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LLOYD CUTLER BIOGRAPHICAL ORAL HISTORY PROJECT

**FINAL EDITED TRANSCRIPT**

**INTERVIEW WITH LLOYD CUTLER**

June 5, 2003  
Washington, D.C.

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**Riley:** This is the second of our sessions of the Lloyd Cutler biographical oral history. You had a busy day yesterday, I understand.

**Cutler:** I had a busy day. We had a launch yesterday of this report that we've filed. In the course of the day, met with the Vice President, with the Speaker and a number of others. We got some encouragement; it's very difficult, you know. The Constitution says that a majority of the members of each house shall constitute a quorum to do business. If one-third or one-half of the House were killed in an attack or incapacitated, the government couldn't function. Congress couldn't pass any laws, couldn't declare war, it couldn't appropriate money, couldn't do anything.

In the House, there are some old parliamentary rulings under which they've said, even though the Constitution says a majority is necessary to constitute a quorum, the House says it can make its own rules and a majority of those present can constitute a quorum. Well, if everybody except two or three were killed or incapacitated, what would you do? What would happen is that two of the remaining three could make the Speaker the President. It may be that everything Congress normally had to do, it couldn't do, or it would be under a big cloud. So we're proposing a constitutional amendment to take care of it. That's the guts of it.

**Riley:** Who's the originator of this idea or the prime moving force behind it?

**Cutler:** The principal prime moving forces were Norman Ornstein of AEI [American Enterprise Institute] and Tom Mann of Brookings. I'm a trustee at Brookings. It's a joint project of Brookings and AEI. One is sometimes identified as very conservative and one as very liberal, although they're both very centrist, really.

Then, after 9/11, Norman wrote some editorials about it, or op-ed pieces, and we put together this project and got the McArthur Foundation, the Hewlett Foundation, the Packard Foundation, and Carnegie to finance this. We formed a commission, really a private commission in a sense, to call attention to the problem and to recommend what to do.

**Riley:** Was Ornstein actually conceiving of this notion before 9/11, or is all of this a post-9/11?

**Cutler:** It's all after 9/11. The problem has been there for some time, but none of us imagined we'd have such a thing as 9/11, a catastrophic attack that you now know was aimed not only at the Pentagon and World Trade Center but also at the Capitol or the President in Washington.

**Riley:** In the course of the investigation of this you said that there were some parliamentary precedents related to organizing questions. Had this particular matter ever been raised, to your knowledge, either during World War II or—?

**Cutler:** We had never had a situation, of course, in which a large number of members were killed or incapacitated. The issue normally comes up in two ways. One is when somebody dies, some elected member dies, you provide for a special election, which usually takes two to four months. There's a limited number of special elections you can carry on at one time. There aren't enough voting machines, among other things. During the period until the elections, we couldn't function.

It got fixed for the Senate almost by accident, a century ago when we moved from the legislatures appointing the Senators to direct election, statewide elections for Senators. They put into that, that if there was a vacancy, the executive authority of the state—that is the Governor—could appoint a temporary Senator to serve until the election was held. He or somebody else qualified as an elected Senator. But the House has always refused to do that and the House has concocted this phony rule that it's a majority of living members, which most constitutional scholars think is absurd.

**Riley:** They concocted that rule—was it a Cold War rule?

**Cutler:** Most of these things go back to the Civil War and the post-Civil War.

**Riley:** There was a provision for continuation of government during the Cold War, right? The Greenbrier was—

**Cutler:** There were ad hoc things like the Greenbrier, but the purpose of that was to prevent the killing of the members of Congress. The bunker is still there at the Greenbrier.

**Riley:** I've been through it.

**Cutler:** But the notion, considering a Soviet missile launch might take, over the pole, might take a maximum of 45 minutes to get here, the idea that the members of Congress could get to the Greenbrier and in their holes before anything happened was absurd.

**Riley:** That was the reason for my question. Since they had this elaborate physical structure set up, I had wondered how deeply the planning had gone for contingencies. My assumption—

**Cutler:** For that contingency, there's very little planning, because there's so little you can do, although all the members had instructions about how to get there and how to be alerted and what happens to their families and so forth. On the continuity of the executive, there are all sorts of

exercises and there are I guess classified mountains and places in West Virginia or nearby where they're all supposed to go.

**Riley:** Were there any thorny issues that you had to deal with in this commission?

**Cutler:** Oh, there are a lot of fascinating political issues.

**Riley:** Can you tell us a little bit about some of them?

**Cutler:** For example, if you think of mass killing, if you have just three, or five, or seven, or 25 or 50 members left, the idea that they'll govern the country for four years is very difficult. Beyond that, if you give the Governor the appointing powers he now has for the Senate, what if he just picks—let's say there are a large number of deaths among the congressional delegation and he fills them all with members of his own party, even though many of them were of the other party. Do you give the Governor a free hand or do you constrain him in some way? That's a very significant political issue.

**Riley:** Sure. Did you make a recommendation?

**Cutler:** We have some recommendations on it or we suggest alternatives. We think the cleanest thing is to give the Governor the authority, just as he has for the Senate. It's always worked well for the Senate; there's never been a serious problem. What we recommend is, if you don't want to give him full power, then say either he must appoint from a member of the same party as the member who was killed, or do what the French do. The French have a rule similar to ours, that if you are in Congress or in the Assembly and you are chosen for the Cabinet, you must resign your seat in the Assembly. We do the same thing. If you're a Congressman and you're picked for the Cabinet, you have to give up your seat. What the French do is have the elected member of the Assembly designate at the time of the election, who should succeed him: one, two, three, four, five. That's kind of complicated. What if you say you designate Michael Jordan, because you think that will get you some extra votes.

Then the whole notion of the Congressmen providing what's going to happen if they're killed is something they don't like.

**Riley:** Sure.

**Cutler:** It's like writing their will.

**Riley:** Or selecting the Vice President.

**Cutler:** Which is a real problem. You know it's literally true that the Speaker, under the 22<sup>nd</sup> Amendment and the legislation, the Speaker could change the order of succession, so if the President is killed and the Vice President is killed, the Speaker can make himself the President. If he can do that with just the votes of two or three surviving members of the House, that's a little anti-democratic. So there are serious political issues.

Where we come at is really to recommend solving it by a constitutional amendment, which says that if a large number are killed or incapacitated, then the House may pass, or the Congress may pass, legislation dealing with the problem. They could set a trigger number, they could select one or another method of designating the successor. If they make a mistake, or they do something that's unpopular, they just have to pass more legislation, because the other alternative would be to set up a precise new system in the amendment itself. But if you do that and you needed to change something, you'd have to go through a second time through the process of amending the Constitution, which we've only done it 17 times since the Bill of Rights.

**Riley:** Right. So you did not recommend specific language in your report for—

**Cutler:** We have various versions of what you might do, but we didn't come down on one. We gave them several choices. Let me get you the report.

**Riley:** Okay.

**Cutler:** But we got a lot of encouragement yesterday. There's also another political difficulty about a constitutional amendment—apart from the problem amassing two-thirds of the Congress, both Houses, plus three-quarters of the states—and that is, if we had a clean amendment dealing with this problem in the Senate, you would not be able to stop various Senators from tacking on to it a flag-burning amendment, a balance-the-budget amendment or something like that. You'd need at least 60 Senate votes and strong bipartisan support and public support to get it through in clean form.

**Riley:** I'm looking at the report now. To look at the membership, there are no sitting members of Congress who served. This is completely—

**Cutler:** There's no one in government office. There are many people who have held high government office.

**Riley:** Your co-chair was Alan Simpson?

**Cutler:** Yes, who is a wonderful man.

**Riley:** Have you worked with Alan Simpson before?

**Cutler:** Yes. He just keeps us in stitches. He's somebody who could get elected President, I think, except neither party wants him at the moment.

**Riley:** During the course of the deliberations, were there any significant disputes within the commission?

**Cutler:** I wouldn't say disputes. Differences of opinion, but we ended up with a unanimous report.

**Riley:** I see. My assumption would be that your differences of opinion would have been on some of these thorny political issues that you've talked about.

**Cutler:** Yes.

**Riley:** So the next step? This was just made public and you presented a copy—

**Cutler:** We presented copies to the Speaker. We met with [Thomas] Daschle, we met with [William] Frist, and we met with a number of other important members of the leadership on both sides in both Houses.

**Riley:** And your sense is that they've been receptive?

**Cutler:** Yes. Many efforts have been made in the past to get the House to do this, and they've never succeeded, even in the Cuban missile crisis.

**Riley:** I see.

**Cutler:** So everybody knows this is a difficult problem. But if we don't do it, you almost give the al Qaidas of the world an incentive to make a raid that does knock out this many people, so that our institutions cannot function. And we need to prepare for it before that happens.

**Riley:** Right. Is it contemplated that you and other members of the commission will be doing follow-up to sell this?

**Cutler:** Yes. And in addition to that, this particular report deals with Congress. This is an equally difficult, maybe even more difficult problem than the succession of the Presidency if the President and the Vice President are killed. There is also a very serious problem in connection with the judges, if a large number of them are killed. We're going to do separate reports on those.

**Riley:** Okay, so the continuity of government then is—

**Cutler:** There will be three reports.

**Riley:** And you're the chair, the same commission—

**Cutler:** The same commission.

**Riley:** Can you tell us a little bit what's contemplated? I think we probably would understand the problems with the President and the Vice President, because that's something that we've dealt with before. Have we ever dealt with the question of succession of the Supreme Court?

**Cutler:** Yes, that's dealt with currently by statute and it takes six members to constitute a quorum. If you don't have six members, then the decision of the Court of Appeals, of the intermediate court, would stand.

**Riley:** Right.

**Cutler:** If we have this attack that kills a large number of members of Congress, the chances are it's going to kill four or more members of the Supreme Court. At that point, you have the problem of how do you appoint new members, or do you just have all the different Courts of Appeals splitting the way they normally do on matters that ought to be settled by the Supreme Court. If a Supreme Court member dies, who appoints a successor? Where you come out on all of that at the end is well, Congress can fix it. The fix is not easy, but Congress has to be there to do it. You can't do it without Congress.

**Riley:** So the first order of business then would be to get Congress reconstituted and then you can deal with the question of the Supreme Court.

**Cutler:** That's right.

**Riley:** Are there members of Congress that the commission has looked to or will be looking to, to assume the leading role in picking the ball up and running with it from this point?

**Cutler:** Yes. Broadly speaking, the leadership in both Houses with the tacit blessing of the White House. In theory the executive stays out of constitutional amendment issues.

**Ernst:** You won't use this as an opportunity to revive the proposal for an intermediate, multi-circuit court between the Supreme Court and the Courts of Appeals?

**Cutler:** Well, I don't know.

**Ernst:** If they sat in Washington it wouldn't help that much.

**Cutler:** It wouldn't help that much. If a disaster occurs, say, in San Francisco and the judges of the Ninth Circuit are the ones that are incapacitated, you could still end up with split decisions and you still have to provide for confirming judges. There's a reappointment problem, even assuming you've got a President to do the reappointing: how do you get confirmation unless you have a functioning Senate?

**Riley:** To follow up on something you just said, the President typically stays out of these kinds of constitutional questions. There wouldn't be an interest on the part of this administration in trying to do something?

**Cutler:** Oh, there'd be an interest and the President has, in the past, advocated various kinds of constitutional amendments. But the President plays no role in the process.

**Riley:** Of course, of course.

**Cutler:** He can't veto the amendment, even if it's passed by two-thirds on both sides.

**Riley:** That's a question of formal involvement, whereas in something of this magnitude, when you're trying to win popular approval, it seems to me that there would be a role for the use of the President's—

**Cutler:** And a good example is the Equal Rights Amendment on women, remember that?

**Riley:** Sure.

**Cutler:** And President [Jimmy] Carter in office certainly advocated that. They never did get it through.

**Riley:** But have you detected any willingness on the part of the current administration to help in processing this through?

**Cutler:** Yes.

**Riley:** Their party does—

**Cutler:** The answer is yes. I can't give you any detail. They recognize the problem and it has to be dealt with.

**Riley:** Sure, very good. I think what we're going to do now is dial back, all the way back to the post-World War II period. We last time devoted a fair amount of time to dealing with questions about your public service record during World War II and then traced forward, especially because of Tim Naftali's presence here last time, on some of the intelligence-related issues that you've been involved with up through the [John F.] Kennedy administration.

What we didn't do was to basically follow the chronology related to what you were spending most of your time at during this period, which was developing a law practice. So what we'd like to do now is go back and pick up that strain and to find out what we can about the development of your legal career in the '50s and '60s. We'll move back and forth into the realm of public service as it shows up on the time line. So I'm going to ask Dan to take the lead in helping us through this.

**Ernst:** Was the move to becoming the liquidation commissioner in Latin America, were you thinking about a jumping off place for private practice at that point?

**Cutler:** What I was thinking of was getting out of the Army. You needed 80 points on some system to get out, a certain number of months of service and extra points if the service was overseas or combat service, et cetera. When the war ended, I had 20 points, so I was a long way from getting out. But there was an exception. If one of the Cabinet departments asked for you as a person on some project connected with various peacemaking activities, the Secretary, or the Defense Department could let you out. And I got such a request from the State Department, which is where this Office of Foreign Liquidation had been assigned.

**Riley:** Who did the request come from in State?



**Cutler:** In State, a friend of mine from the Lend-Lease administration named Philip Kidd.

**Riley:** This is somebody that you had known from law school?

**Cutler:** I knew him when I was working at the Lend-Lease administration during the war.

**Riley:** Right. As I recall, you spent a few months in South America.

**Cutler:** It was roughly January through April of 1946.

**Riley:** January through April is probably a good time to be out of Washington. You were in Rio, is that right?

**Cutler:** In Rio, in Panama. We were in most of Latin America. Wherever we had leftover property, whether it was military property or air base or whatever, that we wanted to get rid of, that was our job.

**Riley:** And you were getting rid of it to the local population?

**Cutler:** Mostly we gave it away to the various governments.

**Riley:** So your job was to sit in an office and give away government property.

**Cutler:** More or less. [laughter]

**Riley:** Did you find that interesting work or was it just—

**Cutler:** Not really. Traveling around South America was very interesting, because I'd never done that before.

**Riley:** And you had time to do this at the time?

**Cutler:** Well, we had property everywhere. We were in almost every Latin American country.

**Riley:** Probably a completely unrelated question that pops into my head is that part of the lure of the immediate post-war era is that there was an awful lot of German migration into Latin America at that time from some nations that were friendly. Did you witness any of this while you were down there?

**Cutler:** I didn't work on any of it, and in that immediate post-war period, while we knew that a certain number of Nazi officials had fled to South America, mostly they hadn't been found or tried. There was [Adolph] Eichmann and there were all the cases in Argentina.

**Riley:** Exactly. But that wouldn't have been on your radar screen at all.

**Cutler:** I was aware of it, but it was not anything I was connected to.

**Riley:** Exactly. So you get back to Washington in the early summer, late spring of 1946.

**Cutler:** Forty-six, right.

**Riley:** And at that point you're looking to return—

**Cutler:** Trying to decide what to do.

**Ernst:** So how did you see your options, particularly the choice between government work—

**Cutler:** Remember, I'd come out of the Cravath firm and I sounded out whether I would be welcome back there. The position there, which I think I may have covered earlier, was that their first obligation was to the returning members of the armed forces who had left them to go into the armed forces. I had left, as you may remember, for a civilian wartime job and circumstances where it displeased Mr. [Robert] Swaine, for whom I was working, because of his theory that what he was doing was in the war interest and that he would have to train somebody else. And I didn't know anything about Lend-Lease so I'd have to be trained and that was inefficient. So I did explore that.

**Riley:** Did you talk directly with Mr. Swaine?

**Cutler:** Yes, I had worked quite closely with him. Then I had an offer from George Ball and Fowler Hamilton, who had joined what used to be the Cleary, Gottlieb firm in New York. Down here was called Cleary, Gottlieb, Hamilton & Ball. I almost took that job. Meanwhile, three of my Lend-Lease colleagues, Oscar Cox, Mack Langford, and Buster Stoddard had started a little law firm and asked me to join them as the fourth lawyer. That's what I did.

**Ernst:** Why was that particularly appealing?

**Cutler:** Well, I knew them very well and I would be a partner from the get-go.

**Ernst:** That wouldn't have happened in the Cleary, Gottlieb firm?

**Cutler:** I honestly don't remember. I don't think we ever got that far. At that point I was only six years out of law school, but they might have done it.

**Riley:** At this point you preferred to go to Washington rather than back to New York?

**Cutler:** The other offer would have been Washington also, as Cleary, Gottlieb was opening a Washington practice.

**Riley:** But all other things being equal, was there an appeal to staying in Washington, other than going back to New York? It may be an unfair question, because you go where your opportunities are.

**Cutler:** Certainly I was interested in Washington and the notion of starting a new firm and growing it in Washington and having chances to perform other kinds of government service without disrupting my family, changing houses, changing schools. It was attractive.

**Morrisroe:** Can you tell us a little bit about the individuals with whom you started the firm? You worked in the Lend-Lease administration together. Can you tell us a little bit more about their background and your relationship with them?

**Cutler:** Yes. Two of them, Oscar and Mack Langford, had been in the Cadwalader firm in New York. I think Oscar probably had been a partner, he was old enough, maybe Langford also. Buster Stoddard had been in the New York Corporation Counsel's office and I think he was at Winthrop Stimson at one point. They were all very compatible people, easy to work with. On top of everything else, they had major clients.

**Riley:** Forgive me, you were at this time, in terms of age, a peer of these individuals?

**Cutler:** I was younger. I would say probably ten years younger than Oscar and five or six years younger than the other two.

**Riley:** And your Lend-Lease relationship with them had been at a superior-subordinate role?

**Cutler:** Not necessarily, because of the confusion and jumble of a war. They were not hierarchical agencies; everything changed very quickly.

**Riley:** Okay.

**Ernst:** Where did their clients come from? They had a client base when the firm was started?

**Cutler:** Yes. A major client was the various Kaiser Industries companies, this is Henry Kaiser. He'd been involved in shipbuilding, dam building and in the course of the war they'd gotten into starting an aluminum plant, or at least operating it, a steel plant and a cement plant. And Fiat was a principal client, primarily of Oscar's. The Kaiser companies more or less fell to me. I didn't bring in the business but I did the business. This firm, when they split up in 1962, the business came to me.

**Ernst:** Did the work with Kaiser grow out of Lend-Lease in any particular way?

**Cutler:** In the sense that the Kaisers had a lot of government contracts and that Oscar and others had met with them in a government capacity frequently during the war. So they were people who knew Oscar and what he could accomplish.

**Ernst:** At some point you helped Kaiser with some problem in Argentina and you ended up meeting Juan Peron. What was that?

