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LLOYD CUTLER BIOGRAPHICAL ORAL HISTORY PROJECT

FINAL EDITED TRANSCRIPT

INTERVIEW WITH LLOYD CUTLER

May 29, 2003
Washington, D.C.

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Riley: This is the Lloyd Cutler biographical oral history interview. We're delighted, having imposed on you for your recollections about your time in the [Jimmy] Carter and [William J.] Clinton Presidencies, to have the occasion to come back and talk with you about the entirety of your career, public and private. The way that we typically begin these things is an administrative matter of getting a voice identification, so if you will allow us to do that, I'm Russell Riley, a research professor at the Miller Center at the University of Virginia.

Morrisroe: Darby Morrisroe, the chief research assistant for the Oral History Program.

Ernst: Dan Ernst, I'm a professor of law at Georgetown.

Naftali: I'm Tim Naftali, director of the Presidential Recordings Project at the Miller Center.

Cutler: And Lloyd Cutler, the subject or the victim.

Riley: Wonderful. Mr. Cutler, you were born in New York?

Cutler: I was born in New York City, yes.

Riley: Were your family longtime New Yorkers?

Cutler: New York area. My grandparents on both sides came from central Europe in the 1880s and 1890s, so I'm third generation.

Riley: And they settled into the New York City area almost immediately?

Cutler: Yes. My paternal grandfather actually settled first in Cohoes, New York, upstate New York on the Erie Canal, but quickly came to New York City.

Riley: Was he also trained in the law?

Cutler: My father was, but not my grandfather.

Riley: Do you know what your grandfather did for a living?

Cutler: What he did for a living over here was real estate. Over there, he grew up in the so-called Pale, in the area that's been owned back and forth by Poland, by Germany and by Russia.

Riley: They moved to New York City after your father had been born, or before your father was born?

Cutler: Before my father was born.

Riley: Your father was trained in the law. Did he go to law school or did he read himself?

Cutler: He went to law school. In those days, it wasn't necessary to have a college degree to get into law school. So he went directly to law school, the so-called Brooklyn Law School, which is a branch of St. Lawrence University, which is an upstate university. It was a non-residential law school.

Riley: Did he have brothers and sisters who were also interested in the law?

Cutler: He had a brother and two sisters, one of whom was interested. His brother was interested in the law but did not have a distinguished practice of his own.

Riley: Your father's law practice, in which areas did he practice?

Cutler: He was a trial lawyer, wrote some books about evidence. Was a law partner of Fiorello LaGuardia, a name you will recognize.

Riley: Sure.

Cutler: I still remember going down—in those days lawyers worked on Saturdays—I remember going down with my father to their law office, and Fiorello would be back from Congress, holding court. He was not yet the mayor; he was a congressman at that point. Really one of the most stimulating people I've ever listened to.

Riley: Do you have any specific recollections about LaGuardia?

Cutler: A number. He was, as you know, a so-called fusion candidate. LaGuardia's father was a bugler in the U.S. Army and LaGuardia himself grew up on military bases in the West. He would, I remember, take the House floor, brandishing a pork chop in his hand, which he would use to argue some issue about the Depression.

Riley: Was this a cooked pork chop or a raw pork chop? [laughter]

Cutler: Later on I came to know him much better, we'll get to it I guess. He became the head of the national Office of Civil Defense before Pearl Harbor, actually just before Pearl Harbor. When Pearl Harbor came along, Fiorello had issued instructions, economy instructions, that nobody in the agency could travel without his permission. When Pearl Harbor came, Fiorello immediately

left for the West Coast. When he sent for staff people to join him, they could not travel because he wasn't in Washington to sign the travel vouchers.

Have you ever seen him, or a film of him? He was a small man with a very high voice and enormous energy. He would just sort of prance around the stage. He was a little bit like Nathan Lane. Right after Pearl Harbor, he would jump up and down and say, "Don't get excited! Don't get excited!" He was the most excited—and exciting—person of all.

Naftali: Didn't he have legions of young fans because he read the funny papers?

Cutler: That's when he was mayor, before World War II. He became mayor, the so-called "fusion mayor," I think, in the late '30s or early '40s.

Ernst: Do you recall anything about your father's client base?

Cutler: Not really. They were a small firm, it was called Foster, LaGuardia and Cutler, and they were mainly a litigating firm. My father did do a lot of lecturing about cross-examination, as I said. But it was not a firm with major corporate clients.

Ernst: How did he come to write evidence treatises?

Cutler: Because of his trial experience and I suppose because of the things you do to make your name known as a young lawyer.

Riley: There was a third partner in the firm?

Cutler: A man named Benjamin Foster, yes.

Riley: And do you have recollections about Mr. Foster?

Cutler: I was ten or 11 by that time. He was tall, austere, looked like a schoolteacher. I have no other recollections of that.

Riley: I seem to recall a story that you were born not where your home was, is that correct?

Cutler: Well, we lived at that time in Brooklyn and my mother's sister, my aunt, lived in the Bronx. We were visiting her in the Bronx when I came along a day or two prematurely, but the actual birthing occurred in my aunt's apartment in the Bronx. So if I ever ran for office in New York, I guess I could use that.

Riley: What are your earliest recollections about growing up in New York, Mr. Cutler?

Cutler: My grandfather—in those days, this was pre-Depression—was doing quite well in real estate. We lived in a large house in sort of a gated community called Sea Gate, which was at the end of Coney Island, right where the narrows are and where you could see all these huge ships come in and out. My earliest recollections were of being on that beach and watching these huge

ships. In those days I could identify every ship, or almost every ship, the way we learned in World War II to identify enemy aircraft.

Riley: Did you have an early eagerness to get on those ships and go places?

Cutler: I think my main ambition at that point was to be a trolley car motorman. There was a trolley that ran from the end of the subway line at Coney Island to Sea Gate, this gated community at the end, and riding that was a great thrill. Every now and then the conductor would let you take the controls. But from a very early age I wanted to go to law school.

Riley: To be like your father or was there a different kind of law—?

Cutler: Just law looked exciting.

Riley: Do you remember your early education? Were there teachers you recall who were particularly influential?

Cutler: Yes. I went to the New York public schools. One of them, the high school, was DeWitt Clinton. I went first to the annex on 117th Street in the middle of what is known as Harlem. Then the main school moved all the way up to the end of the subway line in the Bronx and I went there. But I had an English teacher named Miss Frank. If you asked me her first name I couldn't tell you now, to us she was always Miss Frank. She was the kind of role model that teachers often are. Of course, we had much better teachers in those days because there was really nothing else for an educated woman to do; you were a secretary or a teacher. One reason we don't have good teachers today is that there are so many better opportunities now for women.

Ernst: So she spotted you? I mean you went through high school pretty fast.

Cutler: I graduated at an early age. Most of that was what were called rapid advanced classes in K through 8, but I had a full four years of high school.

Riley: Miss Frank was a high school teacher or before then?

Cutler: High school.

Riley: Do you have any recollections of your schooling before high school?

Cutler: I remember the schools I was in. Like everybody else, I've got photos of school plays. I was Christopher Columbus in some play and I have a picture of that, but I can't remember what the play was.

Riley: We might like to see that at some point, you know. What did you do for fun when you were a child?

Cutler: Played on the beach, played tennis. At this house we had a grass tennis court where you had to put up the net and line and everything else. Then, because I was so young when I got out

of high school—I was 14 then—and because we were on the brink of the Depression—it hadn't happened yet, the Wall Street collapse hadn't happened yet—I went with my mother and my then five-year-old sister to Europe. We were going to enter an international school in Geneva. Then, bang came the Depression, the stock market crash. I came home and it was too late to apply to most of the colleges, so I spent that year at New York University and transferred to Yale after my first year.

Riley: You went straight to Geneva or was there a kind of a grand tour as a part of the—?

Cutler: Kind of a grand tour. I remember being in Berlin, Paris, Italy.

Riley: Took a steamer over?

Cutler: Took the *Rotterdam* over, if I remember correctly. Then spent some time at a hotel in Montreux, on the other end of Lake Geneva from the city itself.

Riley: Was that the first time that you had gone overseas?

Cutler: Yes, when I was 14, yes.

Riley: You were in Geneva for how long?

Cutler: I think until October.

Riley: So just a couple of months then?

Cutler: A long summer.

Riley: A long summer, I see. Did you meet anyone over there that you stayed in touch with?

Cutler: Yes, contemporaries of mine, children of friends of my mother, friends we made over there.

Riley: Were there a lot of Americans there or were these mostly Europeans?

Cutler: No, these were Americans.

Riley: So you came back and then spent a year at New York University. Was there just a kind of general curriculum at that point?

Cutler: I was supposed to be such a star student; I still remember I got a C in physics, my only C.

Riley: Did you steer away from the natural sciences thereafter?

Cutler: I never took anything else.

Ernst: Was the family expectation that you wouldn't go to a New York school?

Cutler: That I would not go?

Ernst: That you would go to maybe Columbia, but you would go to—

Cutler: No, it was pretty well left up to me. In those days, all you needed, even to get into Yale, was a high school diploma and your father's checkbook. If you were a poor kid, there were very few so-called bursary or other jobs for you unless you were a star athlete.

Ernst: And your family's wealth held up well enough in the Depression, so in other words—

Cutler: Yes. So I never worked while I was in college.

Naftali: When you were in Europe in 1929, did you have any relatives in Europe or had the family all immigrated here?

Cutler: There were no relatives still there that I knew, and we did not meet any while I was in Europe. We used to do some work much later for HAPAG-Lloyd, the steamship line, which used to be called North German Lloyd. I read someplace that in the period from 1880 to World War I, they moved 10 million people from Eastern Europe to the United States. It was an enormous exodus from Europe to go to this wonderful new country.

Riley: Were there family friends that you recall, who basically had replicated the same pattern as your family?

Cutler: Lots of them.

Riley: Any in particular that you recall, Mr. Cutler?

Cutler: Well, we've got a large extended family. When I achieved a certain notoriety later on, I'd keep getting letters saying, "I think I'm related to you," et cetera. In recent years, we tried our best to compile a family history, but got somewhat delayed because my cousin who was doing the main burden of the writing died.

Naftali: The name wasn't always Cutler?

Cutler: The name was any spelling variant of Koslow. But when my grandfather got to Ellis Island, he was advised to take an American name and the Ellis Island officials suggested Cutler.

Naftali: Where did the name Lloyd come from?

Cutler: My mother, who admired David Lloyd George. I was born in 1917 when he was Prime Minister.

Riley: You mentioned a five-year-old sister. Do you have siblings, or did you?

Cutler: She's my only sibling, yes. She's been a major advertising mogul over the years, now semi-retired.

Riley: Also a Cutler?

Cutler: Yes. She married but her professional name was Cutler.

Naftali: Let me ask you about your mother. Where was she born? Also New York?

Cutler: She was born in New York. Her part of the family came from northeast Poland or northwest Russia, whichever you want to call it.

Naftali: How old was she when she married your father?

Cutler: She was a grammar school, public school teacher when she married my father.

Naftali: Had she gone to a woman's college?

Cutler: She went to Hunter College, yes.

Riley: She continued to teach as you were growing up?

Cutler: No, my father was doing pretty well in the law practice and she just became a mother.

Riley: You said that physics was not your favorite subject as you were coming up through school. Did you have a favorite subject?

Cutler: Going through high school and college, history, economics, literature.

Naftali: Let's talk about your history professors at Yale. Do you remember any of them? Who'd you take?

Cutler: I remember best, actually, my English professors, who were John Burdan, he's an expert on [Alexander] Pope. William Lyon Phelps, who you wouldn't know of, and John Gee, his specialty was [Joseph] Conrad. We had a famous Yale course in those days, called "Daily Themes," and the three of them taught it together. You had to write a page or two; it could be a little essay, it could be a memory, it could be "What I Did Last Summer." Then it would be read out loud by the professor and critiqued by the class without identifying the author. It was a very rigorous kind of class, and of course not done by a teaching assistant but by really qualified professors of literature.

Riley: How large a class was this, do you recall?

Cutler: Daily Themes would have been 40-50 people, but there were several sections of it.

Naftali: Did Yale have the history, arts, and letters, HAL major then?

Cutler: I don't think so. This was before a lot of those developments, like American Studies. This is the Yale class of 1936.

Naftali: Did you take Wallace Notestein? Did you take a class from him?

Cutler: I remember him, but I did not take a class from him. We had a class in international relations with a professor named Nicholas Spykman, a very authoritative European-style professor. There was a custom that if the professor did not show up within ten minutes from the starting time of the class, you could leave. One day Spykman was late. By a quarter after or so, the first brave student stood up to walk out of the room. In came Spykman at that point, wearing his Homburg, his leather gloves and a very fancy overcoat. He just stared down these students who had dared to walk out, and they came back in. I still remember him peeling off his gloves, finger by finger, looking scornfully at the class.

Naftali: When you arrived at Yale, they were building the residential colleges.

Cutler: Well, that was pretty much a continuous process. The college plan had started and I was assigned to Saybrook, which is part of the Harkness Memorial Triangle, and they've been building colleges ever since. This was one of the old imitation gothic style colleges.

Naftali: Do you remember who the master of Saybrook was when you got there?

Cutler: Elliot, Elliot Dunlap Smith.

Naftali: Did you join any clubs at Yale?

Cutler: I did not join any of the senior societies. I was not invited to do that.

Naftali: I mean the PU [Yale Political Union] actually, were you in the PU?

Cutler: I was in the PU, yes.

Naftali: The PU was formed in '34.

Cutler: It was just beginning in those days. There was an Elizabethan Club. I don't think I was a member of that, but I went to several of the Shakespeare meetings, et cetera.

Naftali: Do you recall when FDR [Franklin Delano Roosevelt] was given an honorary degree in 1934? You graduated in '36, but were you on campus when FDR came to Yale?

Cutler: I would imagine not, because usually the commencement is a week or two after the school term ends. I do remember that when John F. Kennedy got a degree and he made this

famous sentence that he had the best of both worlds, a Harvard education and a Yale degree. But I was not personally present.

Riley: You had roommates when you were there.

Cutler: Yes.

Riley: Do you remember your roommates?

Cutler: I remember them very well. One was Daniel McNamee, who, after going to Oxford from Yale, came back to go to the Yale law school while I was still at the law school. We roomed together again at that time. My other roommate was a man named Bob Luby, who was a football player from Meriden, Connecticut, and he's still alive.

Riley: These were when you were in law school?

Cutler: They were my college roommates, my three years at Yale.

Naftali: What was your major ultimately at Yale?

Cutler: My major was history and economics.

Naftali: Had they started the senior essay requirement by then? Did you have to write a senior essay?

Cutler: No.

Naftali: Did you take a class from Sherman Kent?

Cutler: I knew Sherman Kent later and I was aware of him on the campus in those days, but no, I didn't. I was very active in the intelligence field in the war, that's when I knew Sherman.

Riley: We'll get back to that.

Naftali: Did you take a class from Norman Pearson, Norman Holmes Pearson, by any chance?

Cutler: No, but I recognize the name. The summer place we have in Wainscott, near East Hampton, is an area where he has a summer place, or did, as well.

Naftali: Did you do any debating at Yale?

Cutler: Not as an undergraduate. In law school we had a moot court competition, the only moot court I know between the Harvard Law School and the Yale Law School, and I argued that case. I can still remember it.

Riley: Tell us about it.

Cutler: It's odd how your memory is. You can remember lectures you had in law school, professors you had in law school, cases that you analyzed in law school, and you don't remember the name of somebody you met the day before yesterday.

Riley: We'll get to the day before yesterday in a couple of weeks, but we're much more interested in the early part. Tell us a bit about the moot court. I know you have some other things I'd like to ask about the undergraduate, but since we're on to this.

Cutler: It was a case called *Goodbody v. Margiotti*; Charles J. Margiotti was the Attorney General of Pennsylvania. But the other details of the case itself, what the issue was, I couldn't recall, except that we won.

Riley: Let me ask you a question then. Were there a lot of fairly young undergraduates coming through Yale at the same time you were coming through?

Cutler: A few. Robert Rosenbaum, who later became the dean of the medical school. Walter Rostow was a classmate of mine, just months older than me, I think.

Riley: Did you feel any discomfort whatsoever at being a fairly young person around an older group of people coming through?

Cutler: You never know. I had a very good time, but if I'd been a year older or two years older I probably would have been more active in campus activities of one sort or another.

Riley: Sure. Were you a tennis player while you were there? Did you continue with that?

Cutler: Yes, I was not on the tennis team, but I was a tennis player. I played college football.

Riley: Did you?

Cutler: When I say college, I mean the Yale undergraduate colleges, the houses as you would say at Harvard.

Riley: Not the varsity?

Cutler: Not the Yale team, no.

Riley: Intercollegiate.

Cutler: My roommate Bob Luby played, he was on the varsity football team.

Riley: What kinds of extracurricular activities were you involved in as an undergraduate?

Cutler: Writing, competing to be a journalist on the *Yale Daily News*. We played a lot of poker. We saw a lot of movies, a lot of B movies.

Riley: Were you a good poker player, Mr. Cutler?

Cutler: I *think* I was. That's about the only way I could say it.

Riley: Did your bankbook reflect that? Usually if one is measuring one's ability as a poker player, you reconcile your wins and losses.

Cutler: I've been reading this book, the one that's been written about Texas hold 'em, this game that's played in the world championship of poker every year out in Las Vegas. I had just spoken at the funeral of a friend, we were law clerks together for judges, so we had played a lot of poker. He once had a draw poker hand that had a 99.9 percent chance of winning against anything. It was a full house of aces and kings and before the draw I had four little hearts. I stayed in the game and I drew a fifth heart and I had a low straight flush, which beat his aces and kings full house. That's my only real poker triumph.

Riley: But it's a great story.

Cutler: Now we play these silly high-low seven card games like baseball, where you can only raise three times.

Riley: Do you still play poker, Mr. Cutler?

Cutler: Occasionally.

Naftali: Most Yalies were Republican in that period.

Cutler: Not necessarily, because FDR was very popular. A lot of people who became Republican later were FDR people in the Depression. When you had a choice between [Herbert] Hoover and FDR, it wasn't too likely you'd be voting for Hoover. But most post-war Yalies voted Republican, I would guess.

Naftali: Later, you mean?

Cutler: Later, through the '50s and '60s.

Naftali: What were the kinds of debates on campus, political debates on campus when you were there?

Cutler: The big issue, of course, was intervening in the war. Was it a European quarrel we could and should stay out of, or did it have worldwide implications that justified joining the Allies against Hitler and Stalin? I was very much a pro-interventionist. Maybe being Jewish, that's natural. I remember being recruited on the campus by the National Students Union and a couple of other highly left-wing organizations, mainly because I was so interested in the war. I never went to any of their meetings after the first meeting. My whole life might have been different if I'd gone to those meetings. I might have become a subject of the [Joseph] McCarthy manhunt.

Naftali: How were you recruited?

Cutler: Just another student on campus, "Come to a meeting tonight."

Ernst: Was politics a big part of your family's life growing up? Was your father active in party politics?

Cutler: No. Of course, he was a backer of LaGuardia. But he never ran for anything that I can recall or took part in a campaign.

Ernst: But he wasn't getting receiverships or trusteeships?

Cutler: I don't know. LaGuardia, when he was in the law firm, was a member of Congress rather than a city official, so it would be unlikely that he had business to throw to his former partners.

Ernst: But you would never have gone to a Democratic club in the city as a kid growing up?

Cutler: As a kid growing up, no.

Naftali: As a Jewish person at Yale, did you ever feel as an outsider? Later on there was talk of there having been a quota for Jews at Yale in the 1930s. Did you ever feel like an outsider there?

Cutler: No. There was certainly a much higher level of anti-Semitism. I don't mean Nazi style, but just a general feeling about the eminence of Jews all over America. To some extent, this was also true on the Yale campus. There probably was a conscious quota system at some point, but I was never conscious of it and I don't think it existed then, because as I said, getting in was very easy. It may well be that at some point the lead universities *had* a sort of negative quota, as they supposedly had for Asians at many of the West Coast colleges. Of course, now there are laws about that that make it much harder to consciously discriminate. Incidentally, our firm is arguing the Michigan cases right now.

Naftali: How did anti-Semitism manifest itself on the Yale campus, as you recall at that time?

Cutler: Well, in the fraternities and the senior societies, there were a far lower percentage of Jews than the percentage of Jewish students on the campus. So I'd say that was the principal thing.

Riley: There was not a sense of discomfort for you at any point?

Cutler: Not seriously. By the time I went, I would say of our class, which was roughly 900-1,000 people, at least 10 percent, maybe 20 percent were Jewish.

Naftali: These fellows were in the class of '35, so you might not have known them, but I'm wondering if you ever met either Walter Pforzheimer—

Cutler: Yes.

Naftali: Remember him?

Cutler: Yes, quite well. I knew him at Yale and then I knew him here, because he was very active in the CIA and was, as you know, a rare book collector and librarian.

Naftali: Could you tell me what you remember of him in college?

Cutler: Puffing his pipe, being very interested in books. I knew him when he got into the intelligence business, but whether he was active on that at Yale, I don't recall.

Naftali: Did you ever meet Duncan Lee?

Cutler: Yes.

Naftali: Tell us what you remember of Duncan Lee.

Cutler: I remember Duncan primarily as somebody very interested in China, even in those days. Then when I got down here during the war, he'd become quite a public figure. He was a McCarthy victim if I recall, wasn't he?

Naftali: Well, he was a Soviet agent.

Cutler: An actual agent?

Naftali: He was an actual KGB agent. Not KGB, it wasn't the KGB then, but he was a Soviet agent.

Riley: You had indicated that you were an interventionist at the period of time you were an undergraduate. My assumption was that you weren't breaking with your family on this, that your father and your mother felt the same way.

Cutler: Yes. We were not a religious family. I never got bar mitzvahed, for example, although my mother, after my father died, became the executive secretary, or whatever you'd call it, of the largest temple in Great Neck, where she lived.

Ernst: And there was never a language other than English spoken in the home?

Cutler: That's right.

Riley: Was that true of your parents also, did your father have other language skills than English?

Cutler: No, and we were not a family who had regular Seders or anything like that.

Naftali: At Yale did you ever cross paths with A. Whitney Griswold?

Cutler: Yes, much of that was later. He was the president while I was there, but I became a very good friend of Kingman Brewster's and Brewster succeeded Griswold, as you know. On various alumni things that I did, I would work with Griswold, who was one of the most laconic people I've ever known. His best book, for example, is about 75 pages. It's a history of farming in the days of the Revolution.

Naftali: Did you know Kingman Brewster when you were a student?

Cutler: No, I think he was the class of '41 or '42, something like that, but by then I was gone.

Riley: Tim has asked you about several names. I wonder if you could just tell us who some of your closest college buddies were.

Cutler: Jonathan Bingham, who later became a Congressman from New York and who was the son of Senator Hiram Bingham of Connecticut. Everybody in our class thought he was the one who would become President of the U.S. one day. Louis Stone, now dead, who was in the class behind me. Potter Stewart was two classes behind me. Many of them I knew better in law school than I did in college, but it's hard for me to separate out whom I knew where.

Riley: Did you travel during the summers or stay—?

Cutler: Traveled with my family during that period. I had various summer camp jobs.

Riley: When you traveled with your family, was this in the United States or did you make a return trip to Europe, or was it just too churned up at that point?

Cutler: I never went back to Europe with my family, but we made Western trips together during and after the war.

Riley: Did you have family out there or was this just vacation and touring?

Cutler: Vacation and touring.

Riley: Law school, any more questions about that? If not, let me pose one general question. What's the first presidential election you remember, Mr. Cutler?

Cutler: Al Smith and Herbert Hoover. I think I would have been 12 or something like that. If I recall correctly, I think I supported Hoover. Looking back it's hard for me to believe. I remember listening to the returns on the radio, but I wasn't following it in any real sense. I was an FDR supporter all the way through, and I guess I voted for [Dwight D.] Eisenhower once, I think the second term. Then I really began to get involved, starting with the Kennedy campaign.

Riley: So it was because of Roosevelt then that you probably would not have tracked in the direction of becoming a Republican?

Cutler: I think I would have ended up a Democrat anyway.

Riley: Did you do anything actively to support Franklin Roosevelt at the time?

Cutler: No.

Riley: In writings or speeches?

Cutler: No. By that time we were either well into the war or I was just too remote from world affairs. I do remember going down to the New Haven railroad station to see FDR. In those days we saw hardly anything of the presidential candidates. You'd read about them in the newspapers, you'd see photographs, but you'd never see them in the flesh except on these campaign trains.

Ernst: Did you get any articles published in the *Yale Daily News*? You said you were writing for the news.

Cutler: I must have had some.

Naftali: What did you write?

Cutler: I can't remember.

Riley: At the period of time when you were an undergraduate, did you ever give serious consideration to doing anything other than going to law school?

Cutler: Not really. The law school professors actually came to the colleges to recruit people, saying, "Don't go to Harvard Law School, come with us." I knew that's where I was headed from the very beginning.

Riley: And you did very well as an undergraduate, other than the physics class.

Cutler: Other than the physics. I was a *cum laude*, Phi Beta Kappa graduate. In law school it was *magna cum laude*.

Ernst: Do you recall which law professors came to the college?

Cutler: Myres McDougal is one. Eugene Rostow, who was two years ahead of us but went right back to the law school to teach. I guess he had one year in a New York law firm. Wesley Sturges, who later became the dean. Charles Clark, who was the dean at the time and who later became a Second Circuit judge.

Ernst: These were all very engaging and effusive people.

Cutler: Yes, they had personality quirks, of course. Every Yale faculty I know of has been pretty contentious and they would call one another names quite frequently.

Ernst: In the classroom, during your classes, would they poke fun at each other?

Cutler: Yes, and sometimes of course it was not just two Yale professors. It was often a quarrel between Felix Frankfurter and Fred Rodell at Yale, for example. Rodell was a disciple of William Douglas. I remember when I was the editor-in-chief of the law journal, we asked Rodell to review a Frankfurter book, and he sent in the review saying "I haven't read this book, but I know what's in it." Then he proceeded to write ten pages attacking Frankfurter.

Riley: As someone who doesn't know what these disputes might be about, I'll lead with the question about what were the primary points of contention in the study of the law at this point?

Cutler: It was the basic philosophical dispute between the Yale faculty and the Harvard faculty about what Yale called the functional approach, as compared to the traditional lecture, analytical analysis of cases that went on at Harvard. The Yale faculty was very experimental and innovative. We had a professor named Underhill Moore, for example, who was an expert on bills and notes, as the course was called. His experiment was to assign a whole class of students to trace what you might call the "sex life of a check." What happens when you write a check, what happens when it is endorsed, where does it go? Can there be forgeries, what happens? We all had to study that and go out onto the Yale streets. He had us do a parking analysis. Do people park where the meters are, do they disobey?

Ernst: So you were one of the research assistants on the parking study?

Cutler: He assigned everybody to do it.

Ernst: Everyone did it?

Riley: Toward what end were these studies directed? Again, as somebody who is not familiar with this.

Cutler: To compare what you read in cases with what really happened in the real world.

Riley: So the sense was that the case study method was not realistic enough.

Cutler: The case study method was a question of analysis, rather than, "What is the social objective of the rule of law as applied to this particular situation?"

Naftali: How did [Arthur] Corbin come down on that, from your experience as the student?

Cutler: Corbin, I'd call Corbin a classicist, in the sense that he would have been just as comfortable teaching at Harvard as at Yale. He was a wonderfully jolly man, gentle, everybody loved him. He wrote a couple of excellent casebooks, as you know. We spent half the year on, I think they're called "unilateral contracts," I think that was his term. If I say, "If you climb that

flagpole, I'll give you a hundred dollars," and that person starts climbing the flagpole and he gets halfway up and you say, "I revoke," is it a contract or isn't it a contract? Do you have to give him the hundred dollars?

Of course the wheel turned enormously later on. By the '70s and '80s, it was Harvard that was experimenting with various functional approaches.

Ernst: Was [Harry] Shulman not a classicist in the torts class or was he someone who used a functional approach.

Cutler: I knew him very well. He was the dean also during part of the time I was there, but I'd say he would have been equally comfortable at Harvard and he was already a Harvard professor. It was a big to-do, are we going to appoint a Harvard professor as the dean of the Yale law school?

Morrisroe: Where did you come down in the divide between the legal realists and the classicists? Did you adopt the approach?

Cutler: I would say much less of a legal realist than Douglas, [Thurman] Arnold, Underhill Moore, whom I mentioned earlier. A much more conventional law teacher, in that sense.

Riley: You were addressing that with respect to a particular professor?

Cutler: I'm talking about Shulman.

Riley: Just for the transcription, Darby wondered about your own personal disposition on these matters, where you had come down on these questions ultimately.

Cutler: I was not convinced myself that these functional approaches were going to get us very far. I suppose over the years I've become more conservative rather than less so.

Riley: Did you begin tracking in a particular direction with your study of the law fairly quickly after you arrived at law school? Did you decide that you wanted to focus on one particular area of the law over others?

Cutler: In those days we had a mandatory first year curriculum and then you could go into other subjects. I was interested in finance, accounting, business law, antitrust law, and that's what I did in my last two terms. As I said, I became editor-in-chief of the law journal, which was a pretty demanding job just by itself.

Riley: That would have been in your third year?

Cutler: Yes, you compete your first year, you take over in the middle of your second year, and you turn over to the class behind you the middle of your third year. In those days it was a competition that every ambitious person tried out for. Now they have trouble, of course, recruiting people even to write for the law journal and you don't have to compete.

Riley: Do you remember who your stiffest competition was?

Cutler: It was a man named Harold Steinberg, now dead, who was the number one in the class.

Riley: But you happened to best him in this area.

Cutler: Well, it's not an election in that sense. In those days, the outgoing board picked the successors.

Riley: Do you know what would have commended you in this case over this other gentleman?

Cutler: What you wrote, personality, I suppose.

Riley: Who were the chief or the major influences on your thinking when you were at law school? Who were the professors there that had the greatest influence on you?

Cutler: I would say Corbin, Shulman, Wesley Sturges, and Rostow. Rostow and I wrote an article together when I was a student, which was printed in the law journal. It's often been cited in the Supreme Court. It had to do with corporate reorganization, what we now call Chapter VII and used to be called Chapter XI.

Ernst: So Rostow was teaching the corporate courses and reorganization work? Douglas was gone at that point?

Cutler: Douglas was already in Washington, yes. Rostow and Sturges were teaching what you might call the corporate courses.

Riley: You began law school in 19—

Cutler: The fall of '36.

Riley: There were ongoing political debates at the law school at this point then?

Cutler: Oh, sure.

Riley: That were also occupying your time?

Cutler: It was all about the run-up to the war.

Riley: Do you remember who would have been some of the chief actors at the law school among other students in these ongoing debates?

Cutler: Bingham, whom I mentioned earlier, Sargent Shriver, Potter Stewart, and all three of them, incidentally, became members of America First. I think even Kingman got involved later on, early also in America First.

Naftali: I think Kingman Brewster brought Charles Lindbergh to Yale in 1940.

Cutler: Did he? I forgot that.

Naftali: You had already graduated from law school.

Riley: These were the non-interventionists.

Cutler: In 1940 I had become a law clerk to Judge Clark on the Second Circuit. Of course the courthouse is in New York, but he used as his main office the courthouse in New Haven. I would have to go up and meet with him roughly every week or so. So during 1940 I was continuously in the law school.

Naftali: But you don't remember—

Cutler: I don't remember Lindbergh.

Riley: Any debates or disputes at the time that you were the editor of the law review that are worth mentioning?

Cutler: They're not political disputes. I remember working with Karl Llewellyn when our class took over. We had a commitment to publish a series of articles by Llewellyn, who was one of the ultra, ultra what you might call philosophical lawyers. He would write sentences that were literally a page or two pages long, if you remember. He delivered us a copy of the article he'd committed and it was almost unintelligible. We did a lot of work trying to revise it and finally he said to us, "I'm going to come up to New Haven and we'll get all of this settled."

He came up and he spent, I guess three or four days and we worked continuously with him. I remember one night we were having dinner at Mory's and he said, "I really want to thank you. Usually I can't abide student editors at all. When I work with a student editor as intensely as this, I get sick to my stomach. But since I've been here working with you, I've been sick only two times." We published the damn thing, I don't know if anybody ever read it.

Ernst: Was your experience writing a Note a very intensive experience? Where you had a lot—

Cutler: Yes.

Ernst: Who was the Note editor?

Cutler: The Note editor in the class ahead of me was Frederick Fritz Beebe, whom you would later hear of in the Cravath firm, and then he became counsel for the Eugene Meyer family and was Kay Graham's principal advisor when she had to take over the paper down here. We were great friends and we thought, when he wrote his last Note that we had to publish, that he hadn't been too careful with it. So to test him, we put in one of these long string footnotes, a citation called, "in re Beebe the Bastard," with a made-up citation. He caught it. Then we learned that he

had put in another cite, which we missed. It was, "in re Silvertex Corporation," or some such thing, which was the name of a condom company. That's in the law journal as printed.

Ernst: The Notes were anonymous?

Cutler: The Notes were anonymous.

Ernst: So if we were to look for your Note, do you remember what it was?

Cutler: It's volume 40, I think, 39 or 40. I remember the broad subject, but I can't remember much about the Note. It had to do with some sort of credit transaction that arose in the mail order business.

Ernst: Was that from Sturges, or you just found it on your own?

Cutler: I was assigned it by the Note editor.

Naftali: Do you remember talking to Potter Stewart about this issue of intervention, since he was certainly one of the founders.

Cutler: Yes.

Naftali: Tell us, can you remember a debate or a discussion? The atmosphere—

Cutler: Potter came out of a political family. His father had been on the Supreme Court of Ohio and had run for Governor at one point. Potter's sense was this is a European war; we shouldn't have anything to do with it. There are the Communists waiting in the wings and it would just tear the country up. Remember, we were living under the Neutrality Act in those days and we had to be somewhat devious even in getting supplies to the Allies, the 50-destroyer deal, for example. But it was a good faith argument. Where his father was on this I don't know.

Riley: I just wondered because you had commented a couple of times on LaGuardia earlier, and I assume you were following LaGuardia's career—

Cutler: Yes.

Riley: Was he taking a position on this intervention question at this time?

Cutler: I don't remember LaGuardia in that connection until he came to Washington just before Pearl Harbor. Another very active person in the America First movement was R. D. Stuart, whose father was the head of Quaker Oats.

Riley: He was at Yale when you were at Yale?

Cutler: Yes, he was at the law school when I was.

Riley: My assumption is that there was a group of people working with you at the law review and I wonder if you could tell us a little bit about the people that you worked with there. My sense is that these are very labor intensive enterprises with a lot of emotion and time invested in them.

Cutler: Yes, for the most part they were not about cosmic issues. I mean law journals in those days were pretty murky stuff and somewhat like medical journals. But the team we had worked very well together. Bingham was a Note editor, Herb Fierst, who I think is still here in Washington, was a Note editor. There was a fellow named Paul Cleveland from New Hampshire who was a comment editor, if I remember correctly. That's quite right, we did see a great deal of one another.

Riley: You had an office in the law school?

Riley: It was an office way up on the top—I think the law journal is still there on the fourth floor. Tiny, really. There were rooms I think only for the editors, half a dozen rooms.

Ernst: How were student-faculty relations generally? Then, was it different for you as a law review editor? I know at Columbia and Harvard at this time, they were distant to hostile, I would say, is how most students remember it. And that the law review editors were sort of privileged in just having the professors deign to meet them. I wondered if the Yale environment was different.

Cutler: I think the Yale environment is different primarily because it is such a small place. I think we had 110 or 120 in the class. So over a period of three years you got to know five classes and you literally knew everybody there. There were eating clubs, you'd eat together. Whereas Harvard is a huge place, 1,500 in a class, ten times our size. Columbia was not that large but the Columbia campus is just not a residential campus, so you don't spend as much time together.

Ernst: Do you remember anything from the law journal banquet that year?

Cutler: I remember the banquets. I remember throwing rolls and doing all the other things you did at a law school banquet. I remember a featured speaker being, I think in my year, being Arthur Ballantine of the Root, Clark firm. His subject was, "Can a bailee milk a cow?" That was about the level in which banquets were handled.

Ernst: Am I right that you had a symposium issue on [Benjamin] Cardozo that you were partially responsible for?

Cutler: Yes.

Ernst: There were a lot of luminaries in that.

Cutler: That's a unique issue because it was a combined issue of the Yale, Harvard, and Columbia reviews. We edited it together, we solicited the articles together, spent most of the year meeting frequently about how to present it, what to do about articles that came in on Cardozo, on a particular subject like insurance, which we thought were not up to proper standard. At one

point Phil Graham, who was the Harvard president, called me and he said, "Have you read this article by this professor?" I think it's Richard Powell, I'm not sure, but a Columbia professor, on insurance. I said yes. He said, "What do you think of it?"

I said, "I don't think much of it." He said, "Well, we think it's terrible. Would you join us in saying to Oscar Schacter," who was the Columbia editor, "that we're not going to accept it, we're going to drop it." We said yes. We took that position. The next thing we knew, the three deans were on the telephone seeing how this could be sorted out. I think we prevailed, I don't recall now.

Ernst: If you were sending a Columbia student up to deliver that message to Professor Powell, I mean, I know people would rather face firing squads.

Cutler: We didn't have that problem, because we were just going to tell Oscar. But it did have this wonderful piece, best thing I've ever read really, about the role of a judge, written by Learned Hand, which was only about four pages, but take a look at it.

Riley: What was the genesis of the idea for this special issue?

Cutler: Cardozo was a very revered person. He'd had this long experience in the state of New York as chief judge. He'd written in every legal field you could think of, and then he suddenly died after being appointed to the Supreme Court. I don't remember whose idea it was, I think it was probably Phil's idea.

Ernst: Was there a point at which you realized that there were other kinds of legal practices or branches of the profession than you had seen in your father's life?

Cutler: Oh, yes.

Ernst: Was that early on? Did you know of the other world—?

Cutler: As an example, the whole, what we now call the field of civil rights, or the field of environmental law, just didn't exist.

Ernst: But what about the world of the corporate practice and the Wall Street firm? You wouldn't have been aware of that from your father's practice.

Cutler: Not from my father's practice, no. But remember this is now a few years after we fought for the creation of the SEC [Securities and Exchange Commission], just a few years after the Wall Street crash, where the brother of a head of the New York Stock Exchange was guilty of a massive fraud, Richard Whitney I think his name was.

Ernst: But you didn't go to Yale, to law school, with the expectation of returning back to New York and having a comparable practice of your father's and then discovered the corporate practice when you were there?

Cutler: Well, I knew I wanted to be a trial lawyer. Then after being a law clerk, I was able to get a job in the Cravath office. The Cravath firm was right in the middle, has been ever since, of all of the corporate law developments.

Riley: The 1930s, the broad history of the decade, there's an awful lot of political turmoil going on in the country, not just on questions of intervention. I'm wondering if during your period at Yale there was much of this bubbling up, especially on the political left?

Cutler: Oh yes. This is Depression time as you know. The whole statism movement, the NRA [National Recovery Administration], the Townsend plan, Huey Long—the government really in effect took over the economy. The objective of the government was not to make things more efficient, but to raise prices.

Riley: Did you find any of this personally persuasive when you were an undergraduate, during the period of time when people were often experimenting intellectually?

Cutler: In some fields, like the farm, I thought it was well worth doing. The farm was so important politically, and conditions were so bad, that for the government to legislate and prevent the foreclosure of mortgages was a good thing to do. On the other hand, the statism ventures, the sort of fascist corporate state ventures, I was always very much against, and that was probably more the influence of the Yale economics faculty.

Ernst: Arthur Hadley wasn't still there, was he? I'm thinking of people who would have had that attitude in the economics faculty.

Cutler: I was trying to think of the names on the economics faculty in those days. There was a man named James Harvey Rogers, who was a banking professor, but that will come back to me. I'll take one look at a yearbook.

Riley: Let me ask you a couple of questions about events that transpired during this period to see if you were attentive enough at that age to have had any reactions. One would have been the Schechter decision, since that relates to this particular issue. Do you remember that registering with you at all? I guess it would have been pre-law school.

Cutler: For me it would have been pre-law school but we were all very much involved, or interested in following the various Roosevelt measures. The one I recall being most interested in was the court packing plan.

Riley: That was going to be my next question.

Cutler: Of course, we all reacted badly when we found out about it. And it almost happened. I think it was Joe Robinson, the Senator from Arkansas, who had put through a big package of New Deal legislation that would have to go to the Court. Roosevelt had agreed with Robinson, who put these measures through, that Robinson would be appointed to the Court. Just before that was announced publicly, Robinson died.

Riley: The court packing plan had resonated on campus at Yale, I know people were very much paying attention to this at the time.

Cutler: Yes.

Riley: Were there people, that you recall, who were so supportive of Roosevelt that they were in favor?

Cutler: Yes.

Riley: Even people in the law school at the time?

Cutler: [Fred] Rodell, Douglas, even Frankfurter was supportive.

Ernst: Was it something that students took a stand on?

Cutler: Not in the sense that you went out and paraded or protested or had a meeting over it.

Riley: The question is an interesting one, though, from a historical perspective, because we go through these ebbs and flows of student interest in politics writ large. I'm not sure that I have a very good sense about how engaged the attentive student population would have been to these kinds of New Deal questions, but your sense is that the students at Yale were in fact paying a lot of attention and that there were ongoing debates on campus about these issues.

Cutler: Yes.

Ernst: When you were at the law school, did Sturges or anybody else suggest you should go into government work straight out of law school? I think Arnold was hiring in the antitrust division about when you would have been graduating, for example.

Cutler: You're speaking of law students who went to work directly for the government?

Ernst: Either from someone you knew who was already in a Washington agency, or someone like Sturges, who I know recruited some people earlier in the New Deal to the AAA [Agricultural Adjustment Administration], for example.

Cutler: Yes. Tom Emerson went from the faculty to the NLRB [National Labor Relations Board] and was recruiting people for the NLRB quite a lot.

Ernst: So there were some prestigious law shops—

Cutler: Yes, going to work for the government, to begin with it was going to get a job. But going to work for the government was considered to be a very good job and a very useful job if you could get it. Of course, when the war came, that was intensified.

Ernst: So were there any possibilities that you considered or were put to you that you can recall?

Cutler: The most prestigious job was to be law clerk to a judge, of course; I did that. The only Supreme Court justice we had then, as a Yale graduate, or a Yale connection, was Bill Douglas. Unlike the other justices, he did not pick a new clerk every year, but he had one clerk continuously for 10 or 15 years. So that opportunity wasn't open.

Riley: Was there ever a possibility that you would have gone back to New York to join your father's firm?

Cutler: I don't think so, no.

Riley: Beginning with your final year in law school, tell us a little bit about your thought processes as you're looking out. What options are you considering at that point in terms of career options?

Cutler: First, to become a Second Circuit clerk. Then to get a job, remembering that the war was about to start and that I'd probably end up fighting in the war, but meanwhile get myself a good job. I was lucky enough to get into the Cravath firm.

Riley: Are there any recollections from your clerkship period, any particular cases that you were working on at the time that proved to be very substantive or formative in terms of your subsequent career?

Cutler: One in particular. Clark was one of the judges who let his law clerks write a lot of the opinions. There was a judge named Judge Manton, Martin Manton, who was crooked and had all sorts of real estate investments he needed money for. He would call lawyers who argued in the federal courthouse and ask them to invest in real estate and other projects of his and then appoint them to receiverships and other valuable appointments. He was indicted and convicted and then there was an appeal to the Second Circuit. Most of the judges on the Second Circuit had been there with Manton and recused themselves, so it fell to Charlie Clark to write the opinion and I wrote a lot of that opinion. But that was a major case about political corruption.

Riley: How much time would that have taken? You were there for one year?

Cutler: A year.

Riley: And how much time would that case have taken, do you recall?

Cutler: Maybe a month.

Ernst: I'd like to know your impressions of Clark.

Cutler: He was a very good dean. He was not a forceful man, probably not as good a legal writer, say, as either of the Hands or Tom Swan. I think they looked down on him a little bit. He was a nice, adequate, perfectly capable law professor, wrote these major books on federal jurisdiction and procedure, but I would not put him in the giant class.

Ernst: I understand that he had a sense that he had a privileged knowledge of federal rules and issues and federal procedures, carrying his rule and drafting it, and I've seen some references to the other judges poking fun of that. Did you see anything like that, self-importance on that issue?

Cutler: When a case came up involving the rules, he would always write in it, whether he'd been assigned an opinion or not. He had this strange way of talking that people mimicked. He would speak of the federal "wooles" and applying for a writ of "cershawawi," but a very nice man.

Riley: Was he easy to work for?

Cutler: Easy, and he gave you a lot of leeway.

Riley: So when you were given an assignment, you didn't feel like there was somebody standing over your shoulder?

Cutler: No.

Riley: What did you learn from him?

Cutler: Well, it's hard to separate what I learned from him from what I learned by the year's experience on the court, and that was a very good court as you know. It wrote the Alcoa case. Being anywhere near Learned was a great experience and he was merciless with lawyers. Some lawyer in the middle of an argument said to him, "If you look at page 11, passage 302, of the record," and Hand broke in and said, "Of the record? Do you think we read the record? You'd be lucky, counselor, if we read your briefs."

Ernst: I understand that when Swan was on the bench that the clerks for Swan and the Hands sometimes worked together, that there were assignments from each of the judges. Did you have any assignments from any of the Hands?

Cutler: No, but the law clerks were very close to one another and we would be in meetings with the judges of the other clerks. I remember frequent meetings with both Hands and with Swan and Bob Patterson, who later came on the Court.

Riley: What more can you tell us about the Hands, your impressions of working with them?

Cutler: Read Gerry Gunther's book, that's about all I could say. An interesting thing about Hand, considering the current furor over Supreme Court appointments, is he lobbied like mad to be appointed to the Supreme Court. Got all of his New York Wall Street firm friends who knew FDR to write to him or talk to him, and FDR would never do it. He never even came close to appointing Hand.

Riley: Were they intimidating to work around for a law clerk?

Cutler: A little, but it was well worth it. And when we talk about the Hands, Gus was a much gentler man than Learned.

Riley: Dan, anything else on the clerkship?

Ernst: Would you say it was an important part of your legal training?

Cutler: Yes, very much so. I'm glad I did it.

Ernst: Because of the daily themes aspect of it, having to turn something out?

Cutler: Partly that and partly just to observe how judges react when they make up their minds, how they get along with one another.

Riley: So it was as much a training in judicial psychology as it was in the formalities of the law itself.

Cutler: And judicial temperament.

Ernst: Did you get to see interactions—you mentioned one—between the elite lawyers in the Wall Street bar, or in the Association of the Bar of the City of New York, and the Second Circuit? Did it feel like the Second Circuit and the bar, that group of lawyers, were involved in the same enterprise, that they had pride in this legal enterprise they were launching?

Cutler: Very much so. I think that's still true.

Ernst: I'm trying to think of some concrete way where that would have been manifested; the shock about Manton might be an example.

Cutler: There are several levels of lawyers and what Manton did was shocking. There are judges who do it today, including the guy who's now in Congress, the fellow from Florida, remember he was convicted?

Riley: [Alcee] Hastings.

Cutler: Hastings, now he's back in Congress all over again. Then there was the upper crust of the judges and the lawyers who got along very well together. For example, Learned's daughter married Harrison Tweed, who was the head of Milbank, Tweed for a very long time.

Riley: Did you develop close relationships? You said you worked fairly closely with the other clerks. Were there people that you got to know well on a social basis and that you kept up with in later years from your clerkship period?

Cutler: I kept up with all of those clerks while they were alive.

Riley: And some of those would be?

Cutler: Bennett Boskey, who was later Stone's clerk, as you know. Sy Rubin who just died, John O'Boyle who was Patterson's clerk, who was in the same Harvard class as Boskey and Graham and who died of a yellow fever shot taken during World War II or after that. The shot was during the war.

Riley: Was there competition among the clerks to shine?

Cutler: I don't think so, no. We all got along very well. There would be competition in the sense of defending your judge or disparaging somebody else's judge.

Riley: You held your own in that competition, Mr. Cutler?

Cutler: Sure.

Ernst: Was there a Harvard-Yale rivalry? I mean, there was a pipeline to the Hands from Harvard.

Cutler: Maybe so, but we had Swan and Clark on the Court together, so we had two Yalies. Some of the other clerks came from all over. They were all Harvard or Yale in my year.

Ernst: Did you see anything of Julian Mack?

Cutler: I knew him, because he was a judge then. So I would see him in the courthouse, but I don't remember any particular cases or work contacts with him.

Ernst: I'd always heard that he was a master on the trial bench, at doing bench trials. I'm wondering if you had an opportunity to observe that.

Cutler: Yes, yes.

Ernst: What was your impression of Patterson?

Cutler: Very favorable. And of course Patterson was on his way to becoming a major figure in the war and in getting us into the war, at least keeping the allies going. But he was one of these very spare, plain people. We worked together later on when he left the bench, as counsel for ASCAP, which is the musical copyright group, which has all kinds of antitrust problems. Members of the board are very rich composers or publishers, they all had $2,000 suits, and Patterson was still wearing high-button Army shoes and four-button jackets and would always have his shirt sleeves rolled up so that if they frayed, he could still wear them. He just bowled over these songwriters. They'd say, "Can't we do such and so?" and he would say "No, I've thought about that and I've decided we can't do it." He didn't say, "I suggest," or "my advice is," he just said, "We're not going to do it."

Riley: While you were serving as a clerk, did it whet your appetite for the bench? Was that something that ever appealed?

Cutler: I never had an appetite for the appellate bench. Of course, anybody would love to go on the Supreme Court. But to sit on an appeals—being a trial judge can be a lot of fun, you're kind of God when you're a trial judge. But I got too interested too quickly in organizing and building a law firm.

Riley: I see. This will rob from some of what we'll want to talk about later, but since we're on the subject, was there ever a point in your career when an opportunity approached you fairly closely to move on to the bench?

Cutler: Oh, I could have gone on the appellate court here. I think Carter would have wanted me if I had wanted to be. When we were setting up the Iran-U.S. claims tribunal, I helped draft the executive order. There were going to be three American judges, three Iranian judges, and three neutrals. Carter would readily have appointed me one of those three Americans. I thought about it and then I decided, do I really want to sit in the Hague for ten years? It turned out ten years was low, it's 25 years that that thing was going on.

The only other time when I might have come close was in jest, really, and that was when Clinton had the problem of whom to appoint to succeed Justice [Harry] Blackmun, now Steve Breyer. Clinton was very interested, he wanted somebody like Earl Warren with political experience, and he was interested in selecting Senator [George] Mitchell. He put it up to Senator Mitchell and Mitchell said, "I don't think I can do it now. I have health insurance to deal with, I've got welfare reform to deal with, ask me next year." Of course, Clinton never got another appointment. But at that point, since I was very much involved in the selection process, I said to Clinton, "Why don't you appoint me for this extra year and I promise I'll resign when Mitchell is ready?" Nobody trusted me. Of course, once you're appointed, I suppose you could do whatever you want. Poor Mitchell, Clinton never got another appointment.

Riley: You're holding up fine?

Cutler: Yes, I'm fine, but I think I'll take one of those breaks right now.

Riley: Okay, why don't we do that.

[BREAK]

Riley: Mr. Cutler, I don't think there's anything else about the clerkship that we'd like to ask you about, so the next question logically would be, what move you made immediately after you left the clerkship.

Cutler: As I said, I got a job at the Cravath office. I worked on two railroad reorganizations that eventually got to the Supreme Court, and a major Bethlehem Steel stockholder suit. The railroad cases were for Robert Swaine, who was the Swaine in Cravath, Swaine & Moore, as it's now called. The Bethlehem Steel case was for Hoyt Moore, who was the Cravath partner who did the steel, and Al McCormack. He later played a major role in my life because he was brought down to take over the so-called Special Branch of military intelligence, which was taking the code-

breaking material we had and putting it into intelligence form for the President and the Secretary of War and so on, but all of that came later.

Naftali: Let's talk about McCormack in this period, though, as a lawyer. Tell me a bit about the case. What was he working on, what were the issues?

Cutler: The case had to do with some bonus plan that allegedly had not been approved and should have been approved by the shareholders. It was a classical shareholder suit for those days. It went to the Court of Appeals, the state Court of Appeals. McCormack, who was a very thorough lawyer who moved around with fleets of assistants, male secretaries, moved us all up to Albany three days before the argument. We spent a whole weekend in Albany preparing the argument, moot courting it and so forth.

When McCormack got up to argue, he hadn't gone more than two or three minutes when Chief Judge Irving Lehman unscrewed his ear piece and clearly something had gone wrong, the battery was dead or something. We could see McCormack didn't notice, of course, that Lehman had sent for a marshal to go out and get something, which was presumably a battery. Lehman just sort of sat there, looking out the window, for the entire length of McCormack's argument. He finally got the repair part back just before McCormack finished, but he won. There were great discussions of, "Should we tell him?"

Naftali: So McCormack was very organized then?

Cutler: Very, and very outgoing.

Naftali: Very outgoing, very stimulating, inspired younger people.

Cutler: Yes.

Riley: How much older a fellow was he than you, Mr. Cutler?

Cutler: Oh, I would guess he'd been a partner ten years by then or something like that.

Ernst: Was Frederick Wood still there?

Cutler: Wood was still there. Wood had the office two away from me. In those days we sat two to an office; the office would be narrower than this. I sat there actually with Fritz Beebe for a while, and later with Nestor Foley, but then the next office was Swaine's on the corner. Next to Swaine was Wood. I mention this because Wood had one of these bellowing voices and I could hear everything—even though we were separated by 50 feet—I could hear everything he was saying on the telephone.

Later on in one of the major oil antitrust cases, which was argued in Milwaukee, Wood was arguing—or trying it, I guess—and every afternoon he'd come back to the hotel where they were all camped out. He'd get on the telephone to talk to New York, to the office, and he'd just bellow

on that telephone. One of the other lawyers said one day, "Fred, instead of bellowing like that, why don't you just open the window and save us some money?"

Ernst: Politics would not have manifested itself in the railroad reorganization or in the shareholder suit, but Wood was—I don't know if he was just arguing a client's case in Schechter and Carter Coal—it seemed like he believed very much in much of the anti-New Deal critique.

Cutler: Oh yes.

Ernst: And you were a junior in that firm. Was that ever a topic of conversation, or were you just focusing on the work?

Cutler: I knew Wood but I didn't work much with him. I worked a lot for Swaine. Swaine had utter contempt for the government and he would blame a railroad reorganization on some mistake the government had made someplace. Then when I went off to the war, I got a job in Washington, Lend-Lease Administration. Swaine thought I shouldn't go and he said, "It's very inefficient. You don't know anything about Lend-Lease and you'll have to be trained down there. I've trained you on railroad reorganization. Railroads are very important to the war and we'll have to train two new people instead of just one." I went anyway. He picked Jack Connor to replace me. Connor later became the head of Merck and Allied Chemical and Secretary of Commerce.

Swaine didn't know that Connor had said to me, "If anything interesting turns up, let me know." Within a year or six months, I guess, we fished him out and he became the general counsel of what was called the Office of Scientific Research and Development. That's what led him to Merck. Vannevar Bush was the head of that office. Swaine would not take either one of us back at the end of the war. He said, "We have to make places for the people who went directly into the military." Then he threw in, "And besides that, it's always been my experience that people who go down to Washington, lawyers, to work in the government, lose their fine legal edge."

Ernst: What about some of the tax partners? I mean, [Russell] Leffingwell had been in the Secretary of the Treasury's office. Was [Roswell] Magill there?

Cutler: That's quite right. Leffingwell was his example.

Ernst: That was his example?

Cutler: Because when Connor became the president of Merck, he was invited over by the J. P. Morgan people, who were Merck's bankers. Connor described all of this and Swaine's remark about losing one's fine legal edge, and Leffingwell said, "Did he mention any names?" Jack said, "Yes, he mentioned you." Leffingwell just laughed and said, "Well, I don't think it did either one of us any harm."

Ernst: Swaine ran the firm at that point?

Cutler: I don't know who ran it in that sense, but certainly he was the senior person and it was a very hierarchical firm. Cravath had run it until he got too rich and spent most of his time uptown at the opera. He would take two Chinese girls to the opera for every new production. But Swaine probably ran the firm as much as anybody.

Ernst: I sometimes get the impression that the people who founded Washington firms in the 1940s, some of them, are defining themselves against the Wall Street practice of which Cravath was the pacesetter. Sometimes I think that they also admired the way in which the Wall Street firm was set up. So, for example, I think, when I read about the people at Arnold & Porter, they delighted every time they beat a white shoe lawyer and defined themselves in opposition to some firms. But none of those guys—

Cutler: They were white shoe lawyers themselves.

Ernest: Right. So what did you like about the Cravath method and what didn't you like about it?

Cutler: What I liked was the quality of the lawyers as lawyers. What appealed to me was the efficiency of the place as compared to the courthouse. The fashion changed, though, about that time. Most of the big Wall Street firms had had Washington offices, branch offices. Then at the end of the war, instead of continuing their branch, they encouraged the lawyers in that branch to form their own firm and establish a correspondent relationship, somewhat looser relationship. That's what happened immediately after World War II. In fact, our firm consists—if you go back to the original 19 members of it—half of them were lawyers in Cox, Langford, Stoddard & Cutler, the firm I had helped to start here. We'd all been Wall Street lawyers and decided to settle in Washington.

The other half, John Pickering's group, were in a firm called Wilmer & Broun, which was the Cravath offshoot that had been established as a correspondent firm. Dick Wilmer, who had been the Washington Cravath partner, became the head of our firm when we merged it.

Ernst: What about the example of recruiting entry-level lawyers, straight out of law school for the most part, or a clerkship, and put the emphasis on training them, which I understand was Swaine's position? When one comes down to Washington, you have the option of doing that or taking someone out of an agency. Were you following a Cravath model when you decided to recruit?

Cutler: In the beginning, I'd say yes. We did recruit judges' law clerks and we trained them. It was very rare for us to have what we called a lateral entry working in the government or in another law firm. We did take in several people whom we had gotten to know in government. The most spectacular success of all of those was Manny Cohen, who had been the chairman of the SEC and was the only agency head who had risen all the way up in the ranks from junior lawyer to chairman of the agency. Today I would say that Cravath was one of the few places that still recruits and trains entry-level people and is very resistant to lateral entries. They've only done it two, three, four times, in the tax field for example, with Roswell Magill.

Ernst: Did you see Swaine operate in a conference with creditors and stockholders in some of those reorganizations?

Cutler: Yes. One of his clients was Metropolitan Life. I went to a number of meetings at Metropolitan life.

Ernst: Do you recall him as a presence in those conference meetings?

Cutler: Yes. Somewhat tactless presence, but a presence.

Ernst: A large number of lawyers who went from—not a Cravath, but at other firms, thinking Corcoran, maybe or Cotton, Franklin—who did a corporate reorganization practice, learned about lawyering from that practice. I wonder if you had any views about lessons you would have.

Cutler: I'm not quite sure I follow you.

Ernst: Is there something that you learn about lawyering by doing reorganization work as opposed to anything else?

Cutler: Yes there is, in the sense that you have multiple layers of creditors, shareholders, bondholders of different classes, and you have to strike a consensus. That's what bankruptcy law is all about really, more than anything else. Then there are the issues, whether you leave the reorganization in the hands of the controlling shareholders or whether you take it away from them and appoint a court trustee, who will then run the reorganization. That's equally true today. But you learn about how stubborn people can be and the person who holds out the longest often gets what he wants.

Ernst: Does the lawyer strike or articulate the consensus, or impose the consensus? I mean, with Swaine it seemed like—

Cutler: Well most of it's all done on quite elaborate voting procedures. Cram-down rules and all sorts of things.

Riley: When you initially took the position when you left the clerkship to go to the firm, did you have other options at that point, and this was the option that you elected? Was that the job that you wanted and you got it?

Cutler: Well, I interviewed at at least half a dozen New York firms. I got more than one offer, but this was the best offer. I don't mean in a monetary sense, but I thought the best firm.

Riley: Then you stayed there for only one year, is that correct?

Cutler: From the fall of '40 until two months after Pearl Harbor.

Riley: Where were you when you heard about Pearl Harbor?

Cutler: I was with a classmate named Louis Goodkind, who had married Henry Morgenthau's daughter. We were all together in the Morgenthau's house in Mount Kisco. Of course everybody scurried like mad. We had the draft to worry about. I was married by that time. We had lots of friends who had already gone to Washington and most of us ended up down there or in the military.

Riley: I'm not going to skip over this question. How did you meet your wife?

Cutler: When I graduated from law school I traveled with Jeeb, Najeeb Halaby, who was a year behind me in law school. We took a trip to Europe, on the *Conte di Savoia*, which was one of the huge Italian liners of those days.

Riley: This would have been what year?

Cutler: Nineteen thirty-nine.

Riley: So this is the first trip back to Europe since your experience in Geneva?

Cutler: That's right. In 1939, we were traveling tourist class, and in those days you could get a Campari and soda, which was called an Americano, for 15 cents. This was pre- the actual start of the war, and there were a lot of fascist party officials on board, in first class.

Riley: This was going over?

Cutler: Going over. Halaby and I were in tourist class, where there were also eight Chester Hale dancing girls, who were on their way to some engagement at the Lido in Venice. The Italian fascist officials, looking down at us and these eight girls alongside the tourist class swimming pool, got the idea in their heads that we were the key to meeting the eight girls, and they invited us to come up to first class. We were all invited to first class, and among the other first class passengers we met were my wife and her sister.

Riley: They were going over?

Cutler: They were going with their family.

Riley: Can you tell us a little about your wife's background?

Cutler: She grew up in Chicago. Her father was a Chicago lawyer who had been born in Kentucky, his family was from Kentucky. He became an Abraham Lincoln buff, wrote several minor books about Lincoln and every Lincoln's birthday would go around making speeches. His name was Beverly Winslow Howe.

Riley: So you met your wife—

Cutler: We met. She was at Wellesley at that point. I guess I became Clark's law clerk much earlier than that.

Riley: The ship was going to Italy, is that correct?

Cutler: Yes, right. We had landed in Naples and Jeeb and I traveled around Italy together. We kept meeting these two girls, plus the Chester Hale girls in Venice and other places.

Riley: This is like Henry James. [laughter]

Cutler: Then Jeeb went off to Russia and I had to come back.

Riley: So you went only in Italy and no place else on the continent at that point.

Cutler: On that trip, yes.

Riley: Did you arrange with your wife while you were in Italy to meet up when you returned to the country, or did you strike that up once you returned?

Cutler: Oh, I think we arranged it, yes. We married in February of '41 and this would have been '40.

Naftali: How long did you spend in Italy that summer?

Cutler: I'd say the better part of three months.

Naftali: Other than superb food, which I'm sure you had a lot, and some good wine, do you remember the atmosphere? [Benito] Mussolini's Italy, what was it like?

Cutler: Well you had both the beauties of Italy, which haven't changed, and you had a fascist state and you had a war about to start. I remember a lot of discussions, more with the people in the hotel and elsewhere, about whether the war would start, would the Italians go in, et cetera. I guess that as part of the same trip I was also in Austria and Hungary.

Naftali: Oh. You of course knew about Kristallnacht in 1938.

Cutler: Yes.

Naftali: Were you a little anxious in Austria, did you feel physically, perfectly safe?

Cutler: I felt safe enough. We were also in Munich, because I remember watching some [Adolf] Hitler parades.

Naftali: I would have thought—

Cutler: But as long as we were Americans and the war hadn't started, we were certainly safe enough.

Riley: Did you also have conversations with the officials on the ship once they invited you up to first class?

Cutler: I'm sure we must have, but I remember the girls better than—

Riley: Bravo. [laughter]

Ernst: Was it simply tourism that took you to Austria and Munich or did you actually want to see what the Nazi state looked like?

Cutler: By that time Jeeb and I had split up and I was just sort of wandering around.

Riley: So you were traveling by yourself at this point.

Cutler: Yes. I'd pick up with other Americans that I'd meet, we'd travel together.

Riley: Again, the entire tour lasted only about three months.

Cutler: Yes.

Riley: So you covered a lot of ground in a fairly short period of time.

Cutler: Yes.

Riley: Mostly train transit?

Cutler: Mostly train, yes. In those days you could get a train ticket to take you anywhere in Europe for practically nothing.

Riley: Did you first go to Salzburg on this trip?

Cutler: No, I never really got to Salzburg until after the war, when we started the seminar.

Riley: So we've gotten you through Pearl Harbor. How soon after Pearl Harbor are you approached about going to Washington?

Cutler: You'd have to turn it around. I wasn't approached; I approached my friends in Washington. There were some good jobs and I would say it was within a week. I had the job and had made the move by February in '41, which is only two months after Pearl Harbor.

Riley: Who patched you into this particular job, do you remember?

Cutler: It was Gene Rostow, Myres McDougal, Oscar Cox, and Phil Graham.

Ernst: Did anyone approach you about the Board of Economic Warfare at all?

Cutler: Not at that moment. But everything was very loose in the so-called Office of Emergency Management, or whatever it was called. The same people, this was all a group of people who worked for Harry Hopkins, of whom Oscar Cox was one. They all had multiple hats and multiple jobs and they were recruiting people right and left.

Naftali: How had you met Oscar Cox?

Cutler: I didn't meet him till I got here actually, but through McDougal and Rostow.

Riley: Were there other jobs that were floated for your consideration at the point that you came to Washington?

Cutler: I don't think I went that far. This one came so quickly and so easily, I didn't shop around.

Riley: I see. I have to confess ignorance here. Your movement down here was strictly because you wanted to be a part of the war effort at that point?

Cutler: Right. I wanted some freedom of choices when I had to go into the military, what part it would be.

Ernst: Was your internationalism in those debates about isolationism under the Neutrality Act a particular draw for the Office of Lend-Lease?

Cutler: Not really. They wanted every able-bodied hand they could lay their hands on, they could recruit.

Ernst: Why did you think the Office of Lend-Lease would be a particularly good place to be with reference to going into the military?

Cutler: Just that you'd be there in Washington on the scene. If some military opportunity came along that you could be commissioned for, you were in a better position to know what was going on, to make friends, and to be picked up. Of course, everything was expanding so much.

Naftali: Were you commissioned?

Cutler: What happened was, I went to Lend-Lease, as I said. When the invasion of North Africa came, we organized a so-called North African Economic Board, which was British, French, American—Free French. I was sent as one of the two American Lend-Lease people for that board. We had Treasury people, we had Board of Economic Welfare people, a group of State Department people. Gene Rostow was the State Department person at that point.

I worked for a man called Livingston Short, who was General Motors Insurance Company president. I was his deputy in this whole operation, which was to supply civil commodities to the French and the Arabs. It mushroomed from the two of us to something like 150 people in three months. So at the age of 26, when Short went home, I became the acting director in charge of

this whole group. Then I was offered a commission to do the same sort of work in Sicily, for the landings in Sicily, but by that time I'd been abroad for nine months and I decided I'd rather go home and enlist, which is what I did.

Naftali: I was just going to ask about the struggle between [Henri] Giraud and [Charles] de Gaulle and the extent to which, in your position, this French political debate, which of course had allied implications, was important, was significant. Did you find yourselves mediating between the rival groups of Frenchmen in North Africa?

Cutler: Well that was going on, but de Gaulle—remember, we married de Gaulle and General Giraud. Giraud, I think, he'd gone to Vichy, but he still had a great reputation. And de Gaulle, of course, had gone to London and had nothing to do with the Vichy government. Roosevelt and [Winston] Churchill named the two of them, De Gaulle and Giraud, as co-chairmen or something of the Free French Committee. De Gaulle got there, paid no attention to Giraud at all, issued his own edicts, made his own press statements, and of course he annoyed the hell out of both Churchill and Roosevelt, as you know. Giraud just up and quit, he just dropped out.

But the people we dealt with later became pretty much de Gaulle's French cabinet after we won the war. We had Andre Malraux; we had Couve de Murville, who later became a foreign minister. We had a number of others who later were in the French government.

Naftali: What about the Vichy officials who were left? I mean, after all, there was this marriage with [Jean-Francois] Darlan, which lasts until he was assassinated. What were the implications for you in the field? How did you pick and choose which Frenchmen you were going to deal with?

Cutler: A lot of that went on above my level, but I do remember that when Darlan was assassinated, I got an open telegram from Phil Graham, Ed Prichard, and a number of my contemporaries, all of us who had been in these Harry Hopkins agencies, saying "Congratulations, we didn't think you could do it that soon." [laughter] I got called in by the G3 at Allied Force Headquarters who handed me this thing and said, "What's this all about?"

Naftali: Your first not-so-covert operation.

Riley: That's right. I'm going to dial back just a second because there's a thing or two we didn't pick up. I wondered if you could tell us what your first impressions of Washington were when you came here. You'd left New York, I assume that you'd been through Washington, but this must have been a period of a great deal—

Cutler: Great excitement, that's right. And of course, it was very much a small, sleepy, Southern town with Southern customs and habits, that all of a sudden became a metropolis. There's a wonderful book by David Brinkley about that, as he came up here as a young reporter from North Carolina.

One thing we haven't covered—I can't remember now whether we did it or not in Charlottesville—is I mentioned that most of the Hopkins people had two jobs. Oscar's jobs were

being general counsel at Lend-Lease and Assistant Solicitor General in the Department of Justice. That's the same position that's now called Office of Legal Counsel in the Department of Justice. One Sunday afternoon in June or July of '42, I got a frantic call from Oscar saying, "Can you get down to the Justice Department right away?" I was at some picnic, I think. I went down, on a Sunday afternoon, and [J. Edgar] Hoover had just announced the arrest of the eight German saboteurs who'd landed by submarine. I became the junior lawyer of a ten-man prosecution team when the military commission was appointed. I worked on the Supreme Court case. So even though in theory I was in Lend-Lease for that whole block of time, I wasn't for four or five months.

Riley: Were you brought into a team of lawyers at that point to discuss how things—

Cutler: Yes.

Riley: Can you, to the best of your ability, march us through the events as you experienced them here?

Cutler: I can and I will, but I've written some stuff about this and other people have written it. It might be better if you looked at that material first. It's the same set of issues we're playing out again today.

Ernst: We could review the materials. There was a question that was in your op-ed piece for the *Wall Street Journal* that in particular I wanted to ask you about.

Cutler: Do that now and there's a book I'll give you written by Louis Fisher—do you have the Fisher book?

Ernst: Yes we do.

Morrisroe: We actually included that in the briefing book.

Cutler: Okay.

Ernst: You stressed in the op-ed piece the fact that the decision, that there was a moment where you had to decide whether you would challenge the appeal into the Article III courts. I think rightly, in the op-ed piece, you make the point that that decision by the prosecutors was made to let it go in and not to challenge that. Do you recall anything about that decision?

Cutler: I'm not sure. Are you talking about how the case gets to the Supreme Court?

Ernst: Right.

Cutler: Whether the provision, the executive order denying access to the courts was to be applied?

Ernst: Right. The prosecutors didn't take the position that the Article III courts had no jurisdiction over the matter.

Cutler: The prosecutor did take that position. The Supreme Court rejected that position. That's essentially what happened.

Ernst: Were you part of the deliberations about whether to object to the Articles?

Cutler: Yes. The decision had already been made to set up the military commission and try them by military commission. [Francis] Biddle wanted to keep them out of the courts because he was worried about *ex parte Quirin*. Roosevelt had said to him, "Francis, you better not lose this case." So Biddle in effect had his marching orders. He was to get a decision and get it as quickly as possible.

The Supreme Court reversed all that and then says that we don't need to reach all those questions, because on whatever theory you examine the conduct of these eight fellows, they were out of uniform, they had all sorts of spy craft materials, they had lists of German-Americans to contact, they had maps of key railroad lines and junctions, and they had lists of munitions plants, like aluminum plants. Whatever may be true about U.S. citizens or people who enter our lines in uniform, these fellows can't claim that because they were out of uniform. So that's essentially how it came out.

There was a side issue, a technical legal issue that bothered everybody and never got fully resolved, and that was when Frankfurter asked, "Mr. [Kenneth] Royall, how did you get here?" Of course, Royall had only begun to file his papers in the district court and they had not yet reached the Supreme Court, when the Supreme Court heard and decided the case.

Riley: Was there a particular part of the case that you were assigned to work on during this time?

Cutler: I worked on the whole thing, the executive order, the trial, the appeal to the Supreme Court and the aftermath of the trial. There were a lot of things we did that we could never do today. I'm sure it's the last time the Supreme Court is going to announce a decision and say, "Opinion to follow."

Naftali: I was just thinking that six of the saboteurs were executed before the case was fully resolved, is that true?

Cutler: After the Supreme Court had approved the judgments of the military commission but before the Supreme Court issued its opinion. One of the serious problems in the opinion was, had Roosevelt followed the proper procedures for reviewing a judgment of a military commission? It was pretty clear he had not.

Naftali: What was the rush, why was there this rush? Why didn't they wait longer?

Cutler: It was a question of political tactics vis-a-vis the Germans and morale booster for the U.S. We'd had Pearl Harbor, we'd had the attack on the Dutch islands. We had Jimmy Doolittle's raid, which was our only—

Naftali: Thirty seconds.

Cutler: Thirty seconds over Tokyo, which didn't do a finger's worth of damage to the Japanese. When these eight saboteurs came along, Hoover and Roosevelt and Biddle wanted everybody to believe that we knew all about it, that we were standing there on the beach ready to arrest them, and we did. Hoover fostered the notion that the FBI had actually infiltrated this sabotage school that the German army was running and had his own spy in there who let us know everything that was happening. It wasn't true. The reason why the trial was secret was to keep all that secret.

Riley: Mr. Cutler, having looked at some of the accounts that you've addressed, what they do, what Lou Fisher's book does very well I think is to give you a kind of play-by-play account of how this is proceeding and what's going on in the courts. But I think the one thing that's missing, and I'll ask for my colleagues to correct me, is we don't have a very good picture of the operation that you were directly involved in, which was the development of this case over a very short period of time. I wonder if you could tell us a little about this period, what you were doing, your perceptions of the role that the other various key actors played in trying to get this case prepared and brought before the court. That's usually glossed over in just a sentence or two and I think it's important.

Cutler: I'll be glad to do that. There is a transcript of the military commission trial and a friend of mine has a copy of that that she is sending to me now. I can tell you more things about the fights between Hoover and [Henry] Stimson and so forth.

Riley: Okay.

Naftali: Please.

Riley: I'm leaving it open if you want to proceed with that now.

Cutler: I think you might look at the transcript first. The transcript will help me to—

Riley: That's good. Why don't we take a break, I think it's about time for lunch, and then we can pick up. I want to go back to this question about your early perceptions of Washington and then you went to North Africa. I'd like to know what it was like landing in North Africa at the time you got there. So you might think about that while we're doing lunch.

Naftali: Then we get to do SIGINT [signals intelligence], finally.

[LUNCH]

Riley: I don't know whether you have anything else to add. I had posed the general question to you about your move to Washington and you had referred to the fact that it was a booming town

at the time and that your own operation was going from just a handful of people to a much larger operation. Any other recollections about that period of time that you were working for Lend-Lease in Washington, apart from the saboteurs case that we'll come back to at a later time?

Cutler: Well, of course, the general frantic nature of the whole thing, the fact that you were so absorbed really in your work, that you didn't have a chance to notice the town much.

Riley: Did you move your wife down?

Cutler: Of course, the cultural things that exist in Washington today weren't present then. We had one theater, being Constitution Hall, for concerts and that was it.

Ernst: How did you find a place to stay? Was that memorable?

Cutler: We were lucky on that. We were able to rent an apartment at 2500 Q Street, which is now a great big condominium 50 years later. Rents were cheap, and by moving to Lend-Lease I moved from roughly $3,000 a year to about $6,000 a year.

Ernst: What was your title at Lend-Lease?

Cutler: We were all called Assistant General Counsel. The way we got the salaries up to a decent level was to say you were in charge of all Lend-Lease operations with Russia, and for Russia we were doing $2 billion worth of business or whatever it was. Or China, or France or whatever.

Ernst: Did your wife come down right away?

Cutler: Yes.

Ernst: Was Lend-Lease in a temporary building or what was it?

Cutler: A building that's actually still there on Virginia Avenue, around 23rd Street. It was just a made-over apartment house.

Ernst: Was Joseph Rauh there right from the beginning?

Cutler: Joe? He was there and elsewhere. He was certainly there before me.

Ernst: Is that where you met him the first time?

Cutler: Yes.

Ernst: Can you give us any impressions of him?

Cutler: He was a real whiz kid and, of course, respected by everybody. He was maybe five years ahead of us in law school but we looked up to him.

Ernst: Were there other Washington hands, not senior hands, but people like Rauh who had come down during the New Deal, who had learned the ropes, who were showing you around?

Cutler: Tom Corcoran, [Ben] Cohen.

Ernst: So you did see Cohen?

Cutler: They moved pretty much at much higher levels then what I was doing.

Ernst: What made Cohen so special?

Cutler: Great mind, pretty daring ideas, very good execution. Tommy was an operator. He was one of the first really successful lobbyists, lobbyist-lawyers.

Ernst: When we get to the start of the Washington practice, but maybe we can do it here, I know that for some Washington lawyers, the worst thing that you can call them is a lobbyist. It tends to be that the negative reference point, the person that they point to as the lobbyist, is always Corcoran. It seems whenever I talk to people, that's what they keep saying. When you were down here, he was already in private practice, wasn't he?

Cutler: It must have been either yes or certainly very close in time.

Ernst: You were focusing on the war, you were thinking you might enlist, but was he a type that people could imagine he could be in government for a while and then do what Tommy was doing, because he was so well connected. But people were looking at what he was doing and thinking about him as an example?

Cutler: Yes. In those days we didn't have the same sort of rules we have today about post-employment activities. So from the day they entered their law firm, I suppose from the day we opened our law firm, we felt free to go anywhere. We didn't have to fill out all those forms.

Riley: How did you go about educating yourself about Lend-Lease? That seems to be a pretty substantial break from the kinds of things you were working during law practice.

Cutler: One of the first assignments I got was to write the quarterly report that Lend-Lease had to file every quarter. So I learned on the job.

Riley: This was only with respect to that particular geographical area