intermediate court. The judicial branch has grown into a vast institution over those years, with a big administrative wing. Fortunately, the whole appellate system is not too much affected by that, because each of the appellate courts is autonomous in many ways, and independent of the judicial branch of which it is a part, especially the Supreme Court, which does control the appellate court to some extent, and makes decisions for the whole appellate system. Once you get into the appellate system, you're not subject to those periodic assignments—you're much more free in where you can work, and how you can spend your time. The goal is getting the work done, not so much being in a courthouse 9 to 5, every day. But it took me a long time to get from the trial court to the appellate court, and I thought it might never happen, but eventually, after 18 and a half years, Lowell Weicker left the senate – ran for governor as an independent – and I knew a lot of people who became part of his administration, and I knew him – to some extent, not closely – but ultimately he did move me to the appellate court. And then I sat there for some 15 years before another governor came along who was willing to bring me that next step of the way, so I could feel the satisfaction of sitting on all the courts.

Did that come as a surprise? Did you know the governor?

I had met Governor Rell while she was still lieutenant governor. Maybe a couple of years before she fortuitously became governor—through a mutual friend. Actually, one of my college roommate's brothers had been in the navy with her husband, and we just struck up a friendship and I knew her on a casual basis, but she knew something about me, and I'd been around longer than most everybody at that point, and at this point I still have. And so, when the time came, it wasn't that much of a surprise, after a while, because I pretty much knew that she was going to do that when there was an appropriate opening. But it was a nice thing to have happen.

Did you prefer the appellate court to the trial court, and the supreme to the appellate? How do you compare the experiences?

I would say that I did very much like doing appellate work, more than trial work, although I'm not sure I would—I'm very glad for the experience, and I wouldn't want to trade that—I might trade a few years of that, to have gotten to the appellate court sooner—but that didn't happen. Being on the Supreme Court was very special, but working on the appellate court remains a very special to work. The collegial atmosphere

there is very unique. So I would say appellate work suited me better than trial work – I just loved the feeling of getting it right, doing the work and not having assignments that I was subject to all the time, and a big fluctuation in the work.

So getting back to my question about judicial decision-making, what goes into your decision-making process? What emotions come into play? What else might come into play, and do you have a set of principles with which you approach new cases? Guidelines? How is it that you approach a decision?

Well, I think it's different for every kind of decision you have to make. Certainly that process is very different if you're a trial judge or an appellate judge. Speaking of the trial court – because that's where emotions may get involved. When you're in a trial court, especially when you're in a court where you're reacting to people in a very direct way, you do have to work at suppressing your own personality, your own emotional reaction, your prejudices, because you are right on the line, and you're interacting with these people. And I think that's where you have a real sense of who you are as a person, somewhere inside the robe, and these people are there. That was never really a problem for me – adjusting to the judicial role, and realizing that I had to step back from my own beliefs, feelings, prejudices, that I had to work at being impartial and neutral. I didn't really have a problem detaching myself from that. But I observed over the years a lot of interesting situations that arose, and some that I imagined a few steps further, that I think would be really interesting to write about. When a judge has to sit on a case which brings up some personal feelings or memories, the process of not letting them intrude, the process of not letting your self interest intrude, not ruling the way other people would like you to do it – for example, on the criminal side, sentencing very strongly – resisting that and doing only what you believe is the right thing to do from a purely rational basis. I think those are really interesting challenges, and I see people succeed and fail at them – and I have myself. I haven't written about any of those internal things. Another subject is that some experiences that judges have can truly be traumatic experiences, and I remember being basically able to sit on any kind of case, including murder case and some pretty horrible things, without being personally affected by it. But I think a certain number of years passed, I was exposed a certain number of times, and I began to almost recoil against violence, and have some difficulty in suppressing any emotional reaction to it. And I think that for quite some time now, I have really been violence-averse in a sense, and I don't enjoy a movie or a television program, or reading something about a kind of violence that I would say is the deliberate kind of violence, or violence that crosses a line into something that is malignant, in a way. And I've seen that happen in myself over a period of years. So, it's not any pleasure anymore – I've heard about too much real suffering from that to find any kind of entertainment value or even a real tolerance for it.

Wow, that's really interesting to hear about the impact on the judge.

Yeah. And one case in particular had a huge impact, and that was sitting on a three-judge murder panel in Middletown, CT, during that very term that I spoke of feeling very bored much of the time. One of the inmates from the Whiting Forensic Institute – he may not have been in Whiting at the time – walked off and stabbed to death a girl who must have

been 9 years old or so, during sidewalks. And that was probably the worst case I ever heard in my life. The three of us who sat on that panel – we found him not guilty by reason of insanity, and he was committed to Whiting, because he clearly had a serious mental disease – that we all just felt, really felt that as human beings, what just horrible horrible incident it was. I've never really forgotten that case. Whereas I sat on a wood chipper murder case, which got a lot of media attention at the time, and still from time to time comes up – and that didn't have the same kind of emotional impact. It did for the jurors – I saw some of the jurors as they were passing around bits of teeth and bone, and that's examining some of the evidence—that they were affected by it. And I know jurors are sometimes traumatized by that kind of thing. So I think this would be an interesting thing to write about at some point.

Have you ever heard of an institutionalized support system for people in the judicial system who are traumatized by what they see? Jurors or judges?

No, I don't that any such exists. I've never heard of it.

In addition to criminal trials, are there any other kinds of cases that impact you personally? In particular, I know you're interested in bioethics and law, I was wondering if any cases in that area stood out to you?

No, I think that my interest in bioethics arose outside my judicial work. There have been a few cases involving bioethics in the court system, but I didn't have any of them. There wasn't any particular case that led me to bioethics or to PTSD. With the bioethics, it arose rather spontaneously, because when I was looking for the subject of a book after the book on law and literature, I found myself compelled to get into some of these issues on the beginning of life and end of life, and I felt that they were really the most compelling issues in society – aside from foreign policy issues and war issues and that sort of thing. I just found myself attracted to them and realized that I was suddenly in the middle of bioethics, and I had not intended to do that – it was there, and I found myself interested in it. But I don't think I had any cases in bioethics that drove me to do that. The same was with PTSD – that came about because I became so involved in the bioethics center at the Yale Bioethics Center, I got into a PTSD multidisciplinary study group. We were looking at PTSD from a variety of points of view, and I had the legal point of view. But I became so intrigued by what I was reading about combat PTSD that I wanted to write my own book about that. Again, that came from outside my judicial work – the other track of my work. Interestingly, in teaching at the law school, in trial practice, for years we used a case called the Rachel Tyson case, in which Rachel – or Ralph – depending on how the group wanted to portray it – was traumatized in a railroad accident and suffered PTSD, and we had lots of medical reports on PTSD – and that's the old railway spine kind of injury. But we used the Mawitt? books I think, and it had that case. So I did get to learn something about PTSD some years ago.

Returning to the judicial process, I noticed you're on the judicial ethics committee and chair it. I was wondering how you feel judicial ethics have constrained you in your life. Is there anything you would have done, but couldn't do because you were a judge?

Well, that is a very interesting question. I think I adjusted quickly, because I was so excited about becoming a judge. Any thoughts about having to restrict friendships or events I went to, getting out of politics – I was ready to get out of politics at that point, I had really had enough after an active ten years – I think I adjusted very happily to the restrictions, and I didn't feel it imposed anything on me. In fact I was rather pleased to stop doing some of the things I was doing. I got out of civic groups, because I felt they would be a distraction from the judicial work too. It was easy transition, and I never had any problem. I would say that I was able to teach, and I wrote, but every time I would write something – I wrote about family violence, and managerial judging, and I wrote about equality, and I wrote lots of articles before I did the first book. I always had somebody – a colleague – read it, and say, am I saying something that is going to violate the code of ethics? Am I speaking about a case, or am I giving an opinion on something that could be awkward or embarrassing or downright unethical? And I feel as though it restricted what I could say a little bit, but not seriously. We didn't have a judicial ethics advisory committee at that point, so when one needed an answer, you just went to a friend, or one of the staff lawyers who specialized in that kind of thing. In recent years, and including the time that I've been Chair – because I really go the thing started about five years ago, thinking that we really should have one in CT and assemble these wonderful fine people. We just met today on our 33<sup>rd</sup>, 34<sup>th</sup> opinions. We've had between 35 and 40 every year. And the questions get better and better, because everything we've said is out there on the website, and judges keep asking questions, and they're even more interesting questions. As I got involved with public policy issues in the last 7 or 8 years, I have felt more restricted, and that I had to be more careful, and especially with this book and everything that has come out of it. For example, I was invited to be on the NPR station to talk about the Affordable Care Act – not a subject of my expertise, but one that I thought because of teaching bioethics I knew enough about. I thought, well I'm not sure I should do this – at that point it had not been passed, if I remember, when I was asked to do this – very much in contention still. I have submitted at least 8 or 9 requests for opinions myself to the committee. We're all anonymous, so technically nobody knew it was me, but I'm sure they could identify it, and I recused myself. And my colleagues in that case said no, they didn't think I should do that. Judicial officials shouldn't do that because that would be getting into political areas. So I didn't do it. I feel a special compulsion to be sure I'm well within the margins. In giving talks, I'm very careful about what I say. I've had all three books read by a friend of mine Jeffrey Hazard, who is an ethics expert, who kindly agreed to read them all and give me an opinion about anything I should change, and whether he would clear them, and gave me a written opinion about them. So I didn't want to take any risk like that. And now, I'm very interested not only in the veteran issues of PTSD, but in figuring out how we can avoid creating so many problems in the future, and it has to be that we use military intervention very, very sparingly, and only after assessing the human cost of it. I've been somewhat influenced by Carma Lantis[?], a Vietnam veteran author, and some other people who are very intent on the subject. Now that I'm really interested in those kind of policy issues, and thinking about writing about them, I'm realizing that I'm really getting up close to the boundaries. And I did ask the ethics committee on several occasions about what I could say and what I could do in promoting the book too – could I hire another agent? So now the more

interested I've become and the more free I feel at this point in my career, when I have much less risk judicially, now I do feel like I'm running up against these ethical boundaries, and I've got to stay inside them if I want to remain a judge, but the sacrifices are going to be a little more meaningful, if I have to step back on talking about policy issues. But one of my goals with the committee from the beginning was to make sure that we protect judge's rights to have a life, to do things, to interact in the public community. But if you're going to be a judge, you have to make that primary, and if you have to sacrifice, you have to sacrifice the other thing—you can't compromise yourself and you can't get into a situation where you have to recuse yourself a lot – it's not fair to everybody else. So I think we've been careful to protect judges in what they can do or say while still saying within the boundaries – and we've pushed it as close as we can to that line. Because I think that's really important, I think that judges have something to contribute to society.

So do you think the rules should be a little more liberal, in terms of what judges can share?

No, I think the rules are okay. Most states have now adopted the latest ABA model code, with some modifications, and I think the rules are fine, and the canons are fine. It's the interpretation of each individual case – and I think that you have to view your judicial role as the dominant one. That's your job and you're committed to that. And we don't have all the political campaigning – I think that other states, they have a couple of other sections of the code dealing with campaigning that to us would seem way over the line – *imagine* being involved with campaign contributions and political support groups. So we are a little out of sync with most of the country in that regard, but I like the way we do things here.

In terms of judicial outcomes, do you feel that the law constrains or empowers judges to arrive at the right conclusion?

I've thought a lot about that question, and I think my answer is that it empowers. Obviously there are constraints, and one of the problems of everywhere in the system is that I think every judge hopes for a result in a case – whether it's a trial court case or a Divorce orders or an appellate case – to produce a result that does not mess up the law. I think that's really important. You've got to apply the law fairly and accurately, even if it produces a result that you don't like. But I think every person carries a sense of a certain fairness or justice or rightness of result that makes sense in the world, that isn't inconsistent with common sense, or that doesn't cause someone some undue suffering. And we would all like the results also to be consonant with that. And they don't always mesh. But I think that as an appellate judge, you have to give the edge to protecting the law, so that it will be predictable, so that—as I just said to some other colleagues— “you don't mess it up” – you don't find some rationale that really conflicts with another rationale and then produce an ambiguity or inconsistency that's going to come back to haunt somebody. You have to do that, because your decisions are printed and public and binding on everybody in the court system, except appellate court and supreme court. as a trial judge, although it might be a little out of the bounds of the judicial function, I think

there's a tendency on the part of judges to do the best they can, but since the case can be reviewed if they're wrong, they give a slight edge to producing the right result, even if it's a little bit in conflict. And I think everybody does it sometimes, because they know there's probably going to be an appeal, and if they're wrong they'll be corrected, but they just can't quite bring themselves to produce a result that seems so wrong. And I think I did it too – but it's something that has to be done on a very guarded basis. I can't say it's right. And of course there are areas where the trial judge has discretion and can do something that seems to be closer to what common sense would dictate.

[1:16:40]

I'm curious to hear more about your family – your children, your grandchildren, what do they do?

Well that's a fun subject to talk about. I won't go into detail, because there's a lot of them... I'm now in a second marriage. My wife and I have been married for – it will be 34 years next year – so 33 years. We brought to the marriage – I 3 natural children, and she 4 natural children, who were all quite young at the time. And we raised them, and they're all our children and we don't draw lines – all 7 of them, 6 girls and 1 boy, 6 women and 1 man I should say. ...[What was the age difference, oldest to youngest?] About 7 years I guess. They were really clustered. I think at one point, there were 7 teenagers in the house. [How did you deal with that? That's incredible.] It was a day by day thing. My wife and I thought that we would write a book about raising a blended family, but we didn't have time while we were going through this process. And after, we were kind of tired of it. And so we never did it. But maybe it's still there in the offing. It was very challenging, and very satisfying. As an only child, it's always been wonderful for me to be a part of what has become a very large family. Not everybody gets together, because it's one – and it's my natural son- who lives in Nicaragua, who's been down there for about, gosh I would think it's about 14 years, who married down there and has three children. So they're not around most of the time, obviously. He visits, and we visit, but it's much less frequent than I wish it were.

What does your wife do?

Well, she's done a number of things in the course of her career.

What's her name?

Her name is Carol. She was doing employment head hunting when we got married, and she was a UN representative for an NGO for a number of years, she taught at a business type school, and at a finishing school in Switzerland. So she's had a number of careers... she's done some print advertising work and she's now studying a bit more on that, thinking she'll do some of that commercial advertising. So she's had a varied career. Plus managing all the people. Keeping track of the birthdays, family events, helping kids and grandkids with problems. That in itself is a huge job.

How did you meet?

We met in a single parenting group actually, when we were both single parents. And it took off from there. Two three years after we got married. Our kids had gotten to know each other – some of them knew each other through the school system – but we didn't, basically. So it's been a long journey. And now the grandchildren age range from 7 to, I think, 28. Several of them are in different parts of the country now, including three in Texas. [...]

You've said that your family in Nicaragua has opened your mind, and broadened your horizons to new subjects, and that led to your teaching a course on public health and policy. I'm wondering to what extent this international awareness has filtered into your judging, or has had any role, impacted you as a professor or judge?

Well that has had a definite impact, because I feel very much tied to the Latino or Hispanic world. my three grandchildren there are half American and half Nicaraguan, and so I feel connected in the most intimate way with that whole Latin American world, and that was quite a revelation when it happened. It was not something I anticipated happening. But it's made me feel that I'm a part of what is a very growing power in the world and in this country, and I really love the idea of that. His [son's] work there too affected me. A lot of the children are doing very worthwhile things, but I think Peter has devoted his life to working with very poor people, and is still going strong with that. And while I've always been very concerned with justice – it's driven me through a lot of my life – I think that his experience and what he's done has affected me too. I can't really think that it's affected my judging that much, except that I think over the years I've become more sensitive to people's needs and people's suffering, and I feel as though my ethical and moral and political views have all shifted just from the experience of watching people. And I feel that I'm still very much a realist – I don't think you can be a judge and see all the problems of the world without being a realist about human beings and their flaws and strong points and weak points – but I still think I'm an idealist, and I don't think I've ever burned out my sense of optimism and hope for change. And I've seen enough to reinforce the idea that it is possible. I remember years ago, when I did get to know a judge when I was in high school, and early in college, I knew the whole family, and I heard him say that he'd sat on criminal so much that he was just sort of burned out with it, worn down by the whole thing, and had lost something in the process. I never felt that happen to me, I just somehow felt I could balance the realism and the idealism at the same time, and not give up on that.

The other thing that has affected me internationally is that my father was born in Switzerland, so technically simply by registering my birth certificate I'm entitled to Swiss citizenship, and my wife too – it's the kind of passive citizenship that a lot of countries offer. And I still have cousins in Switzerland and lots and lots of family members. My wife and I have spent a lot of time in Switzerland – she was teaching there during some of our visits. So I feel very much connected to Switzerland. I feel as though but for a stroke of fate I very well could have grown up in Switzerland, because my father's father and one of his brothers, who were part of a family of 6 or 7 – they chose to

come here. The other siblings stayed there. So I feel as though I very well could have grown up somewhere else – obviously I'd be a different person – and I feel very connected. So I think I have a very global outlook about everything we do, and I'm sure that permeates judging too. I think we have to think globally for practical reasons, and I think in a spiritual sense we have to think of all human beings part of the same family, and I really firmly believe that.

I noticed that you had hosted some Russian judges a little over ten years ago, and I'm wondering what that experience was like. To what extent do you think it's important for judges in different countries to engage with one another?

I do. At the behest of the then-chief justice who wanted to find a project that the judicial branch could give to the Connecticut Bar Foundation to work on, he had heard about a program that the New England states were engaged in, and that was partnering with a region in Russia. And so Justice McDonough(?), who's also a Yale Law graduate, said, "Well why don't you see if Connecticut can partner with somebody? I think that would be a good thing for the branch to do and that would be a good project for the Bar foundation." So I went to the Bar foundation and asked them for some money to explore this. Ultimately, another judge and I, and my wife, partnered with Scoff(?), which is near St. Petersburg. Ultimately I left this organization because I was doing too much teaching and I couldn't do it anymore and I didn't want to make Russia the focus of too many trips when I really wanted to go to Switzerland or Nicaragua. But we had a lot of exchanged visits and that has continued to this day, although some of the funding has dried up on the federal level for it. It was another eye opener to be in Russia and to meet these people – and I think any one of them could have fit right in to any judicial branch if they could have spoken English – judges are judges everywhere, it seems to me. And I've met Chinese judges too, who've come to visit the judicial branch. It's a little different, because nobody even pretends that they're independent and free of politics. But the Scoff(?) judges really wanted to be real judges, and they wanted to have a jury system, and they wanted to free themselves. At the time it looked very encouraging. I think now it is less encouraging because the political control from Moscow became much stronger, and I'm not sure where it stands now – I've lost touch with it. But I think it's very beneficial, to open our eyes to the rest of the world.

Do you speak Spanish or any other languages?

I speak French, but don't test me. (laughter) my family are all French speaking. My wife speaks German and French. I have tried to learn Spanish – I never took it in my student years. It doesn't really stick – when we're together, I manage a little, but I keep falling back on French. I'm not optimistic about improving it a lot more. Fortunately, the children are learning more English.

From your vantage point as a judge, what observations have you made about changes to the legal field and the legal profession? Most of us have been asking some form of this question to whomever we interview about how their profession has changed. So I think the law firm has changed a lot since the time you were in law school. I'm wondering if

there are any aspects of your profession as a judge, or of the larger legal profession, that you see as having changed?

Well I suppose I've observed from the outside the same changes within the legal system itself that other lawyers being interviewed have observed. The judicial system has adapted to the changing needs of lawyers and of people. From what I hear, I would never go back to practicing law. I think it's much more pressurized, and that big firms have really come to dominate the legal profession. But some of them come and go, obviously. There's much more specialization and pressure on individual lawyers to be expert in certain areas. Much more need for malpractice coverage and that sort of thing. From what people tell me, it's less fun to practice law – there may be somewhat less collegiality among lawyers, although I think in small communities and even in a city like New Haven that may not be so bad – I see a lot of collegiality still among them. And then there are the shifts – that we recently had a symposium about – that jury trial seems to be disappearing. About ten years ago, when the whole move toward ADR began, the concern was that the backlog was so great with jury trials, so what did we do, we set up this whole culture of settlement, and it's been so successful and spread into the private sector, that now there aren't enough jury trials and people worry that there aren't enough cases being decided. I don't know the answer to that, in a way it's a self-created problem. I think it's good that people try to take charge of things and settle their own cases and I do a lot of mediations too, and I believe it's very important – I have one tomorrow morning in fact, a will contest case. On the other hand, one of the needs identified at the conference was that jury trials are not economically accessible to people with small cases – they're driven out to settle the cases or not to bring the cases at all because they're too expensive, and discovery has usurped the process. So I think we need to find a way to allow these back into the system and provide fair and accessible and inexpensive access to trials for people who really want the trials.

How is your experience as a mediator compared to your experience as a judge?

Very different. You can imagine, when I retired from the Supreme Court, I wanted to keep doing appellate work, so I did that at the Appellate Court. I frankly felt that I had tried a lot of cases in the 18 and a half years but I wanted to do something different. And I wasn't sure I could be good at it, wasn't sure it would work for me, because I had virtually always tried cases – and a lot of civil cases too, especially nonjury cases – but I had never done much by way of pre-trying, or settling cases, and I wasn't sure I would do it effectively, and so of course I wanted to do it. The mediation work I'm getting is growing, and I feel as though I'm now really understanding what I have to do to settle cases. Developing the techniques and understanding the system as to how you get people together, but every case is a new challenge, and it's a lot harder than simply deciding a case.

Why?

Because you don't simply sit back and then detach yourself and make your decision. Of course, there's hard work in doing that, and with the mediation, it ends and you don't

have to write an opinion. But with a mediation, you're trying to bring the people together – and they don't have to come together, and they often resist coming together. Often one party wants to do it, and the other party agrees to come along and see what the party can find out, and maybe settle it, maybe not settle it. So you have differently motivated parties. But your job is to come up with a result that is reasonably fair and, I hate to use the word justice, but just, because I think it should be that. I don't think I could put my heart into selling something that's really unfair, even if somebody would be willing agree to it. And it's hard work – sometimes you go for 6, 7, 9 hours with very few breaks, back and forth back and forth, trying to get the party that's holding back – persuade without antagonizing the party to see if you can reach a consensus. So it's demanding physically, and personally demanding to do that. You're intimately involved with the people – not just the lawyers but the litigants, trying to make them feel heard and understood, trying to persuade them to do something that they usually don't want to do. So it's demanding, and when it doesn't work it feels very depressing. When it does work, it's wonderful and everyone seems very happy.

[...]

We need to decide our foreign policy – especially when we intervene, which I'm glad we're being more careful about – so that we are the world's moral authority, but not necessarily its dominant, physical authority. I think it's not achievable anymore – that if we put things in the proper global perspective, we will realize that we cannot go on without further bankrupting ourselves if we try to do it, and without further creating problems for ourselves, which I feel that we do. In addition to talking about suicide-because there's the real red flag to human cost, that is a material cost of our military [interventions] that is still not being looked at – but I get more and more concerned about our use of drones – and I'm far from alone, this is not an original position, and I'm reading everything I can about it, because I think this is an example where we're elevating a choice that almost acknowledges that we can kill all our major individual enemies, which of course is an absolutely ridiculous thing to try to achieve. But I think we're sacrificing, in that one undertaking right now, our moral authority. I agree with the people who are saying that we're probably generating three new terrorists for every one who is killed by doing that. At least it's being disclosed, at least it's not totally secret, but that's where I think that we have to think of ourselves as the moral authority in the world. and I know it's hard for people to say – but doesn't that mean we'll be less safe and secure, how do we get to that position without making ourselves vulnerable? There are a lot of bad people in the world. well, there are a lot of bad people in the world, there are some that we can't reach through rational means right now, but we can't abandon the hope of doing that – if we do we are destined to be in a kind of hell forever where we are trying to kill our enemies and protect ourselves against the enemies that our own actions are constantly generating. So this is where I'm beginning to also hit the margins of what I can speak out against, but this is what I'm thinking about of something I might join others in writing about if I feel I can do it, along with other possibilities. But I think we've given up our role of being the moral authority in the world, and I think that's where our real strength lies, and we have to take some risks. We can't say, if there's one

100<sup>th</sup> of a chance that this person might lead another 9/11, we've got to kill that person. We can't do that. I think that's a self-defeating action.

It seems like you've had this incredible career that you're very happy with – you seem to have found a nice balance of various things that you're interested in doing: teaching, writing, judging. What advice do you have for current law students to go out there and forge their own paths?

Well that's a hard one to sum up. I have said several things. First, I think it's very important to be involved in public affairs – and not necessarily politics – and that's a message that Yale Law gives all the time, and Yale too. And I think that maybe more than any other university and law school, Yale produces public servants in one form or another, and I think that's so important. I think it's important to be generalist – I never been happy with a single approach or a single discipline, but always felt the need to write about and speak about and to be interested in multi disciplines, always curious about another. I think, be driven by your curiosity, be a generalist so that you don't limit yourself to a narrow specialty, and don't give up any field of knowledge to so called “experts” or “professionals.” I may have said this when I gave a little talk at the law school and elsewhere – but I think it's important for people to inform themselves, to be willing to speak out in other people's fields. It's a little risky to write about psychiatry and make criticisms and say what should be done in psychiatry and in the military and in law – but in law I feel comfortable, if I don't know how to say those things in law, something is really missing – and I realized that I'm a little bit at risk, and I try to protect myself by reading everything I can get my hands on, and then by running it by people. I ran a lot of the military history by a college classmate of mine who teaches military history, and I said, just tell me if I'm saying something really stupid, or off the track, and I did the same with the psychiatry. But I think it's really important to do this – more and more we get confined by fields of expertise, and overwhelmed by information, and I think we have to struggle to do that. Another thing is, don't sell yourself short. I could have abandoned law school, and I certainly didn't envision the things that I've had opportunities for in my life, but I think if you're alert to things and you prepare reasonably well and you look for opportunities, you find that life leads you in directions that you never anticipated. I think I'm a good reactor in some ways – my wife says that I'm more of a reactor than an initiator – that I initiate some, but that I'm always looking to see reactions and other opportunities, and often persuaded to change my course because of it. And it's both good and bad, as I suppose closing yourself off to being a reactor is both good and bad. But I like the idea of not giving up on something, but always taking on something that seems a little bit out of your reach, because I think it's a good thing to do, and I think the day I give it up I will have ceased to exist – or I hope I never give it up. and I also think that it's important, if you're lucky enough to live into the stage where you begin caring a little bit less about yourself, because you know that your own career and self-enhancement has reached a limit, at least in our culture and society, and it will ultimately, by way of age, but if you're lucky enough to enjoy that time when you just fully feel alive, when you are helping somebody in the next generation and the generation beyond that, in the way that you got helped yourself. And I think it's important – it almost verifies the uniqueness of human life, in that we have this

stage to reach in which we care about the perpetuation of our human species and its flourishing than we do about ourselves, and I'm glad to have reached that stage. But I'm not willing to give up on myself either too, my own challenge and stimulation and enjoyment.

Are there any other reflections, things you want to share?

I think your questions have been wonderful, and there may be out there, but I think you've reached into some really important areas, and given me an opportunity to think about them.

Well thank you for doing this!

Thank you, Amanda.

Shutler Interview Excerpts

Yale Law School Class of 1963 Oral History Project

Interviews with Kenneth Eugene Shutler  
Combined Transcript Excerpts

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Interviewer: Helen Vera

Location: Home of Kenneth Eugene Shutler, 156 Mabery Rd., Santa Monica, CA

Dates: Nov. 9, 10, and 11, 2012

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[121109\_002]

[2:24]

*HV: Did you always go by Gene?*

Kenneth Eugene Shutler: No, almost all of my, in fact all of my classmates, and most of my friends, call me Dutch.

*From the time you were a child?*

Yup.

*Was that something that your parents came up with?*

Well, no. Ha. I was in grade school during World War II. And because we spoke Dutch at home I had an accent. And the kids would call me a dirty German. And I developed a very good right jab. And after a while they began to call me Dutch. I'd say, no, I'm Dutch. And then we'd fight, and after I won enough fights I've been called Dutch ever since. I went to college, and thought, that's all behind me, you know. Nobody from my high school had come to Penn, and I hadn't been on campus ten minutes before one of the football coaches walked by and said, "Hey Dutch, we're glad you're here, see you at practice tomorrow."

*So you hadn't been recruited for football.*

No, I was a Franklin Scholar at Penn. And Franklin Scholars, I think there were only twelve in each class. And it was basically a full scholarship. The Ivy League doesn't really, didn't then at least, recruit for athletics. If you were a good athlete, it certainly helped your resume.

*You would walk onto the team later, when you got there.*

I was a pretty good athlete.

## Shutler Interview Excerpts

*It sounds like it was really important to you in high school.*

I have always enjoyed sports. Above you, you will see my oar from the University of Pennsylvania. I rowed there. And I loved crew. Crew was the most intellectually demanding thing I've ever done.

*I don't know enough about crew to even ask what position you were in in the boat.*

It might be hard to believe looking at me, but I was the smallest man on my crew. I was in the bow, which means I'm the last one, everybody else was in front of me. But the intellectual part of rowing is that you have to have phenomenal concentration. The best eight oarsmen don't row the fastest, it's the eight that row the best together.

[5:08]

[...]

*So tell me a little more about your high school. You grew up in Blackwell, Oklahoma, and you went to high school in Wichita. That's an hour or so away, right?*

Well, Wichita was about two hours away at that point. My mother was a nurse, and it was easy—she had gone to nursing school in Wichita and met my father in Wichita. And so we moved back. Frankly, Wichita had a much better football program. And--

*And you already knew you wanted to do that. From before high school.*

I played football since I was big enough to get away with it. And, the schools were better too. Blackwell's six thousand people. Blackwell High School had maybe 400 kids in it all told. So I moved up to Wichita when I was—I think I started seventh grade up there. It was a town of about a hundred thousand people. Most of them worked at Boeing, or Cessna, or Beech. Typical Midwestern town. Good place to grow up, I never felt unsafe there. We were not poor, but we were a long way from rich. Both of my parents worked. She worked nights only, she worked 11-7 at St Francis Hospital. And my father was also hard working. He had been damaged a bit in the service. So that it was hard for him to—to be steady at a job.

*Emotionally?*

Yeah, it was an emotional issue.

*Did he fight in World War II?*

Yes, he was in World War II. And I, I always had a job. I thought it was, in my family, what you did. I was an only child and my first job was selling doughnuts door to door.

## Shutler Interview Excerpts

*Delicious!*

If you like doughnuts it's a real good job. Well, you basically got as many as you could eat. Which for me was more than you would think.

*How old were you at that job?*

I was eight. And then I got a job in Wichita in junior high school working at Watts Drug, which was a drugstore, delivering on my bicycle. And by the time I got to high school I worked in the city library and loved that.

*In Blackwell?*

In Wichita—I was in high school. And I also, they could adjust their hours so I could come after practice. And then I got a job at Safeway. Started as a bag boy there, and by the time I finished I was the cashier, the person who stood behind that supposedly bulletproof glass and took checks and either approved them or disapproved them and gave cash.

*And at that point were you driving yourself back and forth to Blackwell?*

No, the whole-- my mother and father took a house up in Wichita when we all moved up. That was just before my seventh grade. And my father was a truck driver and basically a produce man in the sense that he worked for the same company or group of companies after service. My mother didn't like his trucking so he worked in the warehouse when he wasn't driving a truck.

*She didn't like it because it seemed unsafe?*

She didn't like it because she didn't think it was safe, and my father would go on benders, he would get drunk and mean, and she didn't want him doing that on the road. So eventually he just worked in the warehouse.

*Sounds like you have a lot of respect towards your mother.*

I did.

*Sounds like your mother was a wonderful woman.*

She was. She was very hardworking, very loyal. Pretty much interested in me. My father wasn't interested in me at all, and in fact it wasn't until within the last ten years, that I was able to figure out why my father didn't really care for me and it was simply because I was an unwanted child. They weren't married at the time, and my mother became pregnant, and in those days you got married, that's what you did.

## Shutler Interview Excerpts

*And was that something that you were aware of growing up?*

Never. I literally never knew it until sometime in the last ten years.

*Amazing.*

I could never figure out why I could never please him. I did everything I could to please him.

*It sounds like you were a remarkable child.*

He didn't seem to think so.

*Did they have any other children, just you?*

No, my mother miscarried once after I was born, and then they stopped, I think. Wichita had three high schools. East High School, which is where all the moneyed kids went. North High School, which was a curious mix. There were actually-- The African American community was located toward the north. And kids who went there, it was a racially integrated school. Keep in mind that Wichita is 200 miles south of Brown against the Board of Education. That was a Topeka school.

*And, so, what year did you graduate from high school?*

'56.

*Wow, so that was, very much—*

Very. Yeah. There was no question, in Blackwell there was no question that if there had been any black families in Blackwell, the kids could not have gone to school with the whites. It was a southern town. And Wichita was progressive for that time and place. The high school I went to was in an area called Hoover's Orchard, named after Herbert Hoover. Who was the father, in their view, of the Depression. And it was a rough and tumble school. There were a few Latinos in my class, no Blacks—

*Were the Latino students from Mexico?*

Yes, I think they were. In fact I'm sure they were. The great pilgrimage from Central America had not begun. But we had some kids in the school who were called Pachucos. And Pachuco is a gang. They all had in this part of their hand [between thumb and forefinger] a tattoo of a small cross. And you wanted to kind of keep your distance from the Pachucos, they were tough. It just gives you an idea of what kind of school it was. It was principally an industrial—a place where people prepared to work in the aircraft factories. There were many more classes in shop there than there were in Shakespeare.

## Shutler Interview Excerpts

*So tell me a little bit about your transition to college. How did you end up at Penn, how did that start to take form in your mind as a possibility?*

Very late. My goal when I was a junior in high school was to have indoor work. I didn't want to work in the oil fields. I didn't want to work in farming. And I really didn't want to work with my hands. I sensed that I could do something more than that. My marks were good. I knew I was smart. I didn't know how smart, but I knew I was smart. And I had two teachers, Evelyn Thompson was one and Lillian Wall was the other, God bless them both. And one day after practice I was tearing through the locker room taking my two-second shower and getting ready to go off to my job, I was supposed to be there at 5:30 and practice typically ended at five, so it wasn't the easiest thing in the world to do. And I came popping out of the locker room, and Ms. Wall and Ms. Thompson were standing there, and they said, we'd like to talk to you. And I said, I don't know what I've done wrong but I can't talk to you right now, I'm supposed to be at work. And they said, we've called your boss and told him that you're going to be late. And he says it's OK. I was terrified. First of all I thought I was going to lose my job. I said, ok what do you want to talk to me about. They said, come on, sit down in the classroom. We sat down and they said, look, we think you can go to college. I said, I know that, I want to play football at college. Maybe get a scholarship at KU or K State, I knew that I wasn't good enough to play for Oklahoma.

*You were a junior in high school at this point?*

I was a junior. I had a pretty good idea how good a football player I was and I wasn't great. But I liked hitting people, but that was the extent of my skills. They said, no, we're talking about an academic school. I had heard of three colleges, that in my mind were academic. They were Harvard, because frankly Harvard is the greatest university in the world. Everybody's heard of Harvard. It was then, and it still is. I had heard of Yale because I'd read the Dink Stover stories, the story of the Yale athlete, and I'd heard of Princeton because I'd read F. Scott Fitzgerald. So. I said, you mean schools like Harvard or Yale or Princeton? They said, yeah, we think you can get in. What'll I have to do? They said, the first thing you have to do is apply, and we're going to help you with that, and you apply at the beginning of next year, and between now and then you're have to figure out where you would like to go. I said, OK, and they gave me a list. Must have been 25 names on that list, schools I'd never heard of. Carleton College in Northfield Minnesota, Williams, I thought Williams was a last name, I didn't think it was a school. Penn was on that list, Cornell was on that list, and of course Harvard and Yale and Princeton. And they said, we've taken the liberty of ordering catalogs from all these schools, and we want you to start reading them in your spare time. My spare time, which was severely limited. Come summer I had more time, and I spent more time looking. And then there was a college fair in Kansas City and they found out about it and I drove my '48 Chevy from Wichita to Kansas City for the purpose of going to that College Night, and there I met another huge influence on my life, Douglas Root Dixon. Doug Dixon was director of scholarships and student aid at Penn.

[20:20]

## Shutler Interview Excerpts

*At Penn?*

At Penn. And I met him and liked him, we talked for what seemed to me to be a long time because there were a lot of people there. And sort of by accident I added Penn into the mix of schools I was applying to. And I had decided by the way that I didn't want to go to Yale, because Yale had a firm requirement that all scholarship students had to work in the Bursar's program, had to work for Yale, and I had decided that I didn't want to do that. What I wanted to do was just study and do sports—which was of course nuts because I ended up working four years at Penn and three years at Yale Law. But I thought that I was truly going to just be hanging on by my thumbs to stay in college, let alone to work and go to college.

*You felt like you'd be around students that you'd have to compete with academically and it'd be tough—*

Yeah, and who wouldn't have jobs, and I would. And besides that they all had educations. They'd all gone to what I came to call St. Grottlesex. You know—

*Prep schools.*

Boarding schools, yeah. So I added Penn to the list, and I was awarded a Harvard National and I was all set to go. And my mother had cancer in April of my senior year and had a double mastectomy . . . . And it was clear that she was fading, and she couldn't work, and she couldn't lift her arms up above her shoulders. So it changed the economics of our family for my mother not to be able to work. And I wrote to Harvard and said my circumstances have changed, I need a larger grant. And I got back a letter, I still have it somewhere, I don't think I'll ever forget it, that said in very polite terms, "anyone who's smart enough to win a Harvard national, is smart enough to ask for more money. We don't review aid once granted until the end of the year." Well if I had done that I'd have died of starvation by the end of that year. It assumed that my parents could send money, and I think that probably, in fact I'm sure that I sent more money home from Penn than I ever got from home. So I thought about it. I'd turned down everybody else, it's over. And I remembered Douglas Root Dixon, and took my life in my hands and picked up the phone and made a person to person call to Philadelphia. There was only one phone in the house and god knows why it was in the dining room. The dining room was about the side of this rug. And Dixon gets on the phone and I said Mr. Dixon "I'm sure you don't remember me, my name is Shutler, and I met you at the college fair in Kansas City and you awarded me a scholarship and I said I was going to Harvard and my circumstances have changed. I told him why. And he said of course I remember you, and he said how much more do you need, and I'd done the calculation very carefully, and I knew what tuition was—are you ready for this? \$1,200 a year. And Franklin Grants were intended for you to take no loans at all—it's a complete grant, and he said how much more do you need? I said, four hundred dollars.

[.....]

[45:00]

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I lived in the dorm at Yale Law School for about sixty days. And an opening came up in the freshmen counseling program. A student not in the law school but in the graduate school had decided to drop out, leaving that slot, and I had interviewed for a counselor's job, and they said, OK, so I moved out of the law school and into 341 Wright Hall. [...] It's a free room as opposed to out of my scholarship dole, and you have a telephone. I had a two-bedroom suite, and I liked the freshman. They were a wonderful education for me.

*Where on Old Campus were you?*

341 Wright Hall—riotous Wright, as it was called. [...] I ate in Freshman Commons five nights a week. It's good training for the Army, because if you can eat Commons food you can eat anything the Army serves you. [...]

*When you started law school, what did you think you would do? What did you want to do?*

I knew at that point that I was pretty smart. I couldn't have gotten into Yale Law School if I weren't smart—that turned out not to be true. There were a couple of students who weren't smart who were in the law school. I knew I was smart, but I also knew there were a lot of smart people there. ... Many of them were smarter than I was.

*Did that intimidate you?*

It didn't intimidate me at all. I'm hard to intimidate. But it certainly made me aware of the task in front of me. I worked pretty hard my first semester in law school. It sort of surprised me, but I did. I did all right. I was in the top third of my class.

*How did you come to know Professor Gilmore?*

Gilmore—Yeah, I took his Contracts class. I don't think I distinguished myself with Gilmore there. But I did a pretty decent job. I figured out, I don't think most of the other students in the class figured it out, that Cardozo was in a series of opinions trying to limit the application of promissory estoppel. And I figured that out. And I went up afterward in class and I said, if you look at these opinions, Cardozo doesn't like the idea of promissory estoppel. He thinks it's a way of turning what wasn't a contract into a contract. Gilmore looks at me and says, yes, quite right. [Grumbling sound.] That's what he did every word.

*Was that part of his speech—?*

It was part of his speech. He was very difficult to understand, but worth it. [...] I got to know Gilmore a little bit by being persistent and asking questions and showing an interest. I got a B from him, and I went up to see why. He said 'Well, let me show you an A paper, and then you look at it in contrast to yours.' And he pulls out the A exam and he pulls out mine. And he was right. Much better than my work. But we became friends, and then we began to play squash. And

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then we began to play doubles. And Gilmore and I would play Fleming James and a guy named Jim Corbridge . . . . We'd go over to the gym and play squash and got to be friends. There was a squash court in the law school, and I went to the Dean and I said, there's a squash court in the law school. He said, I know. I said, well it's not being used because it's in terrible shape. What if I got together a bunch of guys and we painted the court, cleaned it up. Could we use it then? He said, sure.

[...]

*So did you start playing squash at Penn?*

I played at Penn because I hurt my leg playing football my senior year, and the surgeon said, what you need to do is flex your leg a lot, but not drive off anybody, not be hitting a blocking sled or something like that. You oughta try squash. OK. I go over and a wonderful guy named Al Malloy who was the coach there, said, sure, I'll teach you how to play squash, get you ready for crew. And I fell in love with the game. I still rowed—would never have made the squash team there, it was filled with preppies—

*Yeah, it was not a game that you—*

Didn't see a lot of squash in Oklahoma. Even to eat, thank god.

*Well that sounds like an amazing little tradition.*

It was. It was great fun. I loved Gilmore. He was great. He deserted me, the rat, my third year. I was working for him. He was doing this volume on secure transactions that won the Ames Prize.

*The treatise.*

Yeah. My job was to be, I did the, the variorum edition of Article Nine. In every state in which Article Nine had been adopted, it was my job to check the wording against the model statute and what was enacted, and note all the changes. This is a boring job. But I got paid for it, and I got to work with Gilmore. I'd come in and show him my notes, this is where the changes are, and I went back to the legislative notes on this one, to see why they made this peculiar change, and I don't know why. That was how I came to work for him, and I adored him. In fact, I idolized him. He had a mustache, because he had a hair-lip. And he was slightly cross-eyed. And he tended to speak like this. And he drove a Porsche. His wife was a psychologist, I met her several times. And I just loved him. I thought he was a great man. . . . When he was at Harvard, I still had the same job, I would just write up the reports, type them up. You remember typing?

*You'd send him an email.*

Ha.

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*So you would write up memos and send them every week or so?*

Yeah. I was only doing—four or five hours of that is plenty. The Code had been enacted in, my recollection, in the 48 states, maybe fifty states by the time. It's a lot of work—you have to literally get the statute and go line by line. You'd think I'd have become a secured transactions lawyer but I never did. Anyway, I got to know and admire and indeed venerate Gilmore. He was a wonderful teacher despite all of his handicaps. Years later I came back to the law school recruiting. I called up Gilmore and said, can we have dinner. He's very shy. He said I'd love to, of course, we'll have dinner at Mory's. [...] We went off to Mory's. I had my drink and he had his. I could see something was troubling him. Finally, after some chair wiggling, he said, "Can I ask you a question?" I said, yes sir, anything. He said, "well, what did you think of the faculty when you were in law school?" I was stunned by that question. I could think of a number of ways of answering it. But I said, I thought they were giants. I thought you in Contracts. I thought even Gene Rostow, in his field, a giant. He said, "that's interesting. Because you know, I felt that way, when I was in law school. And I had Corbin for contracts. And I thought we were a step below that great bunch of people that we studied with." I said, "well you weren't, and you aren't." Interesting that he had that kind of self-doubt. [Describes how Gilmore gave a series of lectures at one point.] He announced there would be no, as he put it, Socratic interruptions, he was just going to speak on the subject. Something to do with the concept of secured transactions. And Helen, this classroom, which normally held fifty students, the day that he started those lectures was literally standing room only. People were sitting on the steps, they were sitting on the windowsills. They opened the doors of the classroom so that people standing outside could hear.

*He was just that—*

He was magnetic. I've never known anybody with those kinds of inhibitions and handicaps and self-doubts, who could be that wonderful a teacher. And he was.

*What did you want to do?*

What I wanted to do was be the aide-de-camp to the secretary of the Army in Washington DC. That didn't quite work out.

*Why did you want to do that?*

Well the then-secretary of the Army was a Yale Law graduate. And being aide-de-camp as a second lieutenant in Washington was a very cool job. Lots of nice women, all kinds of things. I mean, it's a party job. It didn't work out for reasons that are extraneous to this narrative. But I ended up going instead into special forces.

*Did you enlist? How did it work?*

Oh, I had been in a program in ROTC. Do you know what ROTC is?

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*I know that it's the training program for colleges.*

Exactly. You went into ROTC for four years, you were commissioned as a second lieutenant and then graduate. I did it at Penn and then deferred, my law school. And I had been in a special program. The Army decided it wasn't getting much leadership from the ROTC program. Getting a lot of clerks, not enough leaders. So they tried to identify people who they thought would be leaders, and they said to us, I was one of them, instead of having to wear your green meanie outfit, and march around the green, instead of doing that, we want you every summer [...] well that was wonderful for me, because it meant a, that I'd be in shape for football, and b that I'd have a summer job, and get paid for it.

*The food was better or worse than Commons?*

Well the truth is, that I was so tired all the time. [...] I was already airborne ranger qualified when I graduated from Yale Law. And I knew that I wanted to lead. I didn't want to be in the JAG corps. Especially with my pedigree, what the Army calls 201file. Based on my education and my Army training I knew, to my horror, that I would be assigned to the JAG branch at Fort Bragg or Fort Benning. And spend the entire two years prosecuting young punk soldiers who had gotten into fistfights, that sort of thing. [...] I think my family has a long tradition of leading, especially on my mother's side. [...] I didn't want to do that.... It sounded boring, and it's not to me what the army's about. I'm sure that JAG officers do their share of making the world safe for democracy, but I can't quite figure out what it is. And I knew that I wanted to do something tangible. I wanted to be a commander. So, I – you know, the Chinese have a saying. It's a curse when your dreams come true. And that's a curse. And my dream came true. I got through special warfare school, which is the hardest thing I've ever done.

[1:13:19]

*Was that after law school?*

Yes. I reported to Bragg— Still sends chills down my spine.

*This is the summer of '63.*

Yup, eight days after I took the Bar exam.

*So you studied in New Haven and then took the Pennsylvania Bar.... So you were sort of thinking Corporate Law generally?*

Yes.

*So you went to Fort Bragg.*

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Went to Bragg. Somehow survived special warfare school. Which as I said was the hardest thing I've ever done by far. You go for four days without sleep. You get treated miserably. You go through live fire exercises where those are real bullets above your head, thirty inches above the ground. I saw one guy dead, two men down from me. If you should be crawling along and run into a snake, if you stand up, you get cut in half. It's called realistic training. So.

*While you were in training, did you know that you would be going abroad?*

I didn't. Special Forces had, at that time, fifth Special Forces group, and seventh Special Forces group. Seventh was Germany. And fifth was Southeast Asia. And I drew the fifth.

*So it was random?*

Well. There's a lot of randomness in my life, and I've told you that when I reflect on much of my life, has been luck. Just luck. This time the luck wasn't with me. And, so I spent about two and a half years in the Army. And I'm not really comfortable talking about that, except to say that it was hard. And that I learned a lot from it. I learned for one thing that you can do more than you think you can do. That your limitations are mental, not physical. When you think you're tired, it's just because you think you're tired. You can think your way out of that if you have to. In some ways, it hardened me. And in some ways it made it possible for me to get more out of life than I might otherwise have. Because I appreciated it.

*Life. Your life.*

[1:17:13]

Yes. You forget those lessons the further you get. But I was very much aware of the fact that every day was a blessing, one more than I thought you'd have. I still feel that way now, after cancer and a pulmonary embolism, when the doctor told me I'd been, as he put it, eight centimeters from being dead. [...]

I can give you an idea about what it was like. What the Army issued to me when I shipped off for Southeast Asia was a pocket protector. Do you know what a pocket protector is?

*For your pens?*

[1:18:30]

Mmhm. It's a little piece of plastic that fits in your pocket in case your pen leaks. It was so that I would look like an engineer. So. The term Black Ops mean anything to you? I will just tell you that my assignment in the army was that I was the transportation officer at Sharpe Army Depot in Lathrop California. That's what my record said. I don't know if there is a Sharpe Army Depot, I don't know if there is a Lathrop California. And I sure as hell don't know anything about being a transportation officer. My god. It sounds like you'd have access to a Jeep.

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I got out of the Army. I'd written letters when I was able to law firms saying I'll be getting out in December, and I know your incomings start in September but I'm not able to make that schedule. And a small law firm in Philadelphia called Stradley Ronon Stevens & Young. And it sounded like just the firm I wanted to be in. Let me do trial work for a little bit, let me get a feel for that, ...and I got a one-page letter from Dick Stevens on this wonderful crisp, linen paper, and the letter said, "Is the bloom still on the rose?" Meaning, are you coming or aren't you? We haven't heard from you for three months after I'd said yes. And I had no choice after that. Anyone with that kind of style I had to work for.

[...]

[121109\_003]

[4:57]

[Discussing how the legal profession has changed.] It's a money mill. It's, how many associates can we assign to a matter, how many hours can they bill. Those interests are adverse to the interests of the client. The client would like you to be able to solve the problem in one hour, and is perfectly willing to pay you five thousand dollars for that hour if you do it. I had, when I was General Counsel of [chuckles] MGM Grand I sent out what became known as Shutler's Letter, which was a letter to all law firms that we engaged, which said, here's the deal fellas. No associate is permitted to work on this file unless I have personally approved him or her. Two, I expect a concise, but nonetheless thorough explication of what this associate will be doing for the firm and why it is necessary for the progress of the matter. I expect all of you to travel coach. Because I travel coach. And I expect that you are good enough, or I wouldn't have hired you, that you will have lots of other clients, and therefore when you are flying will be able to work on other client matters and not bill me for your travel time. Sincerely yours. It went on and on, I mean, how much you can charge me for Xerox, the whole thing. And some firms were just infuriated by it. The general counsel at Disney heard about it and copied my letter word for word. So I think it's a much more mechanical practice. I think it's inimical to the interests of the client. And I think there are developing tensions between clients and lawyers now that didn't used to exist.

*What do you think, where did the change happen, why?*

I think it was a sense of frustration at being able to monetize work. Good legal work. How do you charge for it. I once got a bill for an attorney in London. I'd asked for a listing of everything he did. And I noticed that he'd charged me, as he put it, "five quid for thinking in shower." I was perfectly willing to pay that. OK? I was perfectly willing to pay it. But five quid for research, uh-uh. I want to know why, where, and I'd like to see the result. What I am suggesting to you is that clients want not just massive legal services done in complex cases. In that situation I can see charging by the hour, because you don't know how much it's going to cost, you don't know how long it's going to go on. But ordinary legal matters—a contract, a simple merger, if there are any simple mergers left. Those things can be done on the basis of fee for service. We'll do your deal.

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It's fifty thousand dollars. If we can do it more cheaply, we'll have more money left at the end of the day to split among the partners. If we underestimate it, that's our risk. We are experienced at doing these transactions, so we know what the risk is. You don't. The client doesn't. Except this client did.

[...] [11:20] It's a very hard system. And that's why so many people are dropping out. They don't want to do this anymore. [...] That pressure to get the billable hours in induces that kind of dishonesty [padding hours].

*You just said that you blame your generation for this shift.*

I do. . . .

[13:00]

This guy, I was working on a transaction with him, and he kept complaining. He said, Bludorn is gonna make fifty million dollars on this deal, and what do I get, I get my salary. It's just not right. Well it turned out that he had created companies that he was paying out of the legal funds for research and stuff like that. He ended up going to jail. But the point of that story is that lawyers had a sense that they weren't getting enough of the pie. These transactions were generating huge fees for the investment bankers, for the banks. And the lawyers who were working on them were not generating huge fees. They were making good money, they were all living in nice houses. But they weren't living in sprawling estates. The endgame if I can call it that and I think it is, led them to say wait a second I'm smart, I ought to have a piece of this pie, how can I do this. I can get my associates to work harder, and we all know the accretive effect that has on partnerships, I'll get mine that way. What they should have done was to say, this is a fee-based transaction. I'll do this for you. It costs five million dollars. But it'll make you five hundred million. Who wouldn't take that? So instead they bill eight million dollars, and I don't know, the system seems so inherently unbalanced to me.

*And everybody today, in law firms, everybody works more. The associates work more but the partners—*

The partners work like dogs! And again it's this compulsion to make lots of money. God as my judge, I've always wanted to make money. But I've never been willing to do anything to make money. And I've never been willing to cheat to make money. And what's happened today is, somehow the measuring bar. I blame another Yale Law School graduate, Steve Brill. He's the one who started publishing information about what lawyers were making, you know, *The American Lawyer*. What to do about it is a very different question, and I don't know the answer to that. But I know that there are a lot of General Counsels around who believe that law firms' fees have gotten out of shape. I know one company here in southern California that gets all their patent applications—all of them—in India. They have a general counsel who's a patent lawyer, and he says the quality of work is absolutely equal to what I could get from going down to Newport Beach and hiring a tech firm. We need to get away from the idea of lawyers being

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producers of billable hours, and get into the idea of lawyers providing counsel. Helping people to understand what their choices are, and then providing the documentation for it. [...]

[25:00]

The things that I remember as being most rewarding in practicing law were things where the client say, we couldn't have done this without you. That's a great feeling.

*What are some examples?*

Ever heard of Turner Construction? They're all over. Start looking at construction sites you'll see the name Turner. I came to represent them. And one of the guys wanted to break off and form a consulting corporation. I said, sounds like a great idea. You can do that. He said, well I've got an employment contract. I looked at it. I said, I don't see anything in this contract that revokes the Thirteenth Amendment. So, do it. You'll probably get sued, and we'll win. He looked at me, I don't want to be sued. I said, OK then, stay where you are. But if I were the other side I'd sue you, try to frame you, not competing with them. He wasn't gonna compete with them, he was gonna monitor their bills is what he was gonna do. So he ended up forming Turner Consulting, and Turner Consulting turned out to be a wonderful place for him. And the group of guys that he formed to help him became like brothers, and I was part of that. I made that happen. I didn't make it happen, but I helped it happen. And I had more of those experiences than not. A company called Huntington Signal Oil. A little oil company that was very profitable. [Another story about helping a client prevent a hostile takeover.] That was the year I ended up spending two thousand hours. [...]

[44:23]

It's the idea of creating something that's lasting. That is, not just concrete. But will remain in people's memories. Jim Turner's gone now. And the people he worked with, they remember me, but they don't remember much about me, and it's ok. But MGM Grand is now coming on twenty years old. Now a great big company. I played a part in that as well. And I like that.

*Looking back on everything, what are you most proud of? What gives you the greatest satisfaction to think about?*

I think I get the most satisfaction from my daughter. I was proud to be a soldier, proud of the work I did there. Proud to be recognized as a lawyer and helpful to people in that role. Proud that I helped to build the empire that MGM Grand became. But the last real job I had was as president of Atlantic Crossing. And I think that Atlantic Crossing was in the peace business. I gave a speech on that subject in Geneva to a conference of telecom operators. [...] We were the newcomer of the year. I think when you build a subsea fiber optic cable that's that big around at the bottom of the ocean, and you lay it in such a way that it doesn't lay between two mountains so that it frays and fails and you have to go down and get it. When you do that, you've really done something that's marvelous from a technical point of view. But I didn't do that—I am

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certainly no technician. But I'll tell you what I am. I am somebody that got something done, and that something enabled people to talk to each other. And I think the more that we talk to one another as human beings around the world, the less chance we have of what I view as chaos, nuclear war. So I think the more you can talk to somebody and the cheaper you can talk to somebody the better off we are. I think when you know somebody it's hard to hate them. So I'm proud of that. Of course, we're a long way from peace. . . .

[...]

[121110\_001]

[5:56]

*I meant to ask you when we were talking about YLS yesterday about what happened right after you graduated, which was that that president was assassinated.*

It's a—it's like 9/11, you never forget where you were or what you were doing.

*Well, so I wanted to ask you what your experience of that was, as somebody who was—I don't know if at that point you had left the country--*

Why don't I tell you how I learned that the president had died. I learned that the president had died because of a sergeant rhythmically slapping me—forehand, backhand, forehand. Until I woke up. I had been out in the field a long time. I'd come back. What's going on? He says, we have a red alert, no drill. I said, what the hell happened. He said, the President of the United States, and the Vice President, have been killed. I mean, we're a long way from--.

*When had you arrived in Southeast Asia?*

In October. And he said, we're moving out. Get your men ready. You bet, we've got sealed orders, and typically they're staged orders. He said, we think it's the Chinese. We don't know anything about it. We're going out. They got an aircraft there and they've got a fuel truck beside it, topping it off. Very rarely done—it's dangerous. We get the team in there and I start looking at the provisions that are called for from the orders. A lot of C4—that's an explosive. And a lot of fuses, a lot of rounds. Not a lot of food. And I go up to the cockpit and said, what do your orders say. Smart ass air force guy looked at me and said, you don't read my orders I don't read your orders. However, our range on this aircraft is such and such miles—that's round trip. If we don't go round trip, we just go and don't come back, it takes us to here. He points to an area filled with hydraulic operations. And I said, that's interesting, went back, sat down, and wait for the next packet of orders. Pretty soon this major comes on the aircraft, and says we've got orders to stand down, and takes the sealed orders back, and we get off the aircraft and immediately start asking questions, what's happened. And it was Kennedy's assassination. I never saw any of it—I didn't see the funeral, and I didn't see the assassination or the Zapruder film of it, until I was

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back in the states years later. I think it was the fifth anniversary of his death the first time I ever saw any of that. John Kennedy signed my orders. So.

*That sounds so terrifying, and just incredibly disorienting.*

Yeah. I mean, I'd had about four hours of sleep in the last three days. And all of a sudden I'm watching this stuff getting loaded, and boy, wherever we're going you're not planning on getting me out of there. We're going in to raise hell and, that's what you do. That's the job. So it was an unusual experience to say the least. And the impact I saw later among people—they all have vivid memories of being in class or being somewhere. Terrible. So that's where I was. . . . I kept thinking—you went to Yale Law School—well then who's the President? You know. If the president and vice president are dead, then it's the leader of the majority party of the House of Representatives. Oh my god, John McCormack, I'm gonna give my life for John McCormack, crappy Democrat from Massachusetts.

*And when did you find out what actually had happened?*

Oh, days later.

*Oh my god.*

Yeah. Didn't matter. We were gonna do what we were doing.

*So you had your orders from whoever was above you and that's what you did.*

Yeah.

*And then a few days later you found out—*

Yeah, we were, where we were, cut—we didn't get a daily delivery of the New York Times, or even the Herald Tribune. But we heard about it, new people moving in to replace casualties, and they'd tell us, the Vice President is Lyndon Johnson, he's now the President. And there were terrible pictures of Jackie Kennedy in her bloodstained dress. Johnson being sworn in by a woman. Federal court judge. So I found out later. Turned out to be a lot better than I thought it was. I mean, I really thought, if the intelligence tells us this is just a red alert, we're all going to die, it's just a question of who we take with us.

*Was the thought that came into your head that it was a foreign government that was responsible?*

That's what we were told. The only other person who went to Yale Law School from Wichita Kansas and Penn was Arlen Specter. And Arlen was on the Warren Commission staff. And developed the single bullet theory. And went on to the United States Senate. I knew him—it was the coincidence of our career paths that led us to be acquaintances. Never friends.

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*What struck me from the first conversation I had with you, it seems that something that helped you to be successful is that you seem to be very comfortable with turbulence around you. Do you know where that comes from?*

I have some inklings. I think partly it's genetic. My grandfather on my mother's side was always – he was a wildcatter. He, you know, sometimes you'd blow out a well, and it gets dangerous out there. I only saw him crying once, he was calm about it. He was sad, but he was calm.

[15:04]

*Do you think it's genetic, or that you were close to him and watching him?*

Could be both. He taught me to hunt—turned out to be a useful skill. He was calm. And my mother was an emergency room nurse. You have to be effective. I've always kind of been that way. Not a lot of people running around doing this. I may have told you this story, when I got out of the army and started practicing law, the thing doing deals was going up to the printer in New York, Bown and Company, 350 South Hudson Street. And you'd go in there, and you'd write something up and hand it to the guy, and he'd print it in hot type.

*You had to go to New York for this.*

Yes. And we were up there one night, really late. And I'm looking at my partner's work, it's just awful, I'm trying to turn it into English. And he says, My god, isn't this terrible? Meaning, you know, working late, it was one o'clock in the morning, we've still got two hours of stuff to do. Isn't this terrible? I was concentrating on work, and I took the question literally, looked up and said, not so bad, nobody's shooting at us. He stopped like that, he said, you've given me a new perspective on the practice of law.

*That was not the frame of reference that he'd had.*

I would say not. I thought, it's not raining, nobody's shooting at us. I'd been out of the service about six months. Still part of my head was back there.

*So your ability to work under pressure—it seems almost you enjoy it in a way.*

Sure. I do enjoy it.

*Do you think it was shaped significantly by your time in the service? It seems like you also had it already.*

I think—you don't get selected for Special Forces training if you don't have a quality of the ability to act under pressure. And you sure as hell improve that. It's what the training is designed to do—it's designed to make you horribly uncomfortable and see if you can function. I think it had a great effect. I never—I'm just trying to think about next things. I don't have that cosmic

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look that says the world is coming to an end. Where am I going to get water, where am I going to get food?

*And it seems like you did have that from a very young age.*

It was not unusual for us, on a morning like this—that is, this time of year, it didn't look like this in Oklahoma. We would get out at dawn and go hunting. And we were on our own. Usually it was quail or pheasant. Both of them were difficult and in some ways more rewarding—when you take a deer, first of all you have to skin the deer, second you have to carry the deer out, and that's a lot of work, you have to know what you're doing. So deer hunters typically operate in groups of three or four. You're right, though, he was calm in an emergency. We were out hunting one morning and all of a sudden this bullet goes flying by. And my grandfather drops to the ground, turns in the direction the bullet came from, fires two shots. I said, what are you doing? He said, I'm letting 'em know we're not a deer.

[20:03]

[...]

[29:05]

[Discussing leaving Troy & Gould to work for Kerkorian in 1991.]

He said, so, next week's Thanksgiving, then, wrap up things. I said, yeah, let's just pick a date. I said, March? He said I need you before then. February One is the best I can do. I said, ok, somehow I'll be on your doorstep on February One. And that December and that January each month I billed over 250 hours. I worked all day Christmas, all day New Year's, getting stuff done. And thank God I had understanding partners.

*What made you want to make that move?*

I loved him. Thought he was a great guy. Very smart—not very articulate, but very smart. And I was tired of billing, a nuisance. I wasn't tired of collecting money and getting clients. But, you know, eight years. I thought it was time to move on.

*And it was exciting.*

It was hugely exciting. Largest hotel in the world. Theme park the size of the original Disneyland, a billion dollars to raise on the fly. Public company, New York Stock Exchange. Had a quality to it. The main thing was that I liked him, I liked the people there very much. So—

*Now, you had been at Caesars before—*

That's right.

## Shutler Interview Excerpts

*And you weren't there for too long.*

I was only there for two years. And the guy who took over as Chief Executive Officer wanted his own general counsel.

*So, when you were at Caesars, you mentioned earlier some ambivalence, or it doesn't sound like you were crazy about Las Vegas.*

Yeah, I'm not crazy about Las Vegas now. It wasn't that it was mobbed up. Connections with organized crime—there were some, but they were mainly in the unions, not on the management side.

*Even when you were at Caesars in the early 80s?*

Culinary union was just, Jimmy Hoffa, that kind of connection. But I didn't like Las Vegas, still don't. Everybody that comes there is a gambler in some way or another. There's no middle class. Very top layer of these companies. That layer is very thin, compared to the people, the rest of the people are dealing cards, running cashiers booths, running restaurants. The Liberace Museum is the height of culture there, you can imagine.

*You said you tried to start a—*

I tried to get a symphony going. There was a symphony. It was just awful. I wanted to improve it, I wanted to create a venue for it. That, by the way, has just happened. The new Smith Center in Las Vegas, which I have not seen but which I'm glad to see has been done. I'm trying to get our orchestra to play there next year.

*So did that give you pause in deciding to go back into that business?*

We were doing something a little different from Caesars. We were building from the ground up. We were a company that was squeaky-clean. That was not the case at Caesars. Caesars had had a couple of run-ins with the authorities in New Jersey. Probably would have lost its license. A couple of people had to step down. Cliff Perlman, the then Chief Executive, said we have to leave. He was friends with a guy named Alvin Malnick—doesn't that tell you everything you need to know? And Al Malnick was a member of the Jockey Club in Miami, lived there in a complex. And it was his custom to get his Rolls Royce convertible and ride around Miami in it. He went out to get his car one day, and forgotten something, he tossed his keys to one of the valet parkers, said, go get my car. The guy got the car, turned the key, and the car exploded. Cliff told me that story. Why would anyone want to kill Al Malnick? Well, hmm. Cliff should have known that. It was willful ignorance. He said, I'm not gonna let anybody tell me who my friends are. I said, Cliff, they're not telling you who your friends are. They're telling you you can't have the place if you have friends like that. You can keep your friends forever, you just can't keep the hotel. So, I liked MGM Grand. I liked the people. I liked the opportunity to help recruit the

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board—we had a wonderful board. . . . Perry Thomas, who was a fabulous banker in Nevada—he was a real catch. It was a lot of fun. We were located in Beverly Hills. And as the hotel began to take shape it became pretty clear to me that we were going to have to move the corporate offices [to Las Vegas]. Didn't make any sense for me to be flying back and forth. So we did.

*When did that happen?*

Would have been September of '92.

In the middle of that, on election night in '91—a bi-year election—my daughter Whitney was diagnosed with brain cancer. She was 16, living with her mother in Winnetka. And I got home from a nice pleasant dinner and see all these phone messages. Jeannie says, she's got cancer we have to operate right away, we have to do the operation tomorrow. I said, no you're not. We're not doing anything until I've had a chance to think about it. Don't do anything. I don't know, it's really urgent. I said, we're going to do this, we're going to do this right. And I spent the night on the phone calling people that I knew, every doctor that I knew, any coast, woke them up- I didn't give a damn. I said, I need to know who the best pediatric cancer brain surgeon is in this country, and I need to know now. And I'm sorry to wake you but you need to help me. And I did that literally all night long. Maybe got two hours of sleep. And I had a call the next morning. I knew who the surgeon should be—And it should either be at St. Jude's in Memphis, or at Children's Hospital in Chicago, they had a very pediatric good cancer practice. Okay, so now I knew what the task was. Made reservations for the flight. I ended up going to the office, walked into Kirk's office, not something you do lightly. And said, Kirk, I'm sorry, I know this will surprise you, but I'm quitting. I've got a very sick daughter. I'm leaving now for Chicago, I don't have time to—I can't do this and do that too. He said, you're not quitting. We'll work around this. First of all, you'd lose your medical benefits, and you really need them now. So just, you're not quitting. I said, okay. He said, by the way, that's what airplanes are for. I was so tired, I looked at him and I said, I know what airplanes are for, Kirk, I'm flying back today. I'd never talked to him like that before—he'd never talked to me that way. He said, I mean my plane. I'll have it ready for you in an hour, we'll fly you back, and we'll keep the plane there in case you have to move her. So I went down to my office, started putting out fires, telling people what they have to do. I don't know when I'm going to be back, you guys are going to handle this, get outside counsel, use it, don't hesitate, don't worry about the bills, get it done. . . . Kirk pops his head in the door, he says, you know, I've been thinking, sometimes it helps to get really good service in a hospital if you've made a contribution to that hospital. I said, yeah, I think that's true. He said, well, if you need to make a contribution to Northwestern, write a check for seven figures and I'll cover it for you. I never had to write that check. But that's a man I'd worked for eleven months.

*You mentioned you have incredible respect for him.*

I do. That's why. There are a lot of other things that Kirk did, that were really wonderful for Armenia, for the Armenian community here and in Fresno. Always anonymous. No faster way to get on Kirk's bad list, which, by the way, was permanent. His charities were his own business and he kept them that way, I respect that. So, that's why—MGM. It was wonderful fun for a while. Across from MGM was a hotel called New York New York, which we also built. And I

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bought the land for that by going to Tokyo. We bought it from a guy who was the match king of Japan.

*Like, matches?*

[43:22]

Matches, yeah, that you strike. He was also reputed to be Yakusa. And he'd acquired the property and then been advised that you'd never be licensed in Nevada to operate the casino. So he wanted to sell the property. I acquired a typewriter, and I sat in the hotel suite and typed out the deed for sale. And did the deal in three days.

*Why was it so rushed?*

We were in seasonality—we wanted to begin construction in the good period for construction, which is spring. Summer's awfully hot and awfully dangerous in high-rises. We wanted to get started, hopefully we wanted it to be built so that we'd open for Christmastime the next year. There was a real urgency about it. This guy wanted to do a deal. He presented us with documents in Japanese, I said, this is an American property, American company, we're going to do an American purchase of sale, and I'll draft it. And I had brought along some things to work from, but I basically sat down and—

*And did that happen, did it open on schedule? The holidays—*

New Year's. New Year's Eve is a big holiday in Las Vegas. '95, might have been '96. But that kind of thing was really fun. We opened that hotel. And we eventually opened a casino across the river, across the border from Detroit. That was fun to do. That was a Canadian deal. Opened very successfully. [...]

*So how did your life change from when you were at Troy & Gould to when you went to MGM Grand?*

Well, when I went to MGM it was a company in formation. From a corporate point of view. It was unshaped clay. And it was my job to turn it into the lion that dominated the Strip. So I pretty much set my eye on an agenda. And there were deals I got to do and I've told you about them. One of the things that I wanted to do when I got to MGM was change the traffic flow. Because traffic moved down the strip, and people as they will in Las Vegas maybe drink a little too much, and they would try to cross six lanes of traffic. They'd get hit. There were horrible traffic accidents. Horrible pedestrian accident rate, if they didn't die they were hurt. So I got together with Steve Wynn and Bobby Baldwin and a couple of other guys, I said, here's what we're gonna do, we're gonna build overpasses. MGM will build the first one, with Excalibur, along with this – we'll build up, cross the street, 24 feet. It just happened that the entrance was in the lobby of our hotel—everybody was trying to get an advantage from it, but that's alright. We did—we made a difference. I liked doing stuff like that, I thought it was good for the community.

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Kind of like herding cats. Casino operators are notoriously independent. Sheldon Adelson is a perfect example—that's an odd juxtaposition of words, Adelson and perfect! He is not perfect. So I set my own agenda to a degree, things I found rewarding. . . . I believe that there is nothing new under the sun—and that a good idea has many fathers. . . .

*Were you leaving the office more than when you were at a firm?*

[52:18]

No, the nature of my practice in private practice was that I traveled a fair amount.

*You were working on international transactions.*

Much of the time. At MGM I only took three or four international trips in the four years I was there. One was to Japan-- I count it as one trip though it was back and forth—one was to Canada, you can hardly count that. The other was England, doing finance [...] Make sure the London backers were comfortable with it. And Lloyd's was comfortable with it. When you have a 5,000-room hotel, it's important to have overall coverage. You won't remember this, but there was an earlier MGM hotel, and it burned. And people died. And we all learned from that. It was rebuilt—it's now Bally's. But Kirk was adamant that we were gonna be, as he put it, insured to the gills. And we were, and that required me to go over to Lloyd's and get what were called over-rights. Blanket insurance. [...] A lot less traveling.

*And were you also working with fewer people overall?*

Yes. I had one lawyer working for me who was general counsel for the hotel. Superb guy. [...] But it was a very small group of people that made a difference. I like that- I like small working with small group of people. It's a lot easier for me to imagine convincing three people in a room than convince 300 people to do something.

*So it was overall good for you.*

I was very tired. I thought I was ready to retire. [...] It just felt right to leave. Ready to leave Las Vegas.

*You never were passionate about the thing that the business was for—casinos, entertainment in the Vegas style.*

Oh, no.

*Did some of the people that you worked with—were they there because they loved that?*

Absolutely. Especially gambling. I knew the odds of every game—that was my business. My uncle was a professional gambler.

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*So he was good at it.*

He was great. He was a great guy. Taught me a lot. But you know, my game, I play backgammon or gin, but it's not quite in my makeup. The entertainment side was fun. It was fun negotiating with Barbra Streisand's agent for her comeback.

*Are you a fan?*

I think she's a beautiful talent. I think she's hell on wheels as a person. We gave her the largest suite in the hotel for two months to get her show ready. She hadn't appeared publicly in something like 17 years. She'd done concerts for the Democratic Party and the Malibu Foundation, things like that. But she had never been in front of a live, packed audience. It was New Year's Eve—of ninety-four. Beginning of 95 year. And I got a call from her agent one day, saying, ah, I think Barbra's going to have a cold. Classic line. I said, what's the problem? He said, you know the floors are all marble. Well, Barbra wants to have them all carpeted. This is 5,000 square feet of travertine marble. She wants it out because her feet are cold. I said, I'll take care of it. Called Debbie, my secretary, I said, I want you to go over to Neiman Marcus. I want you to find the ugliest pair of slippers that you can find, in the largest size you can find. I want them to be gift wrapped, I want there to be an orchid on the top of the box, and I want them to be sent over to Barbra with my compliments.

*That was a gutsy move.*

What's she gonna do, not do the deal?

*You were not interested in keeping her on your good side.*

I was not interested in spending half a million dollars to wreck a hotel suite that she'll be out of in two weeks. No. I was not interested in that. Some folks just push until you push back. Sometimes you have to push back hard. [...]

I built a house in Las Vegas. It was a great house, and I never saw it.

*Was it fun to do that?*

Yeah. I rowed with and was friends with a guy named Charles Gwathmey who was a pretty successful architect—

*Oh, yeah.*

Gwathmey Siegel. I liked Charlie. We were friends. The only time I was ever really unhappy with Charlie was when I went to his apartment for cocktails one evening in New York and Catherine Deneuve answered the door wearing only Charlie's shirt. It broke my heart. Why Charlie and not me? God, she's gorgeous. And so, I called Charlie and said, I'm thinking about

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building a house in Las Vegas and I wonder if you'd want to be involved in it. He said, you know, I've always wanted a Gwathmey house in Las Vegas. I said, Charlie, this is going to be the Shutler house in Las Vegas. I don't think this will work. He said, let me send you some ideas. I said, please don't, I don't want there to be any question about where these ideas came from. And he didn't. We were still friends until he died last year.

*What kind of a house was it?*

Very modern, and it was very big. It was 5,000 square feet. It was a lot of house, especially for me. But I wanted a place where I could entertain. My practice was always that it was better to entertain at home, and have MGM cater it, than it was to have a party in a hotel. After all, people that I knew could all go to the hotel, and they couldn't all come to my house. So it made it different. And folks in Las Vegas appreciated it.

*Did you enjoy that aspect of the job?*

I did. But I did relatively little entertaining. Three or four parties a year. I put together the human relations staff, the legal staff. Some of the executives, most of the executives for a party at Christmastime. I did something in the spring. That's about it. Dinner for six, people I wanted to get to know better, celebrate some particular success like getting Streisand on the stage.

[1:03:54]

*Once she was out of the building.*

Oh boy.

*Was it a happy time in your life? You reflect on it positively.*

You know, I've had very few unhappy times in my life. Certainly Whitney's illness contributed to my unhappiness. That was while I was still in Las Vegas, she was still recovering. She came out one summer to work there one summer and live with me. And she just couldn't do the work. A brain's a very complex piece of equipment. And when you start cutting away at it you do damage that you can't anticipate. She was sixteen. We kept her alive until she was thirty-five. And you know what? [Long pause.] Whitney got married. Last bout she had with cancer, I got the news here. Went back, found the right surgeon, the whole thing that I had been through before, I went through it again.

*So she was well for a period.*

She was well. She was compromised. Her intelligence was compromised. Her motor skills were compromised. But, she was alive and she was a cheerful soul and able to live alone. I rigged her apartment so that if she left the stove on too long it would automatically shut off. Flashing lights because she had profound deafness from the chemotherapy. She had trouble keeping a job. She

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kept trying. When she was diagnosed the second time, she went back there and she had the surgery. I could tell when the surgeon came out that they're not happy about it. She recovered. This type of cancer is fairly fast-growing. She lived—the surgery was in June and she lived until the following June. And she had just started seeing a guy, a microbiologist and a complete nerd. And he came around to me, and he said, you know, Mr. Shutler, I think I should marry Whitney now. I said, you sure you want to do this? She was married on Halloween two years ago. Died that spring. But she wanted more than anything to be married. That was wonderful. She walked down the aisle. She wasn't sure she could walk. There were some people—her mother—thought she should go down in a wheelchair. I said, nope, she's going to walk down with me if I have to carry her. I'll walk her down that aisle. She can sit down during the service, but she's Will walk down the aisle. She did. I was really proud of her. Still proud of her.

*That must have been so—*

It was awful.

[1:08:28]

[...]

[After he left MGM, Shutler would occasionally work for Kerkorian on the side. At the outset, he told Kerkorian that MGM Grand paid its most expensive outside counsel \$400 per hour, so Kerkorian said he would pay Shutler \$405. Shutler said he never sent Kerkorian a bill. Eventually Kerkorian called him to chastise him for not sending a bill. Kerkorian sent him a check for \$50,000.]

*Do you still consider him a personal friend as well?*

Of course. Always been friendly with him. I used to play tennis with him almost every Saturday. I went to see him just a couple of weeks ago. He's [almost] 96 now, not in good shape. He said to me, God, what I wouldn't give to be 80 again.

*It sounds like he's very friendly. But I can imagine he might not get along well with everybody.*

He never once, not one time, gave me a hard time about anything. He'd be demanding, asking questions, but he was never rude to me. There are lots of people who are in this world. But boy he can be tough on people. Primarily he was tough on a guy named Alex Yemenidjian. Alex wanted nothing more than to be Kirk's son. He's the guy who introduced me to Kirk. He told me once, he was so frustrated, you know, I've been with Kirk four years, and he's never said "good job" to me. He's said good job to you in front of me twice in the last year. I said, Alex, it doesn't have anything to do with your doing a good job, 'cause you are. It's just Kirk's way. He knows that if he yelled at me I'd yell right back at him and walk out. I don't like bullies. Other people he treats differently. But I had a very smooth relationship with him. Very smooth. Very respectful on both sides.

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*Do you think it was in part your ability to hold your own? Or do you think it was also your—*

I think that's right. But I think, I give Kirk the credit for being perceptive enough to know that I wouldn't take shit. Because I just don't. I just don't like that.

*Ever since your days on the playground.*

That's right—I developed my right job. So I really, best way to get good work out of me is to be respectful. If I've done good work, let me know about it, and if I've done bad work explain why.

*The story of how you came to work for him at MGM suggests to me that he likes to do things on the fly sometimes.*

Yeah. He's not afraid to take risk.

*You're not really afraid to take risk—*

I'm not afraid to take risk. I mean, thirty-five parachute jumps. You don't do that without thinking about what could happen to you. Yeah, Kirk was a marvelous influence on me. In addition to being very good for my wallet. Good man.

[1:16:30]

[...]

I didn't ever have any grand plan. I never thought, I want to be in the airline business, or I want to practice law. I didn't know any lawyers when I was in college. So never a grand plan. It was opportunity. Opportunity coming my way. I was ready for it, I was prepared to do what needed doing. But I never had a five-year plan in my whole life.

*You told me in one of our phone conversations that you in the late '70s you went to National Medical Companies, and you regret it.*

Biggest mistake I ever made in my whole career.

*Were there ever any other times in your career when you felt you didn't know what to do?*

Sure. When I was general counsel of Continental we lost control of the company to a guy who was later deemed to be unsuitable to own any airline. And we lost that bid because we didn't take it seriously enough. Well, I took it seriously. But I didn't convince other people, and I should have.

*At what stage do you think the trouble started?*

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Well, these guys started acquiring blocks of our stock. [Explains that Bob Six, the CEO of Continental, was close to retirement and not as interested in the day-to-day as he had once been.] I should have said, Bob, we really have to pay attention to this and we really have to do something about it. And I didn't. We hired a new chief executive officer, he was a wonderful guy. And he ended up taking his own life. And I regret all of that, I do.

I feel a certain—When people kill themselves it's a very selfish act. My wife took her own life about two years ago. And she was my daughter's best friend. And I'd been through that with Feldman when he killed himself. And I know more about suicide than I want to know. And there are no answers. None. So I regret that. I regret the failure to act in the passionate way we needed to have acted to have beaten off that challenge. Continental should have remained independent. Missed that opportunity.

In terms of regrets, I have a few, but not a lot. I've been very lucky. My grandfather used to tell me, it's better to be lucky than good.

*Do you think that's true?*

I think that I have been both lucky and good. I think luck opens the door, you still have to have the ability to walk through it and be successful on the other side.

[1:41:33]

*And morally good?*

Morality is sort of a given. If you're not honest it's a very short career for anybody. I'm just not comfortable with that. [...]

I can think of a couple of things that I'm really proud of. I'm not one to toot my own horn. But when I was a young lawyer we had a messenger for the firm. He was a smart kid. From South Philly. He was always chewing gum and cracking the gum, and dressed like he was from South Philly. Roach-killer shoes, points on the toes, stuff like that. One day he was in my office and doing something and he had this slack-jawed look to him, snapping his gum. I looked at him and said, you know, you should be a success. And you should act like you're gonna be a success. Don't chew gum, don't dress like a fool. You want to go to law school, dress like a lawyer. Think about it.

*Did he want to go to law school?*

Yes, he was at Temple night law school. And years later I got a call from him. He said, I just wanted to call and thank you. I'm practicing law, and you told me that it's important to dress and act the part, and I did.

*That's amazing.*

Yeah, it's amazing. It brought tears to my eyes. And there are a couple of other people I think

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I've been helpful to. One was a man I served with who lost an arm. I was able to keep him alive and got him out. It was his right arm.

*So this was an incident where you were right there.*

Yeah. And Keith got out of the service and one day—and I always kept a loose connection with people you serve with. And I got a call from one of my sergeants who said, [the lieutenant is] in trouble, he's in jail in Houston, it's a drug charge.

*When was this?*

I don't know, I guess it was about '71 or '72.

*So, a few years later.*

I'd been out for a while, yeah. Okay. Got on an airplane to Houston. Sergeant came down from Massachusetts. We went to see this guy. I'll call him Keith. Keith was a user, in a lot of trouble. We got him straightened out. We got him into rehab. Got him squared away. He ended up working for a little company run by a fellow who was just enamored of all Special Ops people—I mean, Ross Perot. He worked for Ross Perot. He developed software. He learned to operate a typewriter, computer, with one hand. He ended up marrying—I was his best man—marrying the county prosecutor who was prosecuting him on the drug charge. . . .

*And you talk to him every now and then?*

Every now and then. Just to make sure. Great guy.

[...]

[2:02:42]

*Did you joke around with your family? It sounds like your mother had a sense—*

My mother had a sense of humor. She worked very hard and I loved her very much. My father was a distant figure to me. He didn't understand me, and he didn't like me. And after a while I stopped trying to please him. I wanted to please my mother. And I had a wonderful experience—I spoke at my own high school graduation. The school decided, it was the first graduating class of West High School, and they decided that three of us would speak at our graduation. And we did. My mother came. She was in a wheelchair. She was able to see that. My father came drunk.

So, my father taught me very little about what it meant to be a man. My uncle Larry taught me a lot and my grandparents taught me a lot. And that was enough influence.

*Some people probably think a lot about what kind of father they want to be. And some probably wing it more. Did your own upbringing make you have a certain attitude about it?*

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Absolutely. I knew I wanted to be exactly the opposite of the kind of father my father was. I never, ever hit my kids. I can't say never—pat on the bottom from time to time for sticking their finger in the electrical socket. But I was absolutely determined that I would be a present father, that I would be there, and interested. And I was, and I'm glad I was.

[...]

[121111\_001]

[16:05]

*You're in a very different place today than the place where you were born.*

I've had an extraordinary life, and I recognize that. I wish I could tell you that I planned it that way. But I didn't. It happened to me. I was lucky. Mainly lucky, sometimes unlucky. But I had the wit to take advantage of the main chance when it showed up. But, gee, if you had asked me when I was seventeen, what would you think about living in Santa Monica California on Mabery Road and being president of the Chamber Orchestra. I would have said where's Santa Monica and what's a chamber orchestra. I really think if I had to write what you're writing I would call it, "A Lucky Life."

*That's a humble way to put it. In a lot of ways you've been such a go-getter and incredibly hard-working.*

Well, Helen, you may not make your own opportunities. You may just be lucky as I have been. But to take advantage of them, that requires some mettle—m-e-t-t-l-e. So I think I have that.

*Were there ever any moments in college, law school, where you felt a tension between your background and what you were faced with?*

I'm very much aware that I'm a country boy. I'm very glad that I don't live in Oklahoma. But I'm proud to be from Oklahoma, and I learned a lot of things by being raised in a small town, by being raised in a town where everybody knew whatever I did wrong. The lack of anonymity. I count that as a blessing. I find myself in gatherings here, where you look around you and everybody there is just smart as hell. Beautifully educated, right down to St. Grottlesex when they were nine. I look at that and people say, where are you from? I say, well, my father was a truck driver, my mother was a nurse. My father never graduated from high school. I made my own way. And I'm not un-proud of that.

*Are you proud of it?*

Well, I'm not vain about it. But I'm not ashamed of it, that's for sure.

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*You say you're glad you don't live in Oklahoma now. Something about it specifically?*

No. I haven't been back—My plan was, for my daughters, that when they turned sixteen I would take them to Europe. And I did that with Samantha, and it . . . made us both closer to one another . . . . And when Whitney's turn came I had just taken the job at MGM Grand, and I called her and said, honey, I can't get away long enough to take you to Europe, you'll just have to give me a rain-check, we'll have to make it next year. And she said, I don't care about going to Europe, what I really want to do is I want to go see where you were raised. I want to see where you went to high school. I want to go to Blackwell, Oklahoma. I want to see the house where you lived. Where she got that idea or why she got that idea, I don't know, but it was impossible not to do that, once she had asked. So she flew down from Chicago and I met her in Wichita, and we drove around Wichita, and drove down to Blackwell, and went down to the Odd Fellows Cemetery and saw where my mother was buried and where my father was buried . . . .

Before that I'd been back to bury my father. But that was for two days. I'm not ashamed of it, but I'm just a different person. There's a term in biology called a sport—which is some kind of outcropping of the norm. And it's pretty clear to me that I am that, that I am a sport. My mother was smart. My father was smart, I think. But I'm just different from anybody in my family. I respect them—except for my cousins whom I cordially hate.

*Are you in touch with them?*

Oh, no. I'm really—it's really an apocryphal statement. I really don't have anything to do with any of my family any more, except my daughter.

[...]

[30:36]

*You talk about how you're very lucky and you've had a lot of opportunities. You've had a lot of success in your life. But you also have not had an easy life by any means. It can't have been easy, professionally but also emotionally.*

There's not question about it. I've paid a price for that. Still, in all, at the end of the day, for all the pain, for all the pain of loss, which is the hardest one to deal with, I count myself a lucky man. I mean, I do. It's not always easy to say that, but it's true.

*Are there things we've talked about that you haven't really talked to your daughter about? That you think she'd be surprised?*

Absolutely. . . . I think she will be surprised by my overall view of what's happened to me. I think Samantha regards me as a driven person. And as a person who knows what he wants and goes out and gets it. And I think she'll be surprised to find out how much I didn't know what I wanted and went out and got out—I didn't know what I wanted and didn't know how to get it. I found out as I went along. My grandfather used to talk about --- this fellow who had a huge field

## Shutler Interview Excerpts

in northwestern Oklahoma. He said, that fellow's like the guy who put on his Stetson upside down and it rained nickels.

*Do you think that sounds like you?*

No, it just sounded great. I also looked for where the rain is coming. I try to anticipate the world a little bit.

*Is there anything you wish I had asked about more? Is there anything you would like to talk about that we haven't talked about?*

If I were teaching the course that you're in, and I wanted to get a message across, of course I would do it in the Yale way, which is you never tell what the message is. But if I were to do it directly, it would be that, no matter how much we think that today is going to be much like yesterday, in fact change is constant and endemic to us, to human beings. And if you fall into the trap of thinking that tomorrow is going to be like yesterday, you will not be prepared for what tomorrow is really like. So, you gotta look, you have to have some foresight, and you have to be aware of some changes within yourself and the environment in which you live. The classic example of that is warfare. Generals always prepare for the last war. And it's always different. [...] You need to be aware of change. You need to perceive it, act on it, participate. If you don't, in the long run you'll find yourself disadvantaged.

*Is that a lesson that you learned gradually?*

Yes. Absolutely. I must have been at least thirty before I really, before that lesson really came home to me. And it wasn't any particular event.

*Before you were thirty you obviously had experienced this kind of—*

Sure. But it didn't really come home to me. It didn't click in. I don't know why I picked thirty. All that stuff kind of blurs together after a while.

[37:57]