**Cutler:** Yes. At the end of the war we had this huge automobile shortage and Mr. Kaiser decided to go into the automobile business with a man named [Joseph] Frazer. There was a company called Kaiser-Frazer that produced first a big sedan and second a little small car called the Henry J, for Henry J. Kaiser.

**Riley:** Sliding doors in and out of the body.

**Cutler:** I don't remember sliding doors.

**Riley:** A good friend of mine in Alabama had one of those while I was growing up.

**Cutler:** You could be right.

**Riley:** It was quite the item.

**Cutler:** It flourished for four, five, six years and then as normal production resumed and imports from all over the world took over, it was floundering and had difficulty getting financing, and an opportunity came along in Argentina and Brazil to establish automobile manufacturing companies. We took the Kaiser and Frazer to Argentina in a partnership deal with the Argentine government. We took the Jeep—they bought the Jeep Company at that point, this was called Willys Motors—we took that to Brazil.

In Argentina, it was a dictatorship under Peron, as you know, and a government entity called the IAME, it's an acronym [*Industrias Aeronáuticas Mecánicas del Estado*], which was part of the Air Force, but made aircraft engines and various other mechanical things for the Argentine Air Force during the war. We negotiated with Peron directly and then he got overthrown. In the course of those negotiations, which have been mentioned in a number of books, we had a lot of problems about corruption in Argentina and dealing with a Turco named Juan Antonio, who was reputedly the boyfriend of Evita [Peron]. Evita had died just before all of what I am describing. But when Peron was overthrown, every foreign company that had made some sort of joint investment with the Argentine government, every foreign company was "intervened" as they called it, and we found ourselves dealing with a straight-laced navy admiral, a very good fellow.

He finally decided we had not paid any bribes to anybody, and we had not, because Mr. Kaiser—he had walked out of Cuba once, a road construction contract, because somebody wanted a bribe—so that's how that happened.

**Morrisroe:** What were your impressions of Peron during your meetings with him?

**Cutler:** Even though I guess he's of Spanish origin, he seemed very Italian and he was a true fascist. About business, hardy, wily politician, easily became a dictator. His base was really the peons, the *descamisados*, "people without shirts," as they called them. He deserved what he got. The amazing part, of course, is that he came back. In Argentina, just like in China I guess, the warlords never capture anybody, they let them escape. So when Peron fled, the air force and the navy had turned against him and the church had turned against him. When Peron fled, they just followed him at a respectful distance until he got to Paraguay.

**Morrisroe:** They were following him out of the county, right? Turning back at the county line.

**Cutler:** I think he went to Spain from Paraguay.

**Ernst:** Henry Kaiser is a pretty impressive first client. What was your relationship like with him? How open was he to advice along a number of different dimensions?

**Cutler:** Oh, very. He was one of the world's most energetic promoters and salesmen you could imagine. Anything he did he really believed in and he could sell it with a passion. His son Edgar was a remarkable businessman, very decent businessman. A lot of my relationships were with him, but on all the Latin American business, both Kaisers were involved.

**Riley:** You probably have already answered this question, but the decision by the Kaisers to hire attorneys in Washington is very much driven by—

**Cutler:** They had a vice president here for government relations in Chad Calhoun. He was a friend of Oscar's and he retained Oscar to be the lawyer to assist on the various things he was doing in Washington. They had, in California, one of the large San Francisco firms named Thelen, Marrin, Johnson & Bridges, and we worked very closely with them as well. But they had no Washington experience.

**Riley:** Okay. How common was this kind of arrangement in the Washington of the late 1940s?

**Cutler:** Oh very, very. Let me tell you just one story about Mr. Kaiser to show what he was like. When they were building victory ships and liberty ships during the war they were working with Admiral [Emory] Land and Admiral [Howard] Vickery, who were in charge of the Maritime Administration contracting to build all these ships. The ships were being sunk by U-boats almost as fast as they were being built. Mr. Kaiser got very interested—I still call him Mr. Kaiser—he got very interested in the helicopter as a concept.

There was a man named Stanley Hiller, who developed a helicopter in those days. They got so enthused they decided they would go and see Admiral Land. When they inquired where he was, they found he was on a train coming back from the West Coast to Washington. They got in their then-private jet, which was, I remember, some kind of A-20 bomber that you entered from the bottom, very complicated, and caught the train someplace in Utah and found Admiral Land on the train. This is Henry and Edgar.

Henry said to Land, "We've got the answer to your problem. I've got all the papers right here. We've looked in every one of these and this will deal with the submarine." Land said, "What is it?" Mr. Kaiser said, "It's the helicopter," and he made a long speech about the helicopter, "We've talked to everybody in the field." And Land said to him, "Henry, there's nothing new about that. It was Leonardo DaVinci who developed the principle of the helicopter." Henry turned to Edgar and he said, "Edgar, have we talked to that fellow?"

But anyway, we worked for them a great deal. Eventually all those companies, it was one big holding company, which was a publicly held company. The components were publicly held companies also, which the Kaisers had a controlling minority in trust. That was very popular in the stock market for a long time. The market turned because it was so difficult to analyze the earnings of a holding company where you had a 30 percent interest. Could you book their earnings as part of your earnings, et cetera? Legitimate accounting questions. So they decided to liquidate the top holding company so that each company would be totally publicly held and they would not have a controlling interest in each one. They did that and that worked very well for ten or twenty years, but over the course of time each of those companies was taken off the market and acquired by somebody else.

**Riley:** Most of your work for the Kaisers involved serving as a liaison with the federal government, or were you doing strictly legal—

**Cutler:** Both. All sorts of contracts to be drafted, legislation to be drafted, regulatory proceedings to be followed. Remember this is a very frantic postwar period.

**Riley:** Exactly.

**Cutler:** A lot of it was straight legal work.

**Riley:** But you're developing, at this point, relationships with people on Capitol Hill and also in the federal agencies related to your work on behalf of Kaiser?

**Cutler:** Yes.

**Riley:** Can you tell us a little bit about that work? We've heard about at least one episode of your international work, but I'm trying to get a sense about what the more routine work would have involved at this time for you.

**Cutler:** Well, there was a great deal related to World War II production facilities which were, in the course of the postwar, being turned over to the private market. Among those that we acquired were the aluminum plants that I referred to. Kaiser Steel, I guess, we started as a private company, but his whole lifeblood was going to contracts for shipbuilding, et cetera. One of the companies or facilities we acquired was a blast furnace in Cleveland, I think, Inland Steel, and the blast furnace had been built right on the industrial site of Inland Steel. So it was difficult for anyone except Inland Steel to be able to run it, but we bid for it and we got it after an enormous political fight.

Then when Korea came along, the government wanted to commission the construction of new aluminum plants, and a method was developed to do that, which we worked on, in which a private entity would build the plant, and the government would contract to buy any part of the output that was not sold in the private market. We and all the other aluminum companies had five-year contracts to do that. So you had all the negotiations involved in setting up that system, getting it through Congress, negotiating the contracts with the General Services Administration, I guess it was called the War Assets Administration at the time. We worked on all of that.

**Ernst:** When you had relations with Congress, either in the liquidation phase of it or Korea phase of it, were you working with the Congressmen directly? My understanding was the staffs were much thinner in those days.

**Cutler:** It was true, oh it was very true. Now, I think, for the 535 members of Congress, there are something like 40,000 professional staffers. In those days it probably wasn't more than 10,000, if that. I remember even in the Lend-Lease days, when you were dealing with the major committee chairmen, you'd establish a point with them that they agreed to. Then they would say to you, "Sonny, you go out and draft the bill," rather than turning to their own staff, because they didn't have much staff at the time.

**Ernst:** So your congressional relations experience with Congress started under Lend-Lease?

**Cutler:** Yes, but it was not a big part of what I did. Remember, I'm very junior at that point.

**Riley:** But it becomes prominent as you're beginning your legal practice in Washington, a fair amount of what you're doing.

**Cutler:** Yes.

**Riley:** Who were you working with? My assumption is that there must have been certain committees' jurisdiction that would have related more to your work than others. Is it true that you were developing ongoing relationships with some members on the Hill at this point?

**Cutler:** Congress itself was a much simpler place, of course, but the answer is yes. You got to know people. Congressmen are very gregarious, as you know. They need money; they have to raise campaign funds. But most of it was more than we did. If you talk about our firm, there was a fair amount of lobbying, especially by the present definition that we do, but no one would think of us as a lobbying firm, the way you think of Patton Boggs for example, Tommy Boggs's firm.

**Riley:** Could you tell us a little bit about some of the members you were working with as you're getting self-educated in the business of Washington politics at that point.

**Cutler:** One I can tell you about is not in the '46 period, but within four or five years of that. We were counsel for the American Iron and Steel Institute. The steel industry, our steel industry, had not gone global the way the airline industry, the oil industry, and all the others did. The steelmakers were all very conscious of foreign imports and trying to block them. There was a constant effort with the whole series of administrations right up to the Kennedy administration. I remember going with all the CEOs of the major steel companies, including Roger Blough, to see Clinton Anderson, who was the chairman of the Appropriations Committee.

We were seeking his support for a Senate bill to establish steel quotas, import quotas. We told him very proudly that 83 Senators had signed the bill. He listened to us and he said, "Did you say 83 Senators?" and Blough said, "Yes." He said, "Let me tell you something, that bill will never

pass. People sign bills like that to get you out of their office, knowing that a responsible committee chairman like me will see that they never get to the floor.”

**Riley:** That’s not somebody you developed a very positive working relationship with, I take it?

**Cutler:** I knew him; I worked with him. It’s a reflection on how the government works. Of course, that kind of power has been eroded in the last ten or twenty years, with what you might call the democratization of Congress.

**Riley:** Sure. Does that indicate then that there were other committee chairs that you did feel comfortable working with? You probably felt comfortable working with him too, but were there others that you came to rely on and came to develop working relationships with during this early point in your legal career, and can you tell us about some of those?

**Cutler:** Sure. We’re talking about a very long time ago. As I said, we were not in the lobbying business. We never had a PAC [Political Action Committee], for example.

**Ernst:** Did you feel at a disadvantage with firms who had members who had been more active participants in Democratic politics at the time in the ’40s and early ’50s? You became active in Democratic politics, from what I recall, by JFK’s administration. But there would have been some folks who would have been active in the [Franklin D.] Roosevelt administration who were opening offices here. Did that put you at a disadvantage?

**Cutler:** Disadvantage is a strange term to apply to it. That is, you’re practicing law, you’re very busy, you want to grow. You have client opportunities that come to you and occasionally you make a mistake in not recruiting somebody you should recruit. One of my mistakes was never bringing in Vernon Jordan. This is long before Vernon became Bill Clinton’s friend, but he’s been an outstanding director, black lawyer, well known in the corporate community.

When Vernon was the head of the Urban League, Bob Strauss persuaded him to come to Akin Gump, to Bob’s firm, before I was even aware that he was interested in coming into the private sector. So occasionally you miss people like that. There’s no doubt, even more and more true today, that as we take in more so-called lateral entries today than we used to, when you take in lateral entries, you look for people who you think are going to be very successful and who built very good reputations while they were in the government. But for us at least, they tend much more to be members of the executive branch than Congressmen. I don’t think we’ve ever had a former Congressman.

**Riley:** At this stage of the first firm that you were with, that wasn’t a firm that was experiencing a lot of growth in the ’40s and ’50s anyway, was it?

**Cutler:** Well, it grew from four in 1946, to I’d say 19 or 20 in 1962, which is not a great rate of growth. In fact, one of the things we split over was growth.

**Ernst:** There were some extremely talented people that you recruited to the firm. How did you identify them? Were you just looking for good generalists?



**Cutler:** Just looking for good lawyers, good generalists, Supreme Court law clerks who were coming out, friends from other firms who we worked with either in the government or in New York.

**Riley:** Was there a conscious sense or a philosophy of the firm in terms of what it is that you wanted to do in Washington?

**Cutler:** Wanted to have a good law firm that was positioned down here and from which you might have other opportunities for public service. You think of this as much more of a science than it really is. In many ways you never know where your clients are going to come from, people who you think should be consulting you often don't, or they have some other established relationship. Then people walk in that you never expected to see.

**Riley:** Can you tell us about some of those? The purpose here is to disabuse us of any of our misconceptions about things. One of the great advantages to doing oral history is you get the sense of the importance of these accidents and these happenstance developments.

**Cutler:** Let me reflect about that.

**Riley:** Okay.

**Ernst:** There are a few clients who pop up when you do a Lexis search for your cases from this period. There's a dispute with a Texas liquor control board?

**Cutler:** Nothing I worked on.

**Ernst:** Nothing that you worked on. Italian ships under the alien property laws?

**Cutler:** At the end, we were counsel for the Italian government entity here called the Italian technical delegation, I think, which under the Marshall Plan bought surplus liberty ships for, for example, imported grain of one kind or another. We did a lot of work for them. They were a client of Oscar's.

**Ernst:** What about the libel suit against Westbrook Pegler on fellow-traveling allegations?

**Cutler:** We had a client named Abe Spanel, who had a company he called—I think it was International Latex if I remember—but they made brassieres, women's undergarments, various things, typical little company. He started a policy of taking out institutional ads, in fact he'd write his own editorial or op-ed piece and take an ad on page three of the *Washington Post* or the *New York Times* to print it. Westbrook Pegler, among others, would take umbrage at these ads. Pegler was the George Will of his day, or whatever you want to call it, but with a wonderful capacity for vitriol in his commentary. He wrote a piece criticizing these ads and Spanel, and implying that Spanel was at least a socialist, maybe even worse.

Abe wanted to sue him for libel. Our real job was to persuade Spanel, "Don't do it." We went up to see Al Connolly, who was a Cravath litigating partner who did all the *Time-Life* libel and slander work. We brought Abe with us and Abe laid it all out, "I want a good litigator like you, Mr. Connolly," and so on. Connolly urged him not to do it. He said, "Let me give you an example. For one thing, it doesn't matter whether this particular statement is a libel or not. They'll find out something else that you've done that's going to be very, very embarrassing and that you didn't have a good reputation in the first place to justify the libel suit."

And he said, "I had an experience just a few weeks ago with my own brother," who was named John Connolly. He said, "I have a brother named John Connolly, he lives in an apartment building where there's a second John Connolly. The second John Connolly, not my brother, got into a fight in the Stork Club about some woman that made the *Daily News*, the *Daily Mirror* and everything else." The newspaper published a photo of the wrong John Connolly, his brother. Al said, "My brother wanted to sue for damages for libel, slander. It's a lay down case. But I told him, don't do it." He finally talked Spanel out of it. Is that the one you're referring to?

**Ernst:** That's the one I'm thinking of.

**Riley:** You mentioned earlier that Fiat was an early client.

**Cutler:** Yes.

**Riley:** Did you do work on—

**Cutler:** I did some, but they were primarily Oscar's clients.

**Riley:** What kind of work would they do?

**Cutler:** They were a giant automotive company and beyond that they're a huge construction company. They're a true European-style conglomerate.

**Riley:** Who were some of the other early clients in addition to Kaiser that you were spending a lot of time on in those early years?

**Cutler:** The Automobile Manufacturer's Association.

**Riley:** How did that come about?

**Cutler:** Sheer accident or serendipity. Their work was being done by Joe Fowler, Henry H. Fowler, who became Secretary of the Treasury, I think under Truman, but anyway, in that period. His law firm had to give up the work, which was largely legislative work about auto safety, emission controls, and so forth. He recommended us and we took that over and that became a major, major new client. We still do a lot of work for the various auto companies, but there wasn't any solicitation on our part. It was just sheer luck that Joe became the Secretary of the Treasury and somebody else had to do the work.

**Riley:** You said that you were doing a fair amount of congressional work for them at the time because of the—

**Cutler:** That's what it grew into, because among the major issues of that period in the '50s and '60s were emission controls and auto safety devices. We went through a whole set of new laws, new agencies, et cetera.

**Riley:** I'm sure we'll want to come back and talk about that a little later, but who were some of the other major clients who would come to you in the late '40s, early '50s?

**Cutler:** Because of our Cravath relationships, we did a lot of work for IBM. Cravath was IBM's regular counsel and there were a whole spate of both government and private antitrust suits against them, somewhat like the current Microsoft suits. IBM at that point was trying to hide its operating system within the mainframe. Now, of course, they do it in other ways, but it's the same basic problem. How do you keep other people from copying what you're doing?

The work grew so extensive and the number of cases grew so large, that a number of law firms were brought into it. We did several of those cases. In particular we worked quite a lot—by now, that would be back in the '70s and '80s—on the European case, because after we got rid of everything here, we still had a big European case to work out.

**Riley:** Are there other early clients that you—?

**Cutler:** Another that is not that significant, except for what it led to, was when Penn Central went bankrupt. Penn Central had to default on millions of dollars' worth of commercial paper, which had been sold in the market in those days. I think commercial paper is pretty much out of style these days, but in those days it was very important. Every New York law firm had some client who was holding some Penn Central commercial paper. One of the marketers of the commercial paper in Europe was an outfit called Ufitec, owned by one of the Zilkha brothers. They needed counsel because they had sold a substantial number of these notes and had a whole string of clients who had bought the notes.

No New York law firm that had any corporate and banking experience could take it because of the other conflicts. A friend of mine named Peter Kaminer, a law school classmate of mine, who was a litigator, went through Stimson, recommended us. We took that on and it was very good work for two, three, four years. We did actually recover some assets. Out of that we were persuaded to start a London office, which we did back in 1974, and the London office has grown quite well. We now have a Brussels office and we have a Berlin office in addition, and a sense of European international practice. But that came out of just this one little recommendation for one lawsuit.

**Riley:** We're probably going to come back and talk with you a little more about your international operations, but I'm trying to stay more time specific here. Dan did you want to—

**Ernst:** What agencies were you appearing before in the '50s and what was your impression of the staffs?

**Cutler:** We had to appear before the auto safety agencies. We dealt a lot with the antitrust division and the FTC [Federal Trade Commission].

**Ernst:** Were you doing some plaintiffs' cases too in antitrust, or was it all defense work?

**Cutler:** I think almost all defense work. That's probably one of the big tactical mistakes we made in planning a practice, and that is the plaintiffs' lawyers have done much better than the defense counsel, even though we always thought the elite, cash on the barrelhead side was the defense side. But the Milberg Weiss firms of the world have done better than anybody else. Somebody said they're the only law firms that have two private jets. We don't have any.

**Ernst:** There was another case that jumped out at me, principally because the firm had a suit against NBC. Involving the *San Francisco Chronicle*, a battle over a TV affiliation?

**Cutler:** Yes.

**Ernst:** You folks, it looked like were with the *Chronicle* corporation on that one.

**Cutler:** That's right.

**Ernst:** I wondered about that case because it was something that was going on in different venues. It looked like there was an FCC [Federal Communications Commission]—

**Cutler:** It was a primary jurisdiction case, yes. There was a limit on the number of stations a television network could own, which still exists to some extent. The holder of the affiliate in San Francisco was the *Chronicle*. I don't remember all the details, but NBC was unhappy with the *Chronicle* for various reasons and wanted to transfer the affiliation to a much smaller, San Francisco-area outlet. They went ahead and did that. We sued on the theory—I forget just how we concocted the theory—but that it was an antitrust violation.

Somehow or other it got before the FCC at the time. I think that it was NBC who claimed that the FCC had primary jurisdiction. If a network changed affiliates, it was an FCC problem rather than a court problem, if there was any dispute about it. My recollection is that we lost the antitrust case because the Ninth Circuit said there was primary jurisdiction in the FCC. But in the end we backed off NBC from changing the affiliation and I think the *Chronicle* stayed as NBC's affiliate, even today, although I'm not sure.

**Ernst:** Your relationship with NBC didn't grow out of that?

**Cutler:** No, we didn't have much of a relationship with NBC. Our primary television relationships—we did have a substantial practice in this firm, one of our founding partners was a television lawyer named Roger Wollenberg, now dead—but we did a lot of work for CBS. That in turn came partly through Roger and it also came in part through the Cravath firm, who were counsel for CBS in New York.

**Riley:** There was a contempt of Congress case through CBS that—

**Cutler:** For Frank Stanton, yes.

**Riley:** Can you tell us a little bit about our case? That may come later; I don't have a date next to it.

**Cutler:** Well, it's fairly early on, but it had to do with, remember CBS had a lot of social documentaries in those days. This was about hunger in America or some damn thing. It offended a few Southern Congressmen. I think it picked on Mississippi, some Southern state. They started an investigation, congressional committee, and demanded to see CBS's so-called out-takes. Not what you saw visually on the screen, but what CBS had filmed but never used in making the farm program.

We refused to produce the out-takes and we had a big issue on that with Harley Staggers, who was the Democratic chairman of the committee from West Virginia. I think the Republican minority member, who was also very offended by all of this, and the House committee recommended to the Senate, from the House floor, that Frank Stanton be cited for contempt for failing to produce these out-takes. Then we defeated that on the House floor by a very substantial margin with the help of a number of the committee chairmen.

I learned then, very quickly—and this is true in the pharmaceutical industry, we'll come back to it later, and in the auto industry. It isn't the manufacturing company, the big giant, that has the political clout, it's the pharmacy, it's the automobile dealer. In this case it was the affiliated stations. We got Wilbur Mills to support us, we got Manny Celler to support us. We got Ford to support us.

**Riley:** Just by networking through the affiliates?

**Cutler:** By the affiliates calling up their Congressmen. For a Congressman, more important than anything else is how much face time you get on local television, not on the national Edward R. Murrow news.

**Riley:** Were you helping to generate this volume of calls or was that something—

**Cutler:** You're damn right we were.

**Riley:** Tell me a little bit about it.

**Cutler:** We told our client to do that.

**Riley:** Tell us about that.

**Cutler:** I remember going in to see Wilbur Mills, who was very powerful, he was chairman of the Ways and Means Committee. We arranged in the middle of the conversation—we didn't arrange the timing of it—but George Herman, who was a Washington anchor for CBS news, in

the middle of our meeting with Wilbur, he called in and said, "Mr. Chairman, we'd like to have you on CBS News tonight." Wilbur responded to that by going right down on the House floor and made a speech opposing Staggers on this. As I said, we won it by a very substantial margin.

**Riley:** Do you remember about the timing of this? Again, I should know this, but I'm just trying to place this in the context of your career development.

**Cutler:** If I had to guess I'd say probably in the '50s. Maybe the '60s.

**Riley:** I don't want to get too far away from this line of questioning. Dan, do you have a follow up in regard to this?

**Ernst:** Not in regard to this.

[BREAK]

**Riley:** You had some follow-ups.

**Ernst:** Did your firm do any Loyalty Act cases?

**Cutler:** I worked on some. They would have almost certainly have been pro bono, but I know of a number. One I did work on was a friend of mine from Lend-Lease named Alfred Davidson, who became the head of the Children's Fund at the UN [United Nations] at the end of the war. He was involved in one of these accusations where you could never find out who had accused you; you couldn't confront your witnesses. It ended up ruining his career. He did work for us in the London office for a while when his government career, or his UN career, had come to an end. I know Oscar worked on several of these cases.

**Ernst:** I ask in part because of my sense that some of those cases were about defending people who were New Dealers who were under fire, but also it became such a paradigm for a lot of Washington lawyers later, when they felt that zealous advocacy was under attack by the consumer movement, [Ralph] Nader in the '60s. The example of a McCarthyite attack on lawyers representing clients.

**Cutler:** I was his number one target.

**Riley:** Yes.

**Ernst:** So I wondered if that grew out of your own lawyering through the [Joseph] McCarthy era?

**Cutler:** I wouldn't see a connection. The only relationship is that Nader did like to demonize his opposition. He'd pick somebody on the other side and attack them. But Nader himself was certainly no McCarthyite. I don't know if he even had views on the socialist-communist issues of the day. He was consumer, consumer, consumer.

**Ernst:** You said at one point in an interview that people of your generation had to be generalists of necessity when you started your law practice. One of the changes that often we point to is specialization in the firm. Did you see tax as a specialization the firm had to have at some point?

**Cutler:** Yes.

**Ernst:** You don't have a recollection of clients saying, "Gee, it would be great if you could do our tax work for us."

**Cutler:** No, because I think we were thought of more as sort of regulatory specialists in other fields, antitrust fields, agency regulation fields, et cetera. It was very rare for a Washington law firm to be *the* general counsel, *the* outside counsel for a major nationwide corporation, whatever the issue was. Covington had some relationships like that, with DuPont for example. Kirkland in Chicago had a relationship like that with General Motors. IBM and Cravath had a relationship like that. That is more or less past now. Especially as companies began recruiting outstanding lawyers to be their own inside general counsel, the lawyer who came in, when he needed outside help, would go wherever he thought he would find the best person for that particular problem, not always to the same firm.

That has become more and more true. So if you ask most major corporations or most major corporate inside counsel, "Who's your regular law firm," they'd say, "We don't have a regular law firm. We have a lot of law firms."

**Riley:** I don't want to let the Loyalty Oath case go with what we've said just far. I want to press your recollections a little bit about that, because that's something that historically is very important. Can you tell us a little bit about how you came to be asked to be involved in that particular case, if you remember?

**Cutler:** As I said, he was my friend from the Lend-Lease days. As far as I can make out, he was unfairly attacked. I had some intelligence relationships out of my World War II code-breaking work. I had some relationships with FBI [Federal Bureau of Investigation] people and CIA [Central Intelligence Agency] people. Occasionally I could find out whether there was anything to the charge or where it came from. But I did not have a formal role; I was not somebody's counsel of record in the case, either before the Loyalty Board or a case that got to the courts.

**Riley:** I see, that's where my misimpression was, because I thought you had handled some—

**Cutler:** But I would imagine a number of people in the firm were, if we did it. Check all the pro bono cases, I'm sure you'll find it true.

**Riley:** Were you ever the brunt of any, in this very poisonous atmosphere, of any problems like that?

**Cutler:** No.

**Riley:** Did you witness other individuals up close who were very personally affected by it?

**Cutler:** Alger Hiss, of course, very much so.

**Riley:** Can you tell us about your—?

**Cutler:** Well, I had no direct involvement in it, but it was a pivotal case because [Whittaker] Chambers was able to prove at least part of what he was alleging. But I knew Alger's brother Donny very well, and he was in the Covington group.

**Riley:** So you just followed this from a close distance.

**Cutler:** Right.

**Ernst:** You were talking about the Covington firm. There was something that came up last time that I wanted to pursue. When we were talking about Dean Acheson, you said you admired him as a master of foreign policy, but you also said that you'd admired him as a lawyer. We talked a lot about Acheson as a foreign policy figure last time, but we didn't pursue him as a lawyer. Obviously he was among the people you admired.

**Cutler:** Yes. I never worked with him as a lawyer in private litigation or anything like that. I did a lot with a number of his younger partners, most notably Gerry Gesell, who later became a judge.

**Ernst:** Were there other people? We see this period often through Charles Horsky's eyes, because we read those lectures on the Washington lawyer. Did you all read those when they came out?

**Cutler:** Yes, yes.

**Ernst:** And what did you think?

**Cutler:** I agree almost totally with him. I can't remember in particular, but we were very good friends. He was sort of the Sol Linowitz of his generation. He was everybody's concept of the ethical lawyer, a thoughtful man.

**Riley:** During this period in a career, it's not uncommon for people to survey the landscape of other people doing the same kind of work and to say, "That's somebody who's doing it right, whom I admire." Were there people that you saw in the 1950s in Washington that you latched on to intellectually as being—

**Cutler:** Yes.

**Riley:** Can you tell us about those folks?

**Cutler:** Two more, who were also Covington people—I guess we were trying to model ourselves on Covington to some extent—were Hugh Cox and John O'Brian.



**Riley:** Tell us why. What was it about these people?

**Cutler:** They were brilliant advocates, had the respect and trust of the judges. They would give the client the unvarnished truth as they saw it. Hugh Cox would appear in the Supreme Court or the Court of Appeals here and argue a case without a note. Most lawyers bring to the bench an outline of their argument, the briefs, things in the record they want to read. He did it all out of his head and did it very, very well.

**Ernst:** They were courtroom lawyers.

**Cutler:** They were very much courtroom lawyers.

**Ernst:** Part of what is distinctive about a Washington practice seems to be there are so many other places, other than the courts, where you're supposed to work.

**Cutler:** I don't know that that is necessarily true of them. I mean, they were perfectly capable of being generalists, but they may have spent most of their time in litigation.

**Riley:** What would you consider during this period of time—and again, we're talking about late '40s, early '50s when you're still with the first firm—what would you have considered your greatest accomplishments, greatest professional accomplishments during this period?

**Cutler:** I would certainly say the Latin American things we did for the Kaisers, in fact a lot of the things we did for the Kaisers. Winning the auto safety cases and the emission control cases, and whether the government was going to bring a huge antitrust suit. We defended a whole spate of private actions, including some class actions brought on behalf of every man, woman, and child in the country, asking for \$3 trillion. We got the district judge to throw it out. Most of what I'm describing are not headlines in the newspapers.

**Riley:** Exactly. Let me change pace and ask you a different kind of question. Where were you living after you first came back to Washington. Did you buy a house down here?

**Cutler:** During the war we lived at 2500 Q Street, which was then a big, modern apartment house, now converted to condominiums. Then we rented houses in Georgetown and in the Massachusetts Avenue park area. Then in the mid '50s we moved out to Kenwood, which is part of Chevy Chase, and lived there until my wife died, to about the time I remarried ten or eleven years ago. Now we're back in Georgetown.

**Riley:** During this period, what was life like away from the job, being a Washington lawyer? Did you spend your summers away?

**Cutler:** We would spend a month or more every summer originally in the Rehoboth area. Later when my daughter married a New Englander, we would go up to Cape Cod and various places up there.

**Riley:** The social scene in Washington, were you a part of a—

**Cutler:** Not as much as with my present wife who's really—I don't know quite what right word to use, but she's well known in Georgetown.

**Riley:** Who were the people that you were close to socially after you moved to Washington, with whom you developed your personal relationships.

**Cutler:** They were mainly other lawyers, some of whom became my partners and others who were going through more or less the same experience.

**Riley:** Can you tell us a little about some of these people? Tom Barr is somebody you've known for a long time.

**Cutler:** Tom doesn't live here, of course, but he is somebody I knew for a long time. I suppose we'll get to it, but one of the things we spent a lot of time together on were the Lawyers' Committee for Civil Rights cases. Cravath was a major supporter of that project from the beginning.

**Ernst:** You were a northerner who came to a town that was very southern in a lot of respects. Were you struck by the racial mores in the '40s and '50s?

**Cutler:** Oh, no question. Of course, real segregation existed in Washington to a very considerable extent, not only in the schools, but de facto segregation of the kind that there are very few vestiges of now. You couldn't rent an apartment, you couldn't get various kinds of treatment, you couldn't try on clothes in a department store if you were black. We lived through all of that. In fact, the D.C. schools were segregated even after *Brown v. Board of Education* for a while.

**Ernst:** Were you aware of what poverty conditions were like until the '68 riots, or was it just a world that you never traveled in?

**Cutler:** No, I was certainly aware of it all the time I was here. I guess we'll get to it, but I ended up being the executive director of the Violence Commission, which was the Milton Eisenhower commission.

**Riley:** I guess one question would be whether you had any involvement with the civil rights business before the Lawyers' Committee. The *Brown* decision comes in '54, and then Dr. [Martin Luther] King's bus boycott is in '55. As a lawyer in any of those prior instances, did you have any relationship—

**Cutler:** In those days I was aware but not involved. I didn't have lawsuits and we didn't know that much. But going back to [Lou] Oberdorfer again, he is the real organizer of the Lawyers' Committee. He's responding to Bobby Kennedy's question, "Where are all the lawyers?" I worked a great deal with Burke Marshall when Burke was the head of the civil rights division. That went on right through the Martin Luther King riots.

**Riley:** Exactly. We're going to pose questions about that later on, since he just passed away. Back on your practice, one of the things that you mentioned was the pharmaceutical industry. I don't think we've heard the story about how you first became involved with the pharmaceutical industry.

**Cutler:** Here again, there's a great deal of chance and serendipity, but one of my close friends in the Cravath firm while I was there was a man named Jack Connor, who was married and with a child. I think I've related this, but when I left after Pearl Harbor, he said to me, "If any other interesting job turns up, let me know." We were staffing this Office of Scientific Research and Development under Dr. Vannevar Bush, the MIT scientist. We suggested Jack for that job and he left Cravath for that purpose. Without going into all the details of that, he becomes, at the end of the war, the general counsel of Merck where Dr. Bush becomes the chairman of Merck. Then, Connor rises within Merck and eventually becomes the CEO of Merck. Meanwhile, Estes Kefauver is conducting his congressional hearings and trying to limit patents on drugs, the duration of them. I think his main attack was you cannot have a patent on a combination of two other patented drugs in order to preserve, get another five or ten years of patent protection. After some period of time, like five years, generic drug makers would be free to make the same product.

So I was the counsel for the industry in the Kefauver hearings. We headed off all of that. For years we worked for the Pharmaceutical Manufacturers' Association, but that's how it came about. Once more, just if you were dreaming about a law firm, who I wanted to work for, et cetera, it never would have occurred to me.

**Riley:** So your relationship with the pharmaceutical industry doesn't begin until, is it the late '50s, can you recall?

**Cutler:** It would be probably the late '50s, because Kefauver is very much involved in it. Kefauver I think has already run for Vice President. I'm a little mixed up on that—he's certainly the Senate committee chairman, but whether that was before or after he ran for Vice President with [Adlai] Stevenson, I don't recall. Stevenson would have been '52 and '56.

**Riley:** Since you've raised the issue, we haven't talked very much about any political activity that you might have been involved in in the 1950s. You had not worked on the '52 campaign?

**Cutler:** I had worked on the '52 campaign, very peripherally.

**Riley:** You did work on the '52 campaign. What kind of work did you do?

**Cutler:** I did a few position papers; I contributed money. I talked a great deal with George Ball, whom I worked with during the war and who was, I think they [Ball and Stevenson] were law partners, actually, by that point. But anyway, he was very much involved in the first Stevenson campaign.

**Riley:** What were your perceptions of Adlai Stevenson?

**Cutler:** On the whole, very admiring. He was an elegant man in every way. He took on McCarthy. He was something of an anti-Semite, actually, but leaving that aside, I'd give him pretty good marks. While he was a very reluctant dragon about running in the first place—this was the days of the bosses—once he got the bug, it never left him.

**Riley:** Were you involved at all in the '56 campaign?

**Cutler:** Not that I remember.

**Riley:** Am I remembering correctly that you had indicated that you might have voted for [Dwight] Eisenhower in '56?

**Cutler:** Yes.

**Riley:** Can you tell us why?

**Cutler:** I can't remember why really, except I thought he had done a good job. In that period I was going back and forth to Latin America a great deal, so I didn't have much chance to become politically active.

**Riley:** This was for Kaiser?

**Cutler:** Mostly for Kaiser.

**Riley:** Were there other clients that you were doing work in South America for?

**Cutler:** It was almost entirely Kaiser or various spin-offs from Kaiser, like brokerage firms, financial firms.

**Riley:** Were you doing other international work outside? You had referred earlier to the opening of offices in Europe. Did you have any European-based practice at the time?

**Cutler:** When we opened the offices?

**Riley:** No, I guess this would be before you opened the offices.

**Cutler:** I mentioned Fiat earlier, the Italian technical delegation. We were practicing in that sense, but we had no offices over there.

**Riley:** I've asked you questions about national politics, but I haven't asked you anything about local politics. Were you ever involved in D.C. local politics?

**Cutler:** On what we call home rule here, I was very actively involved in our home rule organization and getting representation in Congress.

**Riley:** I see.

**Cutler:** I sort of grew out of that or got too preoccupied on other things, but I think I was the chairman of that group at one point.

**Ernst:** Was the Federal Bar Association something you wanted to invest your professional energies in? What kinds of lawyers were active?

**Cutler:** We always had a D.C. Bar Association, we had a black bar association called the National Bar Association, we had the Federal Bar Association, which was more people who were practicing before the federal agencies, rather than in the local courts. But I was not active in the Federal Bar Association.

**Ernst:** You subsequently became very active in the ABA [American Bar Association]. At this point it didn't seem to be a place where you should invest your professional energies?

**Cutler:** In the ABA? I really got bored with the ABA. If you've ever been to an ABA summertime meeting with 20,000 lawyers in a hot place, ten events scheduled for any given moment at the same time. My partner, John Pickering—we'll now fast forward a little bit—has been very active in the ABA from the beginning. He was a member of the House of Delegates or the Board of Governors. But I left that largely. My activity was limited to individual rights, human rights.

**Ernst:** And the National Lawyers Guild was just too marginal an enterprise for you to pay too much attention to?

**Cutler:** I think I looked on the National Lawyers Guild, for my taste at least, as too left.

**Ernst:** Because I was struck, they did have a committee on constitutional civil liberties in the early '60s.

**Cutler:** Sure.

**Ernst:** And it's striking that it was felt necessary by the Kennedys to create a more solid or more substantial committee, they wouldn't put the energy into boosting what the Guild was doing. The lawyers you wanted wouldn't participate in with the Guild?

**Cutler:** I don't want to knock the Guild. Certainly its positions on civil rights were good positions and they may have done a lot that I'm not aware of, but we were trying to organize the leadership of the Bar.

**Riley:** I'll take you back to the political question. What were your perceptions of Dwight Eisenhower as President?

**Cutler:** As I indicated, pretty good. And of course, he was as much of a Democrat as he was a Republican. You have to be pretty good to be invited by both parties to run for the White House. It's a little bit like Colin Powell; both parties wanted him to be Secretary of State.

**Riley:** Was there ever a strong temptation on your part at this time to switch parties?

**Cutler:** Oh, no.

**Morrisroe:** Did any opportunities come up, notwithstanding the party difference, to serve in any capacity in the administration?

**Cutler:** I had a couple of offers, as I indicated earlier, in the Kennedy administration.

**Morrisroe:** But in the Eisenhower?

**Cutler:** In the Eisenhower administration, I think not. But later in the Bush administration and the Reagan administration I served on a number of presidential commissions on pay, on nuclear weapons, et cetera.

**Morrisroe:** We'll definitely be getting to those later on. So what was going on within your practice by the mid to late '50s? There was obviously some tension over growth in the firm.

**Cutler:** There was tension over growth. The firm had started with Oscar being, on a percentage basis, I'd say at least 60 percent partner. As we grew, that was not tenable and he was not too generous about relaxing his share. He didn't want to grow; he wanted to keep a boutique firm with ten or fifteen people.

**Morrisroe:** At what point did this issue start playing into your consideration to move elsewhere?

**Cutler:** Nineteen sixty-one, '62.

**Ernst:** Did you expect there to be more opportunities for the firm with the Kennedy administration? I was wondering about the timing.

**Cutler:** I think we would have done it even if there had not been the Kennedy administration, if [Richard] Nixon had won the election. Of course we were all very pleased; we were going to have a Democratic Congress. Well, I guess we'd had a Democratic Congress anyway, but not White House for some time.

**Ernst:** Were there any cases in particular that were stretching the firm, the Cox firm, where you felt you just couldn't manage and you were turning down opportunities that you wanted?

**Cutler:** We didn't have much of a set of conflict issues in those days and I don't think that was a major factor.

**Ernst:** Did you perceive the quality of appointments to administrative agencies being much stronger under Kennedy than under even Eisenhower?

**Cutler:** Yes. A lot of that has to do with—and of course it would vary by department. I think Eisenhower had good State and Defense people. I later came to think very poorly of John Foster Dulles, but certainly he had a great legal reputation. But the Kennedy people were sort of in a class by themselves. Kennedy got people interested in government, people who had totally lost interest after World War II.

**Riley:** Had you played a role in the 1960 campaign?

**Cutler:** A minor one.

**Morrisroe:** Am I correct in understanding that along with Robert Kennedy and Byron White you had a role in helping to staff the Justice Department?

**Cutler:** Yes.

**Morrisroe:** Can you tell us a little bit about the priorities that they identified for the selection of individuals? What was important to them in those individuals they sought to serve in Justice?

**Cutler:** Once the decision had been made to put Bobby in as Attorney General, of course it became his problem.

**Morrisroe:** Right.

**Cutler:** He had a very good sense of what he wanted to do, the class of people he wanted. He turned primarily to good lawyers who had worked in the campaign like Byron White and like Bill Orrick in California, for example.

**Morrisroe:** Did you consider a position in Justice in the Kennedy administration?

**Cutler:** Yes. I want to be careful about the word “offered,” but I was talked to a lot about becoming head of what’s now called the Office of Legal Counsel, which used to be the Assistant Solicitor General’s office. This is 1961, the beginning of the transition. Later on I was offered a job in the State Department by George Ball.

**Morrisroe:** That was the time that you were reorganizing the firm, am I correct in that recollection?

**Cutler:** That’s why I couldn’t go forward.

**Riley:** I think they’re flagging us. Why don’t we stop now and we’ll come back to the transitional period of Kennedy and carry on from there.

[BREAK]

**Riley:** Dan, do you have something you want to lead off with?

**Ernst:** When did you work hardest in your career as a lawyer?

**Cutler:** That's a hard question.

**Riley:** Yesterday.

**Cutler:** I think the answer is probably long trials out of Washington. That *Rainbow Warrior* case is one. There were long arbitrations in Europe, but certainly I worked harder in my 30s and 40s and 50s and 60s than I have since.

**Ernst:** One hears such stories of hard work at government agencies during the war, and then I was imagining how much work there would have been with the Cox firm, with just four of you. It just seemed to me that you had lots of occasions where you had had to push yourself very hard.

**Cutler:** One of the defining differences between practice here and in New York was Saturday was close to an ordinary work day in New York. I can remember, my family lived in Great Neck then and I lived there with them. I can remember going home on, say, a 10 o'clock train to Great Neck and finding a couple of partners, Cravath partners, who were on the train with me.

**Ernst:** And you were an associate?

**Cutler:** That's right. Lots of evenings, you stayed down. That's less true in Washington most of the time. Right now it is true because of all the corporate scandals and the trials and the preparations for trial, settlement negotiations. The so-called Wells submissions you make to the SEC [Securities and Exchange Commission] and so forth. But our lawyers here probably average pretty close to 2,000 chargeable hours a year, some are even higher than that.

**Ernst:** I think at some point you said your associates are less leveraged here than in a Wall Street firm?

**Cutler:** Yes. We're now maybe two and a half to one, two and a half associates to one partner, and we count what we call counsel in the associates. They haven't quite become partners yet; they're sort of senior associates. The average Wall Street firm might be three and a half or four to one. We have more partners today than Cravath does.

**Ernst:** Did you think about that difference between a Washington practice and what you were developing down here when you were leaving the Cox firm? I understood you had the opportunity of being the Washington office for Paul Weiss.

**Cutler:** Yes.

**Ernst:** What was the relative advantage of going with Wilmer as opposed to doing that?



**Cutler:** Partly because it's your own show, that you can determine its course. On the other hand, if we'd gone with Paul Weiss, we would have had a guaranteed income from the beginning. In the end, I don't think our decision was made that way. We were here and we wanted to build a new firm here.

**Riley:** Can you tell us about the process of putting the new firm together, your consultations and how you reached the decision to do that?

**Cutler:** I did it mainly with John Pickering and consulting with people that I knew in Cox, Langford, who I knew would be willing to go. Then doing our best to deal with the people who felt a higher loyalty to Oscar and were really agonizing about which way to go. Some stayed, some didn't stay. In Wilmer and Broun, everybody joined the new firm except [E.] Fontaine Broun, who was a long-time Cravath-er.

**Ernst:** They were already broken away from Cravath?

**Cutler:** Broken is the wrong word. Cravath had an office here in Washington roughly from the period between World War I and World War II. During World War II, the fashion changed and the Washington lawyers from the New York firms were encouraged to form independent firms of their own, with whom the New York firm would have a correspondent relationship. That's what happened. So Wilmer and Broun, the individuals had been here—and John Pickering actually—for four or five years as their own firm, even though Wilmer and Broun had originally come, I think, as part of the Cravath firm office in Washington.

**Ernst:** What was the calculation behind that? I mean, a much later development is the great explosion of branch offices in Washington.

**Cutler:** That's right.

**Ernst:** It's hard for me to account for why there was a period where the other firms thought it was better to just have a corresponding relationship.

**Cutler:** I think it's partly that they didn't see ahead, or they didn't think the Washington end of their practice was particularly lucrative. That it was a useful outpost but you could have an outpost on a correspondent basis just as well. It did have the merit of avoiding conflicts.

**Ernst:** I could imagine one might not have been able to perceive the postwar expansion of the economy and practice and regulation, but conflicts also seem like a sufficient reason.

**Cutler:** And you might not have been able to perceive the explosive growth of the Washington law practice.

**Riley:** Right. So it was a kind of reaction, or the reading of the trends of the Eisenhower era, Washington would continue into the infinite future.

**Cutler:** Yes, and that government was going to continue to grow.

**Riley:** At that pace.

**Cutler:** Right. Then for a lot of people in the beginning, when World War II ended, we were all staring the Soviet Union in the face. There were a lot of people who didn't want to make a rest-of-their-lives commitment, because they thought they might be called up again. People like that might very well say, "I'm going to practice here in Washington until things settle down."

**Riley:** But by 1960, it had become just a way of life.

**Cutler:** I would say by then things had settled down. We'd had Korea and we were just sort of—I don't know what phase you'd call that of the Cold War—but we knew the Cold War was going to go on a long time, and that very probably there was going to be no missile attack.

**Riley:** What's the procedure for clients in a dissolution or breakup like this? Do the clients follow the attorney?

**Cutler:** It's the client's decision. In a real sense you deal with the clients you worked on and say, "We're forming this new firm. We want to continue working for you if you want us," or divide the work in some reasonable way with the old firm. We had a cordial break-up, in the sense we never had a big argument.

**Riley:** Did you lose any significant clients when you made the change?

**Cutler:** The firm you can say lost them. As far as I was concerned, I lost Fiat, but I gained IBM.

**Riley:** What were the large clients that were a part of the new firm that the other work was bringing in?

**Cutler:** Mostly the Cravath firm's clients, almost entirely I'd say.

**Riley:** And some of the names that we would recognize would be?

**Cutler:** IBM, I mentioned. Bethlehem Steel. Half the investment banks in New York.

**Riley:** You had at one point a lingering case from World War II, the IG Farben?

**Cutler:** That was really my case.

**Riley:** What was the story behind that, why it took so long?

**Cutler:** The story there was that IG Farben, you remember, transferred most of its assets to a Swiss holding company organized by the Union Bank of Switzerland. At the end of the war, all through the war, we were pursuing those assets, saying they're German assets. Germans are enemies, we're entitled to those assets. The Swiss, once the Germans lost the war, never paid up. They maintained that under the trust arrangements or whatever they had with the IG Farben

network of companies, that these companies, which were called Interhandel, belonged to the bank and not to IG Farben.

There was a big lawsuit in New York about the portion of the assets that were American. I think Schering was involved, General Aniline and Film and a number of other companies. By now we're in the Kennedy era and there's a big issue about the dollar and the balance of payments. A settlement is worked out of this lawsuit in New York, under which the U.S. government gets paid something like \$200 million and the companies go back, not to IG Farben but to Interhandel, the Swiss company. We had to take part and assist in negotiating that settlement and then working out the settlement as a court order, in the New York litigation that would be binding on everybody. I was asked really by Katzenbach and Orrick to help do that.

**Riley:** You had known Nick Katzenbach for how long?

**Cutler:** I'd known Nick—while I was in law school I think we overlapped to some slight degree. I'd known him from the beginning of the Kennedy administration. He started out as head of the Office of Legal Counsel and by that time I think he was a law professor in Chicago.

**Riley:** You had not been involved in his appointment in particular? That had been something that had taken place already when you were consulting with people about the Justice Department?

**Cutler:** Yes. I'm not sure of the sequencing, but I knew him then. He and Byron were very close.

**Riley:** I'm trying to remember if you told us last week how you had first gotten to know Bobby Kennedy.

**Cutler:** Really through Oberdorfer.

**Riley:** And this was when he was working on the Hill?

**Cutler:** Bobby?

**Riley:** Yes.

**Cutler:** I was aware of him on the Hill because of the famous [Roy] Cohn and [David] Schine business, but I never knew him then. But when he becomes Attorney General and I'm doing various kinds of work on the Cubans, the Bay of Pigs people, on the ransom of the prisoners, on civil rights in the South, et cetera, we got to know one another.

**Morrisroe:** Are we going to go through the private practice independently from the Kennedy service? I was just noticing, I took the liberty of looking up your participation in some cases that had made it to the Supreme Court. I noticed by the early '60s, you're a counsel in cases like, maybe you could discuss a little bit the *Wisconsin v. Milwaukee Braves* case. Could you tell us a little bit about your involvement?

**Cutler:** That's a painful chapter in our history.

**Morrisroe:** Perhaps I shouldn't have started with that one. [laughter]

**Cutler:** Lou Oberdorfer, again, was a good friend of Bill Veeck of the Chicago White Sox. He might have become involved later, but Veeck introduced us to the guy who was the current commissioner of baseball. Then I guess the stadium concessions or something for the Milwaukee—I forget whether they were called Braves or not at that point—but the Braves decided, with legal approval, to move to Atlanta, which meant that all the people doing business at the stadium and the City of Milwaukee and the County of Milwaukee were going to lose this lucrative source of both rental revenue and concessions and everything else.

The Supreme Court had long since held that baseball is not commerce and that it wasn't subject to the antitrust laws. So we brought an antitrust suit under the *state* antitrust law against the new owners of the Braves. We won it in the district court, the state district court. We lost it three to two on appeal in the state supreme court. We went to the U.S. Supreme Court on *certiorari* and we got a dissent from three justices, but the petition was denied. [Abe] Fortas was on the Court; Arnold and Porter, primarily Paul Porter, were the counsel for the baseball leagues, or the commissioner. At some point, we have reason to think, at least through the law clerk grapevine, that we were going to get four votes for certain. In the end we only got three and Fortas disqualified himself. We still think that Paul Porter called him up and said, "You have to disqualify yourself." So then as a result we lost the case and the Braves moved.

**Riley:** Well, I'm from Alabama so we were always happy to have a professional team in Atlanta.

**Cutler:** Oh, I'm sure. From a money point of view, the Braves in Atlanta make a hell of a lot more money than they could ever make in Milwaukee.

**Morrisroe:** I noticed that both before, in one case before your move and one case after your move to the new firm, you were representing ASCAP [American Society of Composers, Authors, and Publishers]. I think you talked a little bit about that week in your representation. Can you talk a little bit about the Shenandoah Valley Broadcasting case?

**Cutler:** You want me to talk about ASCAP?

**Morrisroe:** Yes, absolutely.

**Cutler:** ASCAP is the association of songwriters and music publishers that was formed to exploit the so-called performance right. Every time you play a piece of copyrighted music, in theory you owe something to the composer but it is very hard to check up on whether somebody played your song and go after them one by one. So a lawyer named Herman Finkelstein, whom I knew from the Yale Law School, helped to form this new association, which would invest in the monitoring services necessary to figure out who would play what. He would license the whole library of songs collectively, so that if you were a television network, for example, you would pay so much for viewers. You'd get a so-called blanket license or you could get a "per piece" license if you were a nightclub or some such thing.

The government sued us under the antitrust laws on the complaint of the networks. We finally worked out a compromise in that lawsuit in the form of a consent decree, which I think is still alive—this is 50 years later—and it would have to get modified from time to time and there'd be endless negotiations about the decree and putting new sections in and taking out other sections. We did a lot of that for Herman Finkelstein.

**Riley:** Were you still representing CBS at the time?

**Cutler:** I think we had this before CBS. At a certain point we had to give up the representation or at least step out of the negotiations. I think we held on to both CBS and ASCAP, but could not take part on either side in a negotiation between the networks and ASCAP.

**Morrisroe:** In this period in the early '60s, you also served in the Kennedy administration on the Tightrope committee with FAA [Federal Aviation Administration] safety, I believe. You had a role, as I understand it, in bringing [Najeeb] Halaby into the administration?

**Cutler:** Bringing him into the Kennedy administration, when he became the FAA administrator.

**Riley:** How did that come about?

**Cutler:** He was an old friend of mine; he was a Navy jet test pilot during World War II. He's a big Kennedy fan. He was in O'Melveny in Los Angeles and he wanted to come to Washington and be part of this administration. Everybody wanted to be part of this administration. He had very strong qualifications. One of the issues was there was a big fight with the airline pilots that when there had been a crash or some sort of error by a pilot and it was investigated by the FAA, what rights did the pilot have? We were called in to analyze that and make some recommendations to change the rules. It was not a major thing at all, but Jeeb does write about it in his book.

**Riley:** One of the things that's striking as you piece all these things together is this enormous diversification of the issues that you were involved in. Here in the last two or three minutes, we've gone from entertainment rights to the FAA. How did you manage to do all of this? I mean, how is it possible that you find that your skills are applicable in such a diversity of settings? How would you explain to somebody from the outside how it is that you're competent to do all of these things?

**Cutler:** It's one of the virtues of being a generalist. What it involves mainly is a negotiation of a reasonable settlement of a claim or a desired change, and a process that really is much better working out than litigating to the bitter end. That's something I'm pretty good at, or at least used to be.

**Riley:** It's a skill as a negotiator then, that you can apply to any set of facts. By the same token, you must have been a very quick study. I would think that the basic facts are at such a variance in each case that you're applying your skills. How do you go about preparing yourself or how did you go about preparing yourself when you were moving in such diverse communities?

**Cutler:** Your client has a lot of knowledge, of course, and educates you very quickly, but it is true you have to be a quick study. Most litigators are very quick studies. What keeps you going is that every particular matter is finite. In the end you win it or you lose it or you settle. There's enough variety so that each time you get a new matter you learn about a whole new field of people and you broaden your own knowledge and your acquaintanceships.

**Riley:** Can I ask you, what's the most complicated, difficult matter you ever had to litigate your way through?

**Cutler:** I would guess all the auto regulation cases, because there were government antitrust suits, private antitrust suits, new regulations, creating a new agency, dealing with a new regulatory system, and meanwhile producing a reasonably efficient, safe car. Of course, it's full of tradeoffs. Everything you do about emissions, for example, has an effect on gas consumption, has an effect on safety, in other ways.

**Riley:** I'm going to come back to that in a more direct fashion shortly. Darby, did you have some more of those that you wanted to follow up on?

**Morrisroe:** I just wanted to ask, I think in 1967 you argued your first case before the Supreme Court, is that correct? In the Baltimore & Ohio Railroad Company case, did you argue in that case?

**Cutler:** I think I had about four minutes of argument.

**Morrisroe:** Maybe you could reflect on any impressions that you were left with during those four minutes.

**Cutler:** This all had to do with the railroad mergers that required the approval of the ICC [Interstate Commerce Commission]. We were counsel for the Norfolk and Western. Later I became a director of the Norfolk and Western. There was a whole series of cases about mergers we wanted to make, to which the commission would attach a condition. You can merge with the Southern Railroad, say, but you have to take in the Erie along with it. And the Erie is a dog in bankruptcy that nobody wants.

There were a whole series of cases like that in the Supreme Court, the one that I argued being the Central Railroad of New Jersey, where I started off with the line that, "It's a small railroad but there are people who love it," which was a paraphrase of Daniel Webster, "It's a small college, Dartmouth College, but there are people who love it."

**Riley:** How was the experience overall? Did you get stage fright?

**Cutler:** It is without doubt the most stimulating oral exercise or competition you can possibly be in, because you have to be very well prepared, you have to keep your arguments reasonable, and you have to field these dozens and dozens of questions. Usually, you know, instead of the Court just sitting there for ten minutes out of your half an hour, they'll jump on you in the second minute, the first minute. Mostly they're using you to argue a point with one of the other justices.

So you have to be prepared to rearrange. You can never say, "I'll get to that later," you have to take it up right then and there. The skill of admitting your own weaknesses and never overstating is very important.

**Riley:** You've argued before the Court nine or ten times?

**Cutler:** I think ten or eleven times.

**Riley:** Do you spend a great deal of time educating yourself before you go up there on each of the individual justices and their predispositions? Or is that just something—

**Cutler:** Well, that you know. You have to know every case in the area and you have to have some judgment as to what argument will appeal at least to a majority of the court.

**Riley:** Who gave you your greatest difficulty in your time of making oral arguments, in terms of interrupting or—

**Cutler:** Interrupting is part of the game. They have the right to interrupt. But I would say the toughest questions I got were from Byron White.

**Riley:** Who was a friend of yours?

**Cutler:** A number of them were good friends. Potter Stewart was a good friend. Potter, if I go over my track record of cases on which Potter sat and I argued, it comes out about 50-50. So I didn't have any great success there either.

**Ernst:** Maybe dropping down to the D.C. Circuit. Your practice saw a kind of change in judicial attitude at the D.C. Circuit toward reviewing appeals from administrative agencies. There were some very strong judges who were participating in that change. I'd just generally like to know your perspective both on Judge [Harold] Leventhal, and Judge [J. Skelly] Wright and Judge [David L.] Bazelon and what it meant to your practice as this happened.

**Cutler:** It was a very good court, as you know. Leventhal was a great judge, Carl McGowan was a great judge. George [Thomas] Washington was a very good judge. Bazelon was a very quirky judge.

**Riley:** "Quirky" meaning?

**Cutler:** For example, when he was trying to get appointed to that court, he contributed to both political parties.

**Riley:** Is that quirky?

**Cutler:** I'd say that's quirky. I took part in a re-hash of Allstate, I guess, which is the passive restraint case, which was done at the Court of Appeals as kind of a retrospective conference 20 years later. Maybe I can dig that up and let you see it, but it was my conclusion after Chevron

and Allstate and all those other cases, that no matter what rule the Court of Appeals made for itself about restraint and deferring to the agency, if the Court got a sense that what the agency had done was wrong, they would find some reason to upset it. I think it was rare that they sort of held their nose and allowed something to go through that they thought was wrong.

**Ernst:** Would Leventhal, as someone who had been in the OPA [Office of Price Administration] and had been an administrator in a very controversial setting, would he have been more likely not to have seen the agency as committing a mistake than someone like Bazelon, who was more of a litigator before he went?

**Cutler:** I would put Leventhal and McGowan in a class by themselves. I think that they might very well have thought it was more important to adopt some principle of deference to the agency. I do think the whole issue is enormously exaggerated. There must be a hundred volumes of discussion of it.

**Ernst:** Easily.

**Riley:** I want to bounce back and ask another couple of questions about Supreme Court oral arguments. One of the things that scholars occasionally discuss is the question of whether oral arguments actually serve some useful purpose. I wanted to get your sense about that.

**Cutler:** The answer is, absolutely yes. I think any Supreme Court Justice will tell you that.

**Riley:** So there are open questions at the time that they're hearing arguments that they can explore and will find persuasive.

**Cutler:** Certainly in the Supreme Court it wouldn't get there unless it had some very complicated, tough questions to resolve. When the judges grant *cert*, indicating four of them at least think that there's something to be said for the appellate side, in the great majority of cases in which they grant *cert*, they affirm rather than reverse.

**Riley:** Have you noticed any significant changes in the operations of the Court in your time as an attorney making arguments before them, oral arguments or otherwise?

**Cutler:** Several. One is, oral arguments used to be much longer and the justices would let you go on. [William] Rehnquist is an absolute stickler. He'll stop you in the middle of the last sentence of your 23 minutes or whatever it is you have of time, so there's that difference. The Court now is much more prone to declare a statute unconstitutional than it used to be. It used to be maybe once a term, maybe once every two, three, or four terms, they would actually overturn a piece of legislation and say it's unconstitutional, especially regulatory legislation. Now they do it a dozen times a year, maybe more often than that.

**Riley:** Present company excluded, who's the best advocate you've seen appear before the Court?



**Cutler:** I'd say Charles Fahy and Cox and O'Brian, whom we mentioned earlier. I think [Larry] Tribe is good, but he tends to speak to them as if he was a colleague rather than an advocate. I may have already told the Acheson story about Fahy.

**Riley:** I don't remember it.

**Ernst:** Not here.

**Cutler:** He was asked, I think by [Felix] Frankfurter, the \$64,000 question in some case. He answered, "Mr. Justice, many is the time I have lain awake asking myself that question. I have no really satisfactory answer, but the answer that satisfies me the most is this," and he then proceeded to give the answer. Acheson said, from then on, he and the justices were walking down the garden path, hand in hand, searching for the truth.

**Ernst:** It's great, because it's not Professor Tribe treating himself as a peer. He's saying, "Mr. Justice, I've worried about that too," so there's a subordinate to it. Yet it simultaneously elevates him to joining with the justices in puzzling through this problem. Very subtle.

**Cutler:** Somebody ought to look up, did he win the case?

**Riley:** Other cases there?

**Morrisroe:** One major case that jumped out to me as one that's critically important in First Amendment issues is the Red Lion case. You were counsel to CBS at the time and the Court was considering the fairness doctrine? Tell us a little bit about that.

**Cutler:** We didn't argue—I didn't argue that.

**Morrisroe:** No, just counsel at the time.

**Cutler:** We filed a brief.

**Morrisroe:** Oh, you just filed an *amicus* for that case, I misunderstood. Were there other important cases—not perhaps those that by chance, which is really for the most part how cases get to the Supreme Court—but other important cases in the 1960s that you or your firm was involved with that you could reflect upon?

**Cutler:** In the '70s yes. I think we were in the Supreme Court in the '60s but in the '70s we had *Buckley v. Valeo*. We also had—I'm trying to remember the name now, but it was when [Charles] Bowsher was the Comptroller General.

**Riley:** *Synar*.

**Cutler:** *Bowsher v. Synar*, that's right. It had to do with Gramm-Rudman. Those cases were important because of what turned on them. *Bowsher v. Synar*, when we lost that, the whole

chance of having a vigorous budgeting process went down the tubes. Of course, *Buckley* is a *Synar* issue we haven't solved yet.

**Riley:** Let's dial back before we get into the '70s. I want to ask you a general question, because campaign finance reform is something that has been at the center of your career in a number of instances. Can you reflect back and recall when you first developed a concern about campaign finance practices and the sense that there needed to be some reform in the system in order for it to function properly?

**Cutler:** I think ever since I've been a Washington lawyer I felt that way, because clearly it was a way of buying access. When it was totally unregulated—we might have been better off not knowing what was going on—but in those days, white envelopes full of hundred dollar bills were changing hands, even in the White House and certainly up on the Hill. That was all anonymous.

In the Campaign Reform Act, we tried a number of things: disclosures as a possible solution, limits on contributions, limits on expenditures, the presidential campaign fund. Most of them were upheld. The only one that really went down with a thud was the ceiling on personal expenditures, or so-called issue-related expenditures. That problem we haven't solved yet. But the public feeling that access is bought, and that politicians listen to the people who give them money more than anybody else, is more prevalent today than ever.

**Riley:** You're somebody who in your career represented a lot of fairly well to do corporations and clients. Someone who wouldn't know you, or someone in future times looking back, may find it a little unusual coming from—

**Cutler:** Most corporations would like to see limits on campaign contributions. It isn't a case of companies saying, "I want to give you some money," it's politicians going to the companies and saying, "I'm chairman of such-and-such a committee. I need reelection money. What can I do for you?" It's about as naked as that.

**Ernst:** It must have happened during your representation of clients on the Hill, that some Congressman who didn't know you said, "I'd like to help you out, but where's my white envelope?"

**Cutler:** It's never that explicit, but you get a letter in the mail from his campaign committee, "Come to this fundraiser," where the price is \$1,000 or \$5,000. And if you're a PAC, which can give more, you've got everybody after you. In McCain-Feingold, the case we have right now, we have one wonderful memo that is sealed in the court record, because it's a major, major, major company saying, "In order to win out on this issue which is now before Congress, we have to give money to the members of the committee. It isn't a matter just of picking the members on our side of the issue, we have to give money to members on both sides, because we want to win over both sides." It's that cynical. But it does raise real First Amendment issues.

**Riley:** You've been a supporter of public financing of campaigns. Is that still your position as the best remedy for these things?

**Cutler:** Yes, and the presidential fund has worked very well, after 20 years. There are technical problems on it for members of Congress, primarily because one solution for members of Congress would be to give everybody a certain amount of free television time. But not only do you have the station owners bitterly against that, you have markets like New York City, where there are 20 seats in the New York metropolitan area. There are probably fifty, a hundred people running in the election to fill those seats. If each of them got five minutes or ten minutes, you'd have no room for anything else.

**Riley:** Satellite or cable, there's all these channels. I guess you could just have an "all campaign channel, all the time."

**Cutler:** You could and nobody'd listen.

**Riley:** Of course. I want to go back, we've touched on several occasions your involvement with the Lawyers' Committee for Civil Rights. We haven't gotten the story in an organized fashion, so I thought maybe I'd dial back to that and ask you about when this first came to your attention, who was involved, just kind of march us through the formation and what your work was like for the committee.

**Cutler:** I forget, maybe your chronological thing may help me. At some point I helped to found the committee, the ABA committee on individual rights and responsibilities. I'm not sure whether that was before the Lawyers' Committee or after. It doesn't matter.

**Ernst:** I think it's after.

**Cutler:** In any event, when the Kennedys got elected, the civil rights workers in the South were being mistreated by the local police, by the local court system, and they could not get any lawyers to defend them.

**Riley:** Had this been something that was on your personal radar screen, so to speak, before this time?

**Cutler:** Sure, in the sense that Dr. King was out there and getting arrested and these other people were. Bobby Kennedy, when he got involved in all of this, asked his famous question, "Where are all the lawyers?" He put Lou Oberdorfer in charge of trying to organize the national bar. Lou came to me and a number of others for help.

**Riley:** He was where at the time?

**Cutler:** He was the Assistant Attorney General in charge of the tax division. Of course he was from Birmingham, Alabama, so he was a Southerner too.

**Riley:** That wouldn't have been a natural—that particular position wouldn't have seemed to have been a natural place to go looking for—

**Cutler:** That's right.

**Riley:** Although I guess the civil rights division probably had its hands full doing other things.

**Cutler:** You might say the same thing about Orrick, who was in charge of the antitrust division. At that point there wasn't any civil rights division at Justice. We put together this group of New York and major city leaders of the bar. I believe the first thing we did was to write some public letter to Governor [George] Wallace about standing in the door of the university barring [James] Meredith—it wasn't Meredith, who was it? Maybe it was Medgar Evers, I'm not sure. But anyway it was one of the first ones in Alabama. We put that out and it got a lot of publicity. Then we had a meeting in the White House, I think sometime in the summer of '62, maybe '63—summer of '63, because this is the 40<sup>th</sup> anniversary.

The President spoke, Johnson spoke, and Bobby spoke, asking us to form this committee. I remember, just as a footnote, that Johnson was the most effective of the three because he clearly felt it so deeply. He could speak as a Southern politician. That's how it all happened. We formed the committee and we opened an office in Jackson, Mississippi, which was staffed initially by our former partner, Jim Robertson, who is now on the district court here.

**Riley:** He was Southern or just sent down there?

**Cutler:** We sent him down there. I think he went to Georgetown, by the way, I'm not sure.

**Ernst:** I'm not sure myself.

**Cutler:** From that, we kept on sending lawyers to take on cases as they arose. Then that grew into a national effort, because it became more and more clear that in addition to mistreatment of the civil rights workers in the South, you had all kinds of employment discrimination, educational discrimination, et cetera, in the North. We had local branches in Washington. I was at a dinner the other night, or a lunch, to honor Pat Wald, Judge Wald. We had over a thousand people at this dinner of the Washington Lawyers Committee. They were all people in law firms in Washington who had worked for nothing on civil rights cases.

Then we set up a national office that provided specialized staff on voting rights discrimination, schools, et cetera, and made that available to all of the local offices. We'd identify cases and say you should bring this case or that case. Then over time those of us, we all in turn became co-chairman for a two-year term. By now we're 40 years old, so the people who are doing it now were not even in law school.

**Riley:** Were you actively consulting with the Justice Department during this period of time as to which cases would be right for taking?

**Cutler:** Oh, yes.

**Riley:** Who was the primary contact at Justice, was it the Attorney General?

**Cutler:** I think Burke Marshall got the civil rights job. I'm not quite sure if it existed when the Kennedys came in, but it was created shortly thereafter. Burke was the key figure.

**Riley:** What can you tell us about him? He passed away just this past week, right?

**Cutler:** Just a remarkable fellow, very taciturn, very economical with words, but with wonderful judgment and cool and calm. Lou Oberdorfer tells a great story about how one of the issues then that King was campaigning about was that in department stores in Birmingham, if you were black, you would not be hired as a sales clerk to deal with the customers. If you were black and you wanted to buy a dress and try it on, you could not try it on because then it would have been touched by a black person or whatever.

There were seven big department stores in Birmingham and King organized a movement against them. Burke was able to settle with six of the seven department stores and they all agreed that they would stop these practices. It was the seventh department store, headed by I forget who, which ignored all of this. Even though it was a Jewish owner, he refused to change his practices. On the day when they were going to sign this agreement, they all met in the Justice office in Birmingham, but this fellow from the Jewish store didn't come. Burke called him up and said, "Won't you please come and settle with the rest of us," and this fellow said, "No, I won't come."

The next thing that happened was, ten minutes later this guy shows up. He's congratulated for coming and he said, "Well, let me tell you what happened. I'm sitting there in my office; I have no intention of going. My secretary rushes in and says, 'The President wants to talk to you.' Which President? 'The President of the United States.' President Kennedy is on the line and he says, 'Mr. So-and-so, I gather you're not going to be part of this very important settlement. You should be ashamed of yourself. Get your ass over there right away.'" The guy said, "Then I came over."

But it was Burke who worked it out, got Kennedy on the phone, and got him to make the phone call to get it done.

**Riley:** You said he's a sort of taciturn person.

**Cutler:** You could sit with Burke, if you had lunch with him for example, if you didn't keep on talking yourself, five minutes could go by in which he'd say nothing. But he was a wonderful man.

**Riley:** Were there others in the Justice Department that you were working with at the time?

**Cutler:** Katzenbach, Orrick, Joe Dolan, who was Katzenbach's assistant.

**Riley:** Katzenbach was at the University of Alabama, wasn't he?

**Cutler:** He was sent down, I think it was Alabama.

**Riley:** He was the one—

**Cutler:** Filed the lawsuit.

**Riley:** Exactly.

**Cutler:** I think that's right. Then I remember being involved, more or less peripherally, in the Selma business, where the burning issue was whether the King people could conduct a march in the street or whether they had to get on the sidewalk when there wasn't any room on the sidewalk. The issue got down to whether there could be one on the sidewalk and two on the street or two on the sidewalk and one in the street. The Justice Department favored one of those solutions and finally got it through. Katzenbach said, "This is the difference the Justice Department could make," meaning there wasn't much you could do.

**Riley:** Were you also at the time working actively with civil rights movement attorneys?

**Ernst:** Yes, I was going to ask about whether you were consulting with the NAACP [National Association for the Advancement of Colored People] lawyers.

**Cutler:** Oh yes, quite often. Then my turn came to be co-chairman of the committee, so for two years I was involved with all the lawyers in the law firms.

**Riley:** That was a little bit later, though, as I recall. That would have been—

**Cutler:** Early '70s.

**Morrisroe:** How would you work with the NAACP, was it in selecting cases or they would refer individuals to you who would need representation?

**Cutler:** Every now and then they'd bring a case. There was a Mississippi case involving Claiborne County. You may know about when blacks in Claiborne County, led by Medgar Evers, organized a protest movement as a sort of customer strike against the stores in whatever the name of the town is, the county seat. This was a boycott, but of course a political boycott. The state of Mississippi sued the NAACP under the state antitrust law for an illegal boycott. We took that case to the Supreme Court and won it. Jim Robertson worked on that case and I think I argued it in the Supreme Court.

**Riley:** That is a case that you argued before the Supreme Court? Did you travel yourself to the South at this time or was most of your work located in Washington and New York?

**Cutler:** Most of it was in Washington. I did go around to a number of the cities the year I was chairman, but we didn't have many offices in the South. We didn't have many Lawyers' Committee groups in the South. I think we had one in Atlanta.

**Riley:** Did you have occasions to interact with the FBI at this time?

**Cutler:** Some through the Justice Department. I think I related when I was in Charlottesville what I heard one day from Justice Marshall, which was that he always had a warm spot in his heart for J. Edgar Hoover, which would bring you up short. But the reason was, the FBI had penetrated the Ku Klux Klan. Every now and then Hoover would get information from one of his infiltrators that they were going to burn the house where Martin Luther King was staying in a particular town on a particular night. Hoover would call up King and say, "Don't go to such-and-such a town," or, "Don't stay at the house you were going to stay at. Stay at a motel."

**Riley:** So your recollections then would have been, to the extent that you had knowledge, would have been supportive of the efforts to try to aid—

**Cutler:** The FBI? Oh yes, when it got to killings and so forth the FBI was very active. I mean, they had this great personal grievance of Hoover's against Dr. King.

**Riley:** Right. Did you detect any of that when you were—

**Cutler:** Whether I detected it at the time, I don't know. I guess certainly by the time King was assassinated, yes. One of the great unresolved mysteries is how the assassin ever escaped out of the country and why there's never been a trial.

**Ernst:** You did all this because it was right. Was it the kind of thing that attracted young lawyers to the firm?

**Cutler:** I think so.

**Ernst:** I'm trying to think of an earlier example of so organized a pro bono program that was profession-wide. This was a special case and civil rights would go first. I couldn't think of anything earlier. I wondered if it just became a touchstone for the importance of a firm's pro bono activities.

**Cutler:** I guess that's right. Also, once we had the organization, it gave us an opportunity to bring cases that were landmark cases that would have a major impact if you won, as distinguished from what we used to call a store-front pro bono civil rights office where you help people pay their rent or if they were evicted from an apartment, you'd help them get back in and so forth. But certainly the pro bono tradition, that is that lawyers should take an impoverished client with a legitimate case, has been with us for a long time.

**Riley:** Was there any significant dissent within your firm about the—

**Cutler:** No. We took a little heat from clients, in particular American Airlines once I remember in particular got very unhappy because we took an employment discrimination case. It wasn't against them, but it raised issues that they cared deeply about.

**Ernst:** Do you remember where you were when the 1968 civil disturbances broke out here?

**Cutler:** Right here.

**Ernst:** Did you see smoke?

**Cutler:** I saw more than smoke. I remember being at dinner one night at the Metropolitan Club and I ran into Herman Phleger, who was a big San Francisco lawyer, just visiting. We sat and watched the smoke together. We were at 17<sup>th</sup> and I, or Connecticut, and the fires were over on 7<sup>th</sup> Street, which is about ten blocks away, and yet you could see these big clouds. Phleger, who was a real stuffy, old-line autocrat, said, “What’s happened to this country? You can’t even go to your club for dinner.”

I had to go down that night, really I think it was at Burke Marshall’s request. The police were making mass arrests of looters all over the place. Instead of getting them in a paddy wagon, filling out some papers, and sending them to the D.C. jail, the papers got separated from the prisoners and they were filling up the jail and there was no way to get rid of them, or try them, or let them go or whatever. We had a call from Justice, started by the Chief Judge, Harold Greene, to get a group of lawyers down here to defend all these people. In the middle of the night we pulled together a group of lawyers from our firm and many other firms. Then I was chairman of some committee after that that reviewed the whole episode and what we could do to make it better the next time around.

**Ernst:** Did that committee find there was a contrast between Detroit, in that some of the anger on the streets about people who were incarcerated and family members on the outside couldn’t get through to the people who were incarcerated? That increased some of the rage—

**Cutler:** Same sort of issue. I think Detroit happened after King, maybe it was before. But the issues were very similar and I remember talking to Burke and to Cy Vance about Detroit.

**Ernst:** Georgetown’s Criminal Justice Clinic was also participating in those events. It was very important to my senior colleagues, that moment. They take great pride in their participation in it. I had a sense it was true for a lot of Washington lawyers too.

**Cutler:** Yes. There’s plenty of literature about the Lawyers’ Committee, if you want it. This report I just mentioned exists and I think the committee puts out an annual or biannual report.

**Riley:** That would be available to anyone. What we might not otherwise have is the benefit of your own recollections.

Let’s dial back to some of the other things that you were involved with in the early ’60s. I think we talked enough about the Cuban situation last time, but in 1962 the Kefauver-Harris Drug Act was passed. You played a central role in the development of that legislation, is that correct?

**Cutler:** This is the Pharmaceutical Manufacturers thing we went through earlier.

**Riley:** Right.

**Cutler:** An act was passed, but it was not significant.



**Riley:** That was not the major pharmaceutical legislation that you had worked on?

**Cutler:** It was the outcome. We fended off most of what would have been the more serious provisions. Then later a number of subsidiary issues came up under Senator Gaylord Nelson, who was a real scourge of the drug industry.

**Riley:** Not a particular fan of yours?

**Cutler:** We always got along personally, but no doubt we were his target. Not in the Nader sense, however. There was nothing personal about it.

**Riley:** Let's go forward to that then. Your battles with Nader begin about when?

**Cutler:** Whenever the auto safety legislation began, which would be, I guess sometime in the '60s.

**Riley:** I've got '66 being the Motor Vehicle Safety Act.

**Cutler:** Johnson was the President.

**Riley:** I guess Nader's book came out in '62, is that right?

**Cutler:** *Unsafe at Any Speed.*

**Ernst:** Sixty-five, something like that.

**Riley:** Anyway, tell us a little bit about your relationship with Ralph Nader, if that's the right word.

**Cutler:** You know enough about him, what he did.

**Riley:** Yes.

**Cutler:** Of course he was a magnet, sort of a role model for a large number of young lawyers who wanted to play a role in public affairs. He did that very well. But in order to attract publicity and to help his own causes, as I said earlier, he wanted to demonize people. Since I was sort of a spokesman for the auto industry at these hearings, he would attack us. One day—I think I did this in Charlottesville also—we found a group of young, George Washington I think, students, law students, parading around in front of our office with picket signs that read, "Lloyd Cutler plus General Motors equals smog," "Pollution control demands not just legal fees but legal ethics," et cetera.

It was an attack on us because we were counsel for the industry in defending against the government's antitrust case about an alleged conspiracy to suppress emission control equipment. So we asked them to come upstairs, partly to get them off the street. Upstairs we said to them,

“Have any of you read the complaint in this case? Do you know what the issues are about in this case?” Of course, none of them knew anything. And that was publicized largely. He would often write about me or if he appeared on television, he’d go after me. He had some phrase that I was—referred to some of my civil rights work—that I was, “Corporate lawyer by day and Mother Theresa by night.”

Later we found ourselves on the same side on some issues.

**Riley:** Campaign financing.

**Cutler:** I think campaign finance was one. Something about some more or less general industry concentration issue. Sooner or later it went away. Of course Nader made himself very unattractive to a lot of people, partly because he was equally relentless in his criticism of government officials whoever they were, and partly because, even though he was demanding open disclosure of GM documents and records about faulty equipment and so forth, he would provide absolutely no information about his own income or his sources or anything else that he did. Of course, he decided the last two elections.

**Riley:** Your role in the development of the Motor Vehicle Safety Act I would think must have involved something that Nader probably wouldn’t have fully appreciated, which was possibly dragging a somewhat reluctant client in the direction of accepting some regulations that they might not have preferred, in order to stave off an even greater level of intrusion that would have happened if they weren’t cooperative. Is that a fair assessment?

**Cutler:** It’s a fair assessment. Very often there are things you think you can’t live with that you can live with. It’s better to make the deal or accept it, rather than fight to the bitter end and offend somebody really badly and go down in flames.

**Riley:** Do you have specific recollections about your negotiations with your clients on this?

**Cutler:** Yes. In particular on so-called defects, when you had to issue notices that there was a safety defect and you should turn in your car and we’ll fix it for you. The industry was of course bitterly opposed to that; the expense was enormous. It was a matter of more or less advertising that we’ve made a defective model. But we found a way to live with it and got enough into the legislation so that we could survive.

**Riley:** Can you tell us a little bit about how you found your way to this compromise? How do you work this?

**Cutler:** It was partly, auto safety became an issue for Abe Ribicoff. He was somebody I knew very well although he doesn’t figure in this very much. The counsel to the committee was Mike Pertschuk, who later became the chairman of the Federal Trade Commission, I think. Mike worked on the committee’s draft legislation and the committee report, interpreting the bill before it went to the floor. He would show Nader the drafts and have him sitting in one office in the Commerce Committee’s suite there. Then he’d show them to us; we’d be sitting in the next office. One of the people who was working for him at the time, shuffling the papers back and

forth, happened to be Margaret Carlson, who was the *Time* magazine and television reporter. We were able to work out a compromise and some limitations in the language that in the end persuaded us to go along with the bill.

**Riley:** Was the key to this exercise having you in two separate rooms?

**Cutler:** Consulting us both I'd say was the key. Pertschuk was a very inventive, sort of puckish fellow. I think he was a very good chairman.

**Ernst:** One of the mysteries is how you're in these battles with Nader and Naderite people and then some of them end up in the agencies during the Carter administration.

**Cutler:** Oh sure.

**Ernst:** Jump ahead—

**Cutler:** Joan Claybrook, who ran NTSA [National Transportation Safety Administration]. Then there's a very good lawyer who still runs, brings a lot of the Nader litigation, who has come to be accepted by everybody. I'll think of it in a few minutes.

**Ernst:** So it does make me wonder—

**Cutler:** Morrison is the one I'm talking about.

**Ernst:** Oh yes, Alan.

**Cutler:** We've been on the same side in a number of cases.

**Ernst:** Ribicoff had hearings that Nader was at, I think it was to create the Department of Consumer Affairs. I think it may have been a very early part of Nader's critique of Washington firms, mentioned a number of firms by name—I don't think individual lawyers—and then urged Ribicoff to invite the lawyers to respond. Thurmond Arnold wrote a letter, Tommy Austern wrote a letter, I think you wrote a letter, and at that point there were a number of people who were sort of defending the Washington practice. What I wondered is, when all these other people are responding, it ends up focusing in on you as the figure who becomes demonized so much in a public way.

**Cutler:** I don't remember writing a letter. I don't remember that episode, but it must be true.

**Ernst:** I think it's in the hearings. I'm trying to think of the other people who wrote.

**Cutler:** It probably would have been because of the hearings themselves, I suppose. Then of course Mark Green wrote a book about the Covington firm and us, which is—well, it's a book you can well imagine I hate, but he has a lot of factual errors in there. Although he committed to check everything with us, he never did. They're just wrong.

**Ernst:** Is this an occasion to respond to any of these issues that are outstanding or is it just so long ago? I mean, do you feel that you fully—

**Cutler:** I think Nader has settled into a kind of niche in history as a major Robin Hood figure in encouraging young people to do public advocacy, to a rather eccentric person who thought there was so little difference between the two political parties, he was willing to condemn the country to four years of a Republican President rather than a Democratic President who on the whole agreed with him on remedies. There's no doubt Nader clearly cost [Al] Gore the election.

**Ernst:** But the practice of having public interest groups and firms goes on.

**Cutler:** Yes. What are now called NGOs [Non-Governmental Organizations], the whole idea of an NGO is something Nader more or less invented, but he was a one-man NGO.

**Ernst:** This raises a kind of general question for me. I've tried it out on Abe Krash and some other Washington lawyers and I never get the same answer. If there's a period in being a Washington lawyer, an era that starts in 1946 or after the war, was there ever a moment when you felt like, *This is an era in the Washington lawyer that is coming to an end?* Have we moved on? Has it changed fundamentally from when I started? And if so—

**Cutler:** I certainly don't think it's coming to an end. It has moved on only in the sense that there are more and more issues and more and more lawyers.

**Ernst:** But it takes a different kind of form.

**Cutler:** Well, it's increased specialization.

**Ernst:** You once said, when the specialization question was put to you by Steven Brill, you once said, "Of course you can still be a generalist." Then you named I think David Boies and Arthur Liman and a few people like that. Do you still think it is possible for people in your firm to emerge as generalists?

**Cutler:** Oh sure, no question. Take the current chairman of our firm named Bill Perlstein, who spent most of his practice career in bankruptcy law. But now that he's chairman of the firm, he's become a true generalist in many ways. But the growth is exponential of the law firms, of the proliferation of government agencies, of subjects of regulation and litigation. So certainly, it may have changed, but it certainly is not coming to an end.

**Ernst:** Has the presence of public affairs, different government affairs branches of corporations made a difference? That's something that's grown since you started practice.

**Cutler:** Certainly corporations are much more aware of the impact of government and paying attention to what's going on in Washington, no question about that. They have many more personnel here working on those problems. Very often now, the CEOs of those companies have had Washington experience on their way up. I can remember in the auto days, when you had

people like Fred Donner, John Smith, the Fords, the Chrysler people, none of them as they rose in their own companies had had experience in Washington.

**Ernst:** So you were interpreting Washington to them. But if they've had that experience or if they've got—

**Cutler:** Now more and more have had it, or deliberately assigned the people they tagged for future development to periods in Washington. That's all true.

**Ernst:** Are they inclined to listen to lawyers less than they would in the '50s or '60s? I mean Washington counsel lawyers.

**Cutler:** I think the answer to that is not less, but they probably listen to them on more subjects because there are so many more subjects. It's hard to think of either a PR firm or a governmental policy firm that acts without lawyers. Usually if it's a company office, manufacturing company office, it will have lawyers in some group there.

**[BREAK]**

**Riley:** We want to dial back now. We spent a fair amount of time talking about the legal developments, but let's go back to some of the public things that you were involved in in the '60s. The first question I want to ask you is this, do you remember having a reaction to Lyndon Johnson's selection as Vice President in 1960?

**Cutler:** Yes. I knew about all the negotiations and so forth at the time, but I was not a direct player myself. I guess at some point we'll get to my relationship with Phil Graham and in particular the work we were doing on the Communications Satellite Corporation, which was in the Kennedy-Johnson era.

**Riley:** Okay.

**Cutler:** But anyway, I knew what was going on. I was certain, although I knew Stuart Symington very well, who Kennedy had previously asked to run with him, I thought Johnson was the right political pick. That's what Phil Graham argued at the time.

**Riley:** So from your perspective, it was a good decision. Johnson was not somebody that you had had trouble with on the Hill before.

**Cutler:** No, and I had this favorable opinion based on his civil rights work.

**Riley:** I see. Why don't you go ahead and tell us a little bit, elaborate on this Satellite Communications business with Phil Graham?

**Cutler:** You remember communications satellites were developed in the run-up to World War II and during World War II. At the end of the war, various people began proposing, primarily AT&T, that telephone service could be increased enormously and improved by the use of

satellites. In those days, the satellite was going to be one of a series of orbiting satellites rather than the fixed-point satellites that we have today. We can cover the whole world with three satellites.

There was a big fight as to whether the government should do it, whether private industry should have a share, whether companies should be allowed to join and form one big satellite corporation, et cetera. Legislation was passed in the Kennedy administration that Katzenbach worked on and Newt Minow worked on and a number of others. It all went through and the compromise essentially was that it would be a private company, organized under a congressional statute, with half the shares being owned by communications companies and the other half by American individual citizens, to create a public market.

Johnson invited Phil to become the chairman of the board of incorporators in this new entity. He picked me as his lawyer to do it. We worked on that for about half a year. It was the period before we had the current treatments that we have for depression. It was just before Phil showed real signs of manic-depression and eventually committed suicide.

**Riley:** You worked fairly closely with the Vice President through this period on this?

**Cutler:** Not really. We started talking about Johnson as Vice President, then we got onto the Satellite Corporation. Johnson didn't necessarily have a connection with the Satellite Corporation.

**Morrisroe:** Did you work on Johnson's '64 campaign?

**Cutler:** Yes, there was a business committee for Johnson run by Jack Connor and I think Joe Fowler, and I was part of it. Mostly we were money raisers, but we spent a lot of time with Johnson, of course.

**Riley:** Where were you when John Kennedy was assassinated?

**Cutler:** In my office here. My reaction was the same as everybody else's. We still know so little about what happened, although I think two of my partners worked on the Warren Commission. They were satisfied that certainly [Lee Harvey] Oswald had acted alone and that he was not a Cuban agent or a Russian agent. But the whole business of [Jack] Ruby is a total mystery still.

**Riley:** Were there other legal activities that we're omitting from this period that we just wouldn't know to pick up on, that would be important for somebody looking back at your career to understand?

**Cutler:** I don't think of any major ones at the moment.

**Riley:** I certainly don't want to omit things that haven't shown up in our research because then it wouldn't be all-inclusive, and I want to make sure that we're getting things down that would be relevant to what you think is important.

The next big thing that shows up on our timeline with respect to the Johnson Presidency—unless, were you doing anything for Johnson before the Violence Committee? You said that you were involved in some ways in the campaign.

**Cutler:** After Johnson, that was '64.

**Riley:** Right.

**Cutler:** And Johnson, either pre-'64 but while President, or immediately after '64, he formed a corporate committee on urban housing, which I think I mentioned before.

**Riley:** Yes, and we did have some material on that.

**Cutler:** Edgar Kaiser became the chairman of that and I was the counsel for it. But I think it was Edgar who picked me, not Johnson.

**Riley:** And what kind of work did you do? You were the executive director of the committee?

**Cutler:** I think my title was counsel, I'm not sure. What we did was to devise a system, the whole theory was that you could apply assembly-line methods, American manufacturing skills, to the building of houses, which I think I said the other day turned out not to be true. At least the rate of interest on the mortgage had much more to do with the cost of the house than the cost of the materials. What we did devise was a vehicle, which became a forerunner for a lot of other similar vehicles, for setting up a corporate real estate structure in which the gains and the losses could be carried forward and attributed directly to the shareholders, rather than to the corporation so you avoided one level of tax.

That principle, which the tax lawyers call a subchapter C corporation, was applied to the special case of housing. That turned out to be quite a successful method of financing low- and moderate-income housing and it exists to this day. I think we ultimately sold the entity out of government hands. The corporations, the shareholders sold their interests and it became a private real estate firm but with the same tax benefits.

**Riley:** Who did you work with most closely in this enterprise?

**Cutler:** I'm trying to remember the name of the then-Secretary of Housing, [Stewart] Udall, and with Edgar. One anecdotal episode is that we would meet in the Cabinet Room, when we occasionally met with Johnson—he was hands on everything as you know.

**Riley:** Even in this.

**Cutler:** And it was customary, in meetings with business and labor leaders, for George Meany, the head of the AFL-CIO, to take the Vice President's chair opposite the President in a Cabinet meeting. At our first meeting, Meany was a little late in arriving. [Joseph] Califano, who was running all of this for President Johnson, came up to me and he said, "Who's that person sitting in the Vice President's chair?" I said, "Mr. So-and-so of National Gypsum," or something like

that. And he said, "George Meany is waiting in the hall and that's his seat and he's not going to come in. He won't come to the meeting unless you move Mr. So-and-so out of the seat." So I went up to So-and-so and explained the situation to him and of course he moved.

**Morrisroe:** At some point you came under consideration for Undersecretary of Commerce under Secretary Connor. It was reported that you were being considered and then it was withdrawn. Can you discuss the circumstances?

**Cutler:** Didn't I go through that the other day?

**Riley:** I think briefly we talked about it.

**Morrisroe:** The reason I'm leading into this is because we were talking with Professor Naftali and we have the Johnson tapes at the Miller Center and conducted a search for your name. I was wondering if you knew that at the same time that that was going on, that your name had been suggested for CIA director to the President.

**Cutler:** No, I didn't know that. That's the job I would have taken.

**Morrisroe:** Katzenbach had suggested your name to President Johnson as director of the CIA. Apparently Johnson was considering it because in a conversation later the same day, he was talking with Connor about that and saying that some people had suggested your name for CIA. Connor didn't want you to be CIA because he wanted you desperately to be at Commerce, but that Katzenbach had thought you would be perfect for CIA. So they were essentially fighting over you.

**Cutler:** Could have changed my whole life. That's just before our merger, I guess.

**Riley:** This is '62.

**Cutler:** Our merger was '62, it would have been later.

**Morrisroe:** I think this is '66 or '67.

**Cutler:** Then it would have been just a one-year appointment, basically.

**Morrisroe:** Not long term, but that hadn't come up in any of our reports, any of the research I'd done.

**Cutler:** If I'd gotten the job and Nixon came in, I might have been stuck with Watergate.

**Morrisroe:** That's true. So maybe it was a blessing instead. [laughter]

**Riley:** I think we can probably give you the coordinates at our web site and I think you could probably actually listen to that conversation at some point. We'll try to get that for you.



**Cutler:** I'm going to do that.

**Morrisroe:** You can listen to that conversation. The next conversation where your name comes up is in discussions between the President and Hoover about doing your background check for Commerce and being concerned with the Kefauver committee and all the places that Hoover should be doing research to be able to take care of the people at the Kefauver committee and the like.

**Cutler:** Is Johnson doing most of the talking?

**Morrisroe:** Yes. There's a lot of, "Yes, Mr. President," "I agree with you, Mr. President." But that was an interesting, interesting turn.

**Cutler:** Is there a way you can get references to yourself out of the tapes?

**Morrisroe:** There is. On the web, you can at the Johnson library. You can do a search and it will generate the number of times you're mentioned in the discussion of topics discussed. Doing that for the Johnson tapes is how I found the three references, the conversation on Katzenbach, one later in the day with Connor, and then the one with Hoover.

The Kennedy tapes also are, I think at this point, searchable for references as well. I don't think the Johnson one—the audio for Johnson isn't available readily at this point. We have access to it.

**Riley:** Actually, Tim told me that you could access this online, but you'd need the filing information. But let me get this for you—

**Morrisroe:** For Johnson.

**Cutler:** I'd be interested.

**Riley:** If I had been able to, I tried to identify somebody who could have made us a CD-ROM of this yesterday. Darby had been able to listen to it in preparation for this, but the people that I needed to consult with weren't around. At a minimum, I can get a CD burned of this and you can hear the conversation.

**Cutler:** Who did Johnson pick to run the CIA? Was it [Richard] Helms? Helms goes up around that point, I think.

**Morrisroe:** That may be. I don't recall readily. But it was a highly complimentary conversation since both sides were praising you. Connor said that you were great, but you were too great to give up as Undersecretary of Commerce. I know we had talked about that last week but I wanted to lead in with that since it was going on in the context of those discussions.

**Cutler:** There's really no comparison between the two jobs.

**Morrisroe:** I think it speaks to the breadth of your experience and the benefit of being a generalist that you were considered so favorably for such disparate positions.

**Riley:** We come to the point now where you're the executive director of the Violence Commission.

**Cutler:** Right.

**Riley:** That would have been '68?

**Cutler:** That would have been starting in '68 and running over into the Nixon administration.

**Riley:** Can you tell us how this came about, how you were approached to do this? Can you tell us the story about how you did this and how you organized things, the people involved, the controversies you had to deal with and so forth?

**Cutler:** The run-up was that there had been two previous commissions dealing with assassinations and violence. One I think was called the Katzenbach Commission, which had been formed within the Justice Department when Nick was the Attorney General. Then within a year after that came the Kerner Commission, which dealt with racial discrimination, divided into two societies, separate and unequal. They have a string of all the right recommendations, and before anybody had done anything about anything, Bobby gets assassinated, and just before that Martin Luther King gets assassinated, and the riots occur in Washington and elsewhere.

Johnson in his own typical, shrewd way, decided to create another commission. There's a joke about that; I'll come back to it. I was approached by Califano to see if I'd be willing to be the executive director. They had already tagged Milton Eisenhower to be the chairman.

**Riley:** Why would Califano have been the point person?

**Cutler:** He was sort of domestic policy advisor for Johnson in the White House. I don't think there's a comparable job today, but he had a huge office, which later became the Vice President's office. I agreed to do it. Johnson then picked one of these carefully composed commissions with some representative from every sector. Leon Higginbotham, a noted black judge, was named vice-chairman. We had Eric Hoffer, sort of a stevedore philosopher, or whatever you'd call him. We had Patricia Harris, who was the Housing Secretary. She must have been the one, by the way, who worked on those housing issues. We had a number of good people.

One of the people we had was Walter Menninger of the Menninger Clinic. That was a typical gaffe, the kind of thing that does happen in the government, because somebody remembered that the great expert on psychiatric violence—what makes people do the things they do—was Dr. Menninger. But it was Dr. Karl Menninger, who was Walter Menninger's uncle. Walter Menninger was a sort of junior figure at the Menninger Clinic, but he got the invitation. Of course he accepted it immediately and there we were stuck with the wrong Menninger.

**Riley:** You're not leading up to telling us that the wrong Eisenhower got the job?

**Cutler:** The right Eisenhower certainly got the job.

**Riley:** You had known Milton Eisenhower for some time, right?

**Cutler:** I'd known him, yes. I'd known him at Johns Hopkins. Well, I just knew him. We knew of one another but we were not intimate friends. We became intimate friends.

Of course Johnson wanted a report within two months or three months. He wanted to run our agenda. On the last day, the last selection he made after looking over everything else, was to make sure it was going to run right, he put on Jaworski, Leon Jaworski, his own personal lawyer to be on that group. So Leon was sort of our White House spy all the time this was going on. Then when the riots occurred at the Chicago Democratic convention, voluminous covered by the networks, Johnson was dying over all of that and he wanted us to form a task force to investigate the networks. We finally did that, but because of my work for CBS, I couldn't be any part of it. I had to disqualify myself from that part of the operation.

What we decided to do was to divide the topic up into assassination, the frontier, guns, a number of subjects like that, and then find scholars all over the country to organize task forces to write papers and books. We gave them academic freedom, that whatever they wrote would be published even though we might not adopt their findings. That worked quite well, actually. I have all the volumes here if you want to look at them or at least see one.

**Riley:** We actually have one.

**Cutler:** Volume number one. We had a number of good things; our most important recommendations had to do with handguns. But like all commission reports it sat on a library shelf and much of it hasn't happened. In those days we were talking about spending the "peace dividend," the fiscal dividend, because the economy was growing so well at the time.

**Riley:** I saw that.

**Cutler:** Of course, it never happened.

**Riley:** From Vietnam, the peace dividend from Vietnam. I wondered, on what evidence were you basing a sense that Vietnam was about to reach closure so that you would have resources to do this?

**Cutler:** It's spelled out in there, but I think it had more to do with economic growth than anything else. Government revenues as a whole were rising, even though the war part was very substantial. Johnson never raised taxes, as you know, the economy was growing so fast. That's what we did and it was a good study. I might have spent as much as nine months on that. I recruited Tom Barr to be my deputy. He spent six months on it.

**Riley:** Tom was in New York.

**Cutler:** He came down to do this.

**Riley:** I'd asked earlier but I didn't follow up. How did you first know Tom?

**Cutler:** Through the IBM litigation and we'd both gone to Yale Law School.

**Riley:** How often were you meeting with the President as this was unfolding?

**Cutler:** Hardly ever. With Califano, quite a lot. We had to fight out the budget fights. I think we put together a budget of \$900,000 or some such thing.

**Riley:** That's for your own work?

**Cutler:** For our own work. We were told that it would go through, but "We want a commission to get you started while the paperwork is being done on the \$900,000." David Ginsburg, who'd been executive director of the Kerner Commission, said, "Don't even start until you get your budget approved, because they'll take the money away from you." Based on his advice, we took that position. We made Johnson angry—we were insubordinate, but we held our ground and we got our money.

**Riley:** It's an interesting case given what's happening now with the 9/11 Commission.

**Cutler:** Are they having their money taken away?

**Riley:** They aren't having their money taken away but there have been fights about the degree of funding and they certainly didn't hold out their operations to make sure that this happened. Philip [Zelikow] should have come talk to you.

**Cutler:** Anyway, we did get away with this.

**Riley:** Do you remember whose idea it was to develop these various task forces?

**Cutler:** Well, I had as much to do with it as anybody. Before and after a partner of ours named Jim Campbell, who was a very good writer and became our general counsel, he was our number three. We really got a blue-ribbon group together.

**Riley:** That was my next question. How did you go about selecting the scholars that were—

**Cutler:** We went around asking for names. We recruited several people from Chicago, from Yale. I forget the list but it's a very impressive list.

**Ernst:** Actually, I bought a copy of the book because I was doing a history of labor law and some of the chapters were about labor violence. There are a great deal of luminaries who were very solid historians. The historical work still gets cited.

**Riley:** Yes, I think it holds up very well.

**Cutler:** One of the interesting things we did, of course we had to have public hearings and so forth. But since we had all this material organized by subject, rather than put everything in one report, we issued a series of reports on different subjects before our final report. That way you'd get much more newspaper attention each time you'd put out a volume than you'd get if you put it all in one volume.

**Riley:** How was the environment that you were working in, then? My guess is that it must have still been a very charged situation for you to be gathering testimony about episodes of violence and rioting and things of that nature.

**Cutler:** We were a little detached in that sense, because we weren't trying to find out who killed Bobby Kennedy.

**Riley:** But this is 1968.

**Cutler:** We weren't a fact-finding body in that sense. Everybody was in a state of shock about the assassinations. We were a focus of some public attention; we got big headlines every time we had a hearing. We had televised hearings. We had the *New York Times* publishing company publish several of our volumes rather than just the GPO [Government Printing Office].

**Riley:** Did you find difficulties in navigating or negotiating disputes within the commission?

**Cutler:** Yes, especially on gun control.

**Riley:** Can you tell us a little bit about that, about who the crucial actors were and what you were facing?

**Cutler:** The crucial actors were Phil Hart, a wonderful Republican chairman of the Judiciary Committee. Roman Hruska, the Senator, was part of our group. Judge [Ernest] McFarland from Arizona, who had been a Senator and was a great personal friend of LBJ's. Most of us were gung-ho for real restraints on possession of handguns and concealed weapons, much tougher than anything like the Brady law.

Of course, we drew opposition from McFarland, from Hruska, and I think we lost four people out of the 15-person commission. I remember Hart in particular was a wonderfully decent man, saying, "If I sign this, I'll never be able to run for anything in Michigan again. But I'm going to sign it anyway, because I've decided not to run for another term." He did sign it, but we never got anything.

**Riley:** Were there any other secondary issues that generated anything like the gun control issue? Generated any controversy?

**Cutler:** We had a lot of recommendations about strengthening the police. There were a great many groups at this time who thought that violence is largely the result of repressive police who

were racially prejudiced. We took a middle ground, that there was prejudice you had to get rid of, but you had to have a tough police force and you had to spend money on both those things.

**Riley:** Now, the life of the commission extended into the Nixon administration?

**Cutler:** Yes. Johnson wanted us to finish during his term, but we said we couldn't do that and we dragged over into the Nixon administration.

**Riley:** That's included in the nine-month period that you were talking about? It bridged from—

**Cutler:** Roughly, I'd say roughly June of 1968 into February-March of 1969.

**Riley:** Which explains the memo on the wall about your appointment from Chuck Colson.

**Cutler:** Right.

**Riley:** I'll come back to that.

**Cutler:** I remember going with Milton to see Nixon to deliver the report to him and discuss with him how much, if anything, he'd favor. They were on the surface nice to us, but of course Milton had recommended to Ike, "Don't take Nixon for a second term," and Nixon knew that. They were courteous enough but we knew that absolutely and Milton knew absolutely that Nixon wasn't going to do anything about any of the recommendations because they were Milton's recommendations.

**Riley:** Sure. Sixty-eight, with the presidential election going on, was the commission a target for political potshots, either by Nixon or by George Wallace, who was making a lot of noise then?

**Cutler:** I don't think we drew any of that kind of flack.

**Riley:** Just too obscure—at least in political terms—too obscure to merit that? Or was it perceived to be balanced enough?

**Cutler:** I think it was more of a balance. People disagreed of course on remedies, but everybody deplored the violence.

**Riley:** During your period of working on this and I suppose I should ask this of the prior period, did you have much interaction with Hubert Humphrey?

**Cutler:** I knew Hubert and I supported him in '68, but he was not much involved in this at all.

**Riley:** And you probably weren't in a position to do much to support him in '68 because of your obligations to the commission.

**Cutler:** I was not active in the campaign.

**Riley:** Right. Is it your sense that had he been elected, something more might have come of the commission's work?

**Cutler:** Well, he would have endorsed a lot of these provisions. Whether he could have gotten them through Congress would be another matter entirely.

**Riley:** You don't know whether he would have had a lot of enthusiasm for investing his own political capital in getting some of this done?

**Cutler:** He would have invested some of his capital in whatever he believed in, and he'd been more or less a lapdog about Vietnam for quite a while. It wasn't until he took his own stand that he began to draw votes.

**Riley:** Nixon comes in. We talked a little bit about Richard Nixon last time. You deliver your report. I don't know whether I want to go through the Nixon administration blow-by-blow. I'm thinking more impressionistically now. Obviously, you never did any work for him or the administration.

**Cutler:** No, I may have mentioned that I was asked at one point if I'd be interested in being Nixon's counsel.

**Riley:** No.

**Cutler:** I was not asked by him but I was sounded out by some of his close friends. I said no.

**Riley:** This is presumably before you end up on enemies' list.

**Cutler:** Before I wound up on enemies' list, yes.

**Riley:** Do you remember when you found out you were on Nixon's enemies' list?

**Cutler:** I think it got published at some point. There was a John Dean memo that came out at some point during Watergate.

**Riley:** There's a story that I encountered in some of the briefing materials that Darby put together related to a marching permit, that some protesters had wanted to get a marching permit to march down Pennsylvania Avenue. And that you had been involved in trying to encourage the White House to accede to this, that they'd been opposed to this. Do you remember this story?

**Cutler:** The Nixon White House? No, I don't remember that. I remember helping some of the Yale students on how to conduct themselves in a demonstration without getting arrested.

**Riley:** Tell us about that. This was in New Haven or in Washington?

**Cutler:** In Washington, but I think this was somewhat later. It was people like Greg Craig, for example, the demonstrators.

**Morrisroe:** What did the advice include?

**Cutler:** Don't throw anything, don't go over the barricade.

**Ernst:** Would this have been after you'd been a visiting lecturer at Yale?

**Cutler:** Well, I was a visiting lecturer there several times.

**Ernst:** How did the invitation come to teach that course on the limits of regulation?

**Cutler:** Through Geoff Hazard, who had been a law school professor and then began teaching both in the law school and at this new school of public and private management.

**Ernst:** So he was at SOM [School of Management]?

**Cutler:** Yes, SOM.

**Ernst:** What did you want to do in that seminar? I mean, it comes after a period of great controversy. Now you're going to those Yale law students—Yale law students weren't picketing the firm.

**Cutler:** Some of it—when you say Yale law students picketing the firm?

**Ernst:** No, I'm just saying having seen law students have what you demonstrated by showing them the complaint, a not well grounded understanding of the regulatory process, was part of the attraction of going up to Yale and teaching that seminar to actually reach very able law students and explain the administrative process to them?

**Cutler:** Yes. I did the same thing at Cambridge with Steve Breyer. That was partly the School of Management and partly the law school also.

**Ernst:** Why was the course "The Limits of Regulation"?

**Cutler:** Because the main thesis of the course was that the government, if it regulates, will have a dead hand on the expansion of the industry. It is the essential theory of "let the market decide," not "no regulation." Everybody recognizes, even though the market could winnow out unsafe drug makers from safe ones, we're still going to insist on hands-on government safety inspection and regulation for drugs, but that much regulation is overdone. We're at the point then where we had regulations of the Food and Drug Administration about what you could call peanut butter. How much peanuts you had to have in it if it was crunchy, and how much if it were smooth. The record in the case was something like 17,000 pages and the regulatory phase within the agency took something like eleven years. It was a famous example at the time of over-regulation, or incompetent regulation.



**Ernst:** That's a branch of regulation which may have been more extreme, but the FDA has been around for a long period of time.

**Cutler:** Oh, and we need an FDA, no argument.

**Ernst:** More recent was OSHA [Occupational Health and Safety Administration], environmental regulation. The timing is very interesting about the course, because these laws are getting passed. I'm wondering if you were also trying to explain the new kind of regulation to the students.

**Cutler:** Yes. In particular, you should not rule out cost-benefit analysis. You should not establish a zero-tolerance system so that if anything in the product was carcinogenic, that you could not make that product, even when nothing had ever happened to anybody. We had something called the Delaney Amendment, if I remember, which had put that into the law. That you could not make a food or a drug that had anything in it that was cancerous. Of course, one of the most cancerous things of all is sugar. So it was sort of silly.

**Ernst:** So that's well before that executive order that introduced cost-benefit analysis. That's almost a decade earlier than that Reagan-era executive order. You're already arguing for some appreciation of costs at the birth of this kind of regulation.

**Cutler:** Right. And there's a former partner of ours named David Johnson; when he was a law student, he and I wrote an article that's in the Yale Law Journal that deals with this, and also deals with an issue that's since been pretty much resolved. That is that each agency has a specific goal to achieve and tends to act in pursuit of its goal without considering other goals. Notably, environmental regulations don't give a damn about the inflationary cost of the regulation to a very considerable extent.

While you needed single-minded agencies, you needed some coordinating body within the government that would blend the various objectives of different social, economic, tax, and other programs. That finally got adopted pretty much. The court issues were, could the President intervene or submit data, or just what could he do when one of his own agencies, single-minded agencies, was considering a subject? What could he do when it was an independent agency that he's not supposed to interfere with, et cetera? A lot of that got worked out in the Clinton days. We got a new White House agency called OIRA [Office of Information and Regulatory Affairs], which regularly filed its comments in administrative proceedings of the various agencies. Whatever they filed would be open for examination.

**Ernst:** I guess in '81 or something like that, you write an essay that appears in Tulane Law Review, which is in our briefing materials, where you defended ad hoc presidential intervention into the administrative process.

**Cutler:** You say in Tulane, I don't remember Tulane. It may be true.

**Morrisroe:** It may have been reprinted in Tulane.

**Ernst:** It could have been somewhere else as well.

**Cutler:** I remember the Yale Law Journal one.

**Ernst:** Actually I got that cite too late to look at it, but I made a note that I definitely wanted to check it. It sounded to me like it would be something that before the OIRA office was opened, this kind of intervention might go through the White House counsel—?

**Cutler:** Not the White House counsel.

**Ernst:** Who would have done it? Would it have been the Office of Legal Policy?

**Cutler:** The White House organizational structure changes with almost every administration, but it would be a group of economic advisors to the President. Not the Board of Economic Advisors, but there would be somebody in the White House charged with, say, supervising environmental matters.

**Ernst:** Okay. I was just wondering, it sounded so much like a lawyer who was able to perceive all the different trade-offs from his practice.

**Cutler:** It did turn out to be a lawyer, who was an ex-partner of ours named Sally Katzen, who is now retired.

**Ernst:** Giving it to an economist would almost seem too technocratic, there would be too many intangibles in the kind of trade-offs.

**Cutler:** It certainly wouldn't help if you were a trained economist. It wouldn't hurt to have that, but I think you're right, that the people who work on economic policy, for example, are more pragmatic politicians with an economic background than they are economists.

**Ernst:** The thing that helps me is that you had these concerns about the single-minded nature of regulation before you're in the Carter White House, so that it's not an implicit critique of the Naderites who are in the agencies during your term.

**Cutler:** That's true.

**Ernst:** You had this before any of that happened. I'm afraid I would connect those dots too quickly.

**Riley:** Were you involved at all in working for your clients during the period of the Nixon years, in either trying to stave off or shape a lot of the regulatory apparatus this created? There's sort of an explosion of regulatory bodies during the Nixon years.

**Cutler:** I don't recall opposing anything he was doing. He was actually quite liberal on domestic economic policy and even domestic social policy. EPA [Environmental Protection Agency] itself was a brainchild of the Nixon administration.

**Riley:** Exactly. When EPA was formed, were your clients asking you to keep an eye on that and to be involved in trying to give shape to the agency in any way?

**Cutler:** What I was doing at the time—it's something I could have been doing, but I must have been involved in something else.

**Riley:** I guess what I'm trying to do is get a sense about what might have been occupying your time during the Nixon years. I don't know that I've come up with anything from looking at our own prepared timeline so I'm trolling a little bit.

**Cutler:** Well in the public arena, the things that were occupying me were trying to get something done about our Violence Commission recommendations. We formed an Eisenhower Commission, a private non-profit to help advocate some of the proposals. I got involved in a change in the rule making for Democratic conventions along with my partner, Jim Campbell. That's how we ended up with [George] McGovern.

**Riley:** Tell us about that.

**Cutler:** Who actually is a very decent man, you know.

**Riley:** But you were involved in the decisions that led to changes in the '68 and '72, or was there something going on—

**Cutler:** This was mostly '72, the run-up to '72.

**Riley:** And what was your concern at the time then, in leading that effort?

**Cutler:** I wasn't leading it. Jim Campbell played a major part in it. The concern, the practical political concern, you're going to end up with a candidate. Who do you want voting for that candidate, what kind of a candidate are you going to get? If the convention has representatives of every constituent element of the Democratic Party in it, is it going to come out for what you might call a left-wing tax-and-spend candidate, or is it going to come out with a more centrist candidate? Certainly what we did in those rules left it wide open for a tax-and-spend candidate.

**Riley:** But that wasn't your intention? I'm posing that as a question.

**Cutler:** When I said I got involved in the rules, I didn't mean I was advocating them, the changes still got made. I was trying to moderate those changes so they wouldn't be too bad.

**Riley:** I suppose that's where my question is, because my conventional sense about the motive force behind those changes in '68 and '72, my understanding is that they were largely driven by people who were disgruntled with the results of the '68 campaign, that the party had ended up with somebody like Humphrey because of the rule structures. That there wasn't enough of an opportunity for new blood to come in and to be a bit more popular in terms of what happened to the party.

**Cutler:** When you get to changes in rules for a party convention, everybody involved in it has a different motive. It's primarily to get more influence for yourself or people like you. Of course, it's all become vastly unimportant at the moment because we haven't had a convention that decided anything for some time. The primaries settle everything.

**Riley:** But that was part of what these changes were, right? It was a move to reinforce the influence of primaries at the expense of old-line decision-makers.

**Cutler:** True enough. But it wasn't so much the day to hold the primary or things like that, it was much, much more who'd pick the people to run in the primary.

**Riley:** Right. And your involvement was driven because of your interest in Democratic politics?

**Cutler:** Pretty much, yes. This was not a major thing I took part in, but it's the only political thing I can remember for that period.

**Riley:** You were, at one point, based on some of the things that I read, there was a man named Richard Moore that you had—

**Cutler:** Yes. He was a classmate of mine.

**Riley:** Tell us who he was and what your involvement with him was.

**Cutler:** Richard Moore was a classmate of mine at Yale, college and law school. His father had been chairman of the New York State Labor Relations Board. He was a [Nelson] Rockefeller New Yorker, Catholic Republican. He went out to California, worked first for ABC, but he became the head of an independent television station called KTTV, which had been owned by the *LA Times*.

During that he became a friend of Nixon's and a political advisor to Nixon when Nixon was running, I think, for Governor of California. When Nixon got elected President, he brought Moore back to the White House, first to work for John Mitchell in the Justice Department, then to come and be what might amount to communications advisor. He wasn't as important to Nixon, say, as Karl Rove is to [George W.] Bush, but he was right in the middle of communications tactics.

When Watergate came along, he was one of the people who were consulted regularly about it by [H. R.] Haldeman and [John] Ehrlichman and the President and John Dean. When efforts were made to raise money to pay the Cubans and the lawyers for the Cubans, he got involved in that. In the Watergate investigations, he came very close to being indicted. When he had to testify in the Watergate hearings, I went up with him just to sit there and show the flag, more or less.

**Riley:** You helped him prepare his testimony?

**Cutler:** I helped him prepare. He had a separate lawyer, someone I helped find for him. In the end, I think as much as anything else, because it was just before or just after the [Alexander]

Butterworth testimony had come and we learned that there were tapes, Moore became a minor figure at that point and never was indicted. He later became ambassador to Ireland, which is a job his brother had also held.

**Riley:** You also had represented some companies that had been shaken down by the Nixon administration for campaign contributions.

**Cutler:** Right.

**Riley:** Can you tell us how you helped your clients navigate through some very difficult times.

**Cutler:** Yes, one was the head of American Airlines. George Spater had received a check from C.R. Smith, the long-time head of American Airlines, a big Democrat, Johnson's Secretary of Commerce. The check I think was \$75,000, with Smith saying, "You're probably going to need this in the next campaign." Smith had intended that the money be used to support Congressmen, probably Democratic Congressmen in the next campaign. Then the Nixon people had invented CREEP, The Committee to Re-elect the President, and they tried to shake down every CEO in the country for \$100,000.

And Spater, before he came to me, had taken the \$75,000 and used it as part of American Airlines' \$100,000 contribution. All of these contributions were illegal under the new campaign financing act and the Republicans had just "misunderstood" when the act took effect. So we brought Spater in to see Archie Cox, the special prosecutor. He was the first CEO to come in and say, "I was asked to give this money." As a result, he was never charged with anything, although I think he lost his job as head of American Airlines as a result.

There's a footnote to that, if you want. Even though he got a free pass from Cox, Senator Sam Ervin, North Carolina, his committee was investigating all of this. His lawyer, Jim Hamilton, wanted to put Spater on the stand. I persuaded Hamilton to have the two of us go in and see the Senator. I explained to Sam that this money had really come from C.R. I didn't name C.R., but from a friend of American Airlines who had a former connection, was a big Democrat, had never intended that the money go to CREEP. Ervin said, "Well, if you tell me that it was never intended that it be for CREEP, I don't think we need to know the name of this contributor." Then he paused and he said, "You know, I wish I had a friend like that." He was a marvelous old fellow.

The other case is Edgar Kaiser. Edgar had been for Humphrey in the '68 election. He was asked, again, as a CEO of a major company, he was asked by the Secretary of Commerce at the time for \$100,000, Maurice Stans. Edgar consulted me. We decided he shouldn't do it. He didn't want to do it anyway. Edgar called Stans and said, "We don't think we should do this, because we have two major matters pending in Washington right now." One was some SEC technical thing and the other was a major broadcast issue before the FCC. "We think if we give the money and then we prevail in these matters, that it's going to look very bad for you and for us." Maurice said, "You don't have to worry about that. Tell me what the matters are and maybe I can be helpful." That's what the Nixon crowd did in those days.

**Riley:** One of the defenses that the Nixon apologists have often used historically is that, “We weren’t really doing anything different than had gone before, we just weren’t particularly good at it and got caught.”

**Cutler:** I think that’s probably true. Certainly the Democrats were raising money hand over fist, any way they could.

**Riley:** Had your clients been approached by Democratic fundraisers in the past to pony up?

**Cutler:** Sure.

**Riley:** That brings us back around to the business about campaign finance reform. Public financing, you don’t have to worry about these kinds of pressures on your clients?

**Cutler:** But if you get a Federal Election Commission that changes the rules and says that none of the ceilings apply to so-called soft money that goes to a state committee, you just disable the whole system. That’s really where we went wrong.

**Riley:** Were you at all involved in the creation of the public financing mechanisms of the post-Watergate era?

**Cutler:** I suppose I was. Well, I was when I went back to work for Clinton, for example. We had a campaign finance reform that never went anywhere because it got torpedoed by Tom Foley, the Speaker, and by the chairman of the DNC [Democratic National Committee]. Because even though the Republicans were out-raising soft money as compared to the Democrats, the Democrats were taking in more than they ever had before.

**Riley:** My question was more in relation to the ’74 reforms. Were you brought in and consulted?

**Cutler:** Well, I got into the lawsuit after the reforms were adopted, but I was not involved in the drafting of the bill.

**Riley:** I guess I’m asking general reflections about the Nixon administration. Were there people you knew who worked for Nixon for whom you had a very high regard?

**Cutler:** Kissinger. For a while I liked Ehrlichman, until I learned more about him. He was a good White House counsel at the beginning, I thought. I think there were several of the cabinet people I liked. I didn’t know them that well.

**Riley:** Is Daniel Patrick Moynihan somebody you had dealings with?

**Cutler:** Yes.

**Riley:** What were your perceptions of Moynihan?

**Cutler:** He was one of a kind, jolly Irishman, wonderfully thoughtful, entertaining, and I'd say a middle-of-the-road reformer. Of course he's another who in the Nixon administration was one of their better choices.

**Ernst:** I heard, below the level of principals in the agencies and in the departments, there was a great deal of recruitment from Washington firms. That wouldn't have been your firm, but I'm told that actually one of the things that was distinctive about the Nixon administration versus some subsequent Republican ones was that Nixon actually wanted to have smart lawyers in some of his second- or third-tier level.

**Cutler:** That may be so. I had such strong views about Nixon as a person, I never got to that level of giving him credit for much of anything. [laughter]

**Ernst:** Fine with me. What were any changes or developments in the law firm during the Nixon years? One thing that occurs to me, I'm not sure if you had woman lawyers in the firms in the beginning, but they certainly become more numerous after 1970. I wonder if that was controversial at all.

**Cutler:** No.

**Ernst:** Do you remember who the first woman hired in the firm was?

**Cutler:** Here?

**Ernst:** Yes.

**Cutler:** Someone who has now left. Well, we had several women hired as associates who never became partners. Now we have a lot who became partners. The first who became a partner was Deanne Siemer, who then married another of our partners and they left the firm.

**Ernst:** But you don't recall it as being a controversial issue.

**Cutler:** Not at all. What did worry us of course was we knew, we now know, and we suspected it then, that when Nixon won the second term, he was going to settle a lot of scores, especially with lawyers, Democratic lawyers, whom he thought had hurt him in one way or another. We know in the Haldeman diaries, he says, "We're going to change the rules in the second term and make clear to these Democratic lawyers that they can't get anything from the Nixon administration. We're going to tell the companies if they want anything, they have to hire Republican lawyers." We were worried that might happen. In the end, it never did happen. Somehow or other the message, it's just one of those things that's on the tapes that maybe nobody did anything about.

**Riley:** So you didn't feel any pressure on your client base at the time? You didn't have people coming to you and saying, "Look, I'm getting pressured to—"

**Cutler:** No.

**Riley:** Now, you had indicated in our last conversation that you had taken a part at one point, because Joe Kraft's phones had been tapped, right?

**Cutler:** Yes.

**Riley:** Were there any other places where your career intersects with Nixon and Watergate in that fashion?

**Cutler:** There's Dick Moore, which we've been through. We consulted with a number of the people whose phones had been tapped and who were trying to decide whether to bring lawsuits or not. The journalists were all up in arms because the Nixon people were going to the phone companies and getting at least the lists of who had called whom, even though they couldn't, legally at least, get access to what was said. The so-called pen registers.

**Riley:** Right.

**Cutler:** We did have those experiences.

**Riley:** In 1973 you become a member of the Trilateral Commission.

**Cutler:** Yes.

**Riley:** How did that come about? You were invited?

**Cutler:** The Trilateral Commission was founded really to restore dialogue between Japanese businessmen, the government, Europeans, and Americans. It was when we'd given the cold shoulder to Japan. I think Nixon devalued and was doing it because Japan was piling up too many dollars. Gerard Smith, who had been the Nixon arms negotiator—by the way, he's a very good example of an able person working under Nixon—had joined our firm as counsel. He and [Zbigniew] Brzezinski were the real founders of the Trilateral Commission. They invited me to be one of the original founders, which I did.

As a result I was at a meeting—we met about every nine months—I was at a meeting in Tokyo where I first met Jimmy Carter. We used to sit in meetings where we sat alphabetically, so Carter and Cutler are very close. That's how I got to know him.

**Riley:** Did you sense that he was somebody who had ambitions outside of Georgia when you first met him?

**Cutler:** Absolutely, he was already running. If he could find half a dozen Americans to go talk to, even in Tokyo, he would do it.

**Riley:** His membership there was a way of establishing some heft to a résumé that at that point was pretty much regionally based?



**Cutler:** It was a way of developing experience in foreign affairs. He'd been Governor of Georgia and he'd been a submarine officer, but with no public reputation in government affairs at all.

**Riley:** I suppose I should have asked you, since we talked about this and I actually skipped over this, and this was the 1972 election. You had been involved in the rules changes, but were you involved at all in the 1972 campaign?

**Cutler:** Yes, but in an odd way. I was not a McGovern fan, though I've come to admire him in many ways too. Remember Senator [Thomas] Eagleton had been picked to be the vice presidential candidate and then had his psychiatric troubles disclosed. Eventually he had to drop out, although McGovern's first comment was, "I'm behind you one thousand percent." Sargent Shriver got picked to be the Vice President and he's an old friend. He asked me to be his campaign finance director and I did that. I still remember that we raised \$300,000; we now raise \$50 million. We were very pleased with ourselves, this was a lot of money for a vice presidential candidate to raise just for his part of the campaign.

So through that I met a lot of the McGovern people, including Miles Rubin, who is a very good friend.

**Riley:** Who had you supported among the group of Democratic hopefuls in '72? Who had you hoped to see get the nomination?

**Cutler:** I'm trying to remember. That was not the [Henry] Scoop Jackson year, was it? I don't think so. Jackson was with Carter in '76.

**Riley:** I think so, but I can't remember. Who else would have been in the group in '72? I don't remember. Did you travel with the candidate, with Shriver?

**Cutler:** No.

**Riley:** You were basically just raising money?

**Cutler:** Yes.

**Riley:** Where were your best targets of opportunity for raising money for a McGovern campaign in '72?

**Cutler:** Well, I was raising Shriver money, mostly from Yale graduates.

**Riley:** Did your client base get at all nervous about your connections with George McGovern?

**Cutler:** I don't think so. While McGovern was thought of as a tax-and-spend Democrat, people didn't like Nixon that much either, as you remember.

**Riley:** That's true. Obviously you wouldn't have had any involvement in the transition from Nixon to [Gerald] Ford. I don't know whether you have any stories about that period.

**Cutler:** Only that the pardon, which I criticized at the time, I think was probably the right thing for Ford to do.

**Riley:** And you've gotten to know Ford subsequent to that time.

**Cutler:** Well, I always knew Ford because when I was at the Yale Law School, Ford was also. He was actually the coach of the freshman football team. Then, that's another case we haven't really talked about, but that's *Powell v. McCormack*, which is when Adam Clayton Powell was not seated. We were counsel for the House and we would go up and meet day after day with the Speaker, who was John McCormack in those days, and meet with the leadership, including Manny Celler, Gerald Ford and a number of others. I think I described this somewhere, smoking those dreadful fifteen-cent cigars that McCormack used to hand out.

**Riley:** That case went to the Supreme Court.

**Cutler:** That's right.

**Riley:** Did you argue that case before the Supreme Court?

**Cutler:** No, it was argued by Bruce Bromley of Cravath. But this is another case that Tom Barr and I worked on together.

**Riley:** Is that right? So you knew Ford. Did you have a fairly high comfort level with Ford becoming President? Was there a sense of relief?

**Cutler:** Yes, yes.

**Riley:** Did you have any involvement whatsoever with anything that Ford was doing as President?

**Cutler:** Not really. This would be '75, '76.

**Riley:** I don't show anything on the timeline. As the '76 campaign season rolls around, did you make an early commitment to Jimmy Carter?

**Cutler:** Yes. I was not really active in the campaign. I was a contributor but I was not active. But he was certainly my pick among the candidates.

**Riley:** Were you involved in trying to help recruit additional people to his standard?

**Cutler:** I did not join the election team, but I guess the answer would be yes.

**Riley:** What was it that appealed to you about Carter? Even as close to the election as January that year, very few people knew Carter. I would have thought he would have been very much a dark horse in that election, so I wouldn't anticipate that electability would have been the major

reason somebody would have supported Jimmy Carter in an early stage. So I guess I'm asking, what was it that appealed to you that Carter was a viable candidate?

**Cutler:** Very bright, very plain spoken, military experience. He was one of the first of the centrist Democrats. I never expected to have a position in the Carter administration, although many of my friends did.

**Riley:** Let me suggest this, Mr. Cutler. Maybe the thing to do at this point is to go ahead and close the session today. That leaves us with one more scheduled session. We basically could come back at that point and deal with any unanswered questions from the prior interviews. This will give us an opportunity to review the transcripts from your Carter and from the Clinton interview and to try to deal with the various commissions and so forth.

Dan, we haven't talked about your availability and so forth, but obviously we want to go ahead and continue tracking through developments in the law firm and the legal career. Does that make sense to you?

**Ernst:** That makes sense to me.

**Riley:** Are you amenable to going ahead and breaking now and picking up with that?

**Cutler:** One other thing you may want to go through is the *Rainbow Warrior* case. Chronologically, it's back in the '80s.

**Riley:** You were also expecting a transcript from the saboteurs.

**Cutler:** Which I've now received, but I haven't been over it yet.

**Riley:** Our last scheduled session together is still over a month away, so if you have a chance to look at that and think it's something worth our attention, let me know. We could distribute copies of it as preparation. The other thing that I might do is touch base with you at some point before that final interview on this timeline, just to see if there's anything. We'll have a little bit more supplementary information, but this second book includes just about everything that we would cover.

**Cutler:** Is this the same book I have?

**Riley:** Yes it is, which basically takes you to 1990. Of course, we've got the Clinton interview already on record. Has that been transcribed, I'm trying to remember.

**Morrisroe:** It's in the process.

**Riley:** I don't know that there's anything else about Clinton that we'll want to talk about, because we've already covered that material. If I can get the transcript back in time, I may have a quick look at it to see if there were any holes there and we can come back and talk about some of that.

**Cutler:** At some point we ought to do something about his last commission.

**Riley:** Absolutely.

**Morrisroe:** There are three or four commissions in the '90s that I'm gathering information on now for the final book.

**Cutler:** I worked on judicial pay, government-wide pay, and ethics in the Bush administration.

**Morrisroe:** Right. I have the commission reports for all three.

**Riley:** All of this, the [Robert] Bork nomination, those are the kinds of things that I think we can cover fairly well in a day's time. We're pretty well poised, given the fact that we've got those extensive interviews on Carter and Clinton, to fill in the blank spots I think in a single day.

You might think about whether we've left any glaring omissions in what we covered thus far or whether there are elements that we might not think to touch on, especially related to the law practice, because those aren't areas that our sources would tell us much about. If you could give me some heads-up, maybe we'll talk over the phone a week or two out about the next interview, and that way I can apprise my colleagues about what we should expect to do. But I think we're in very good shape in terms of our time commitment.

**Cutler:** Good.

**Riley:** Okay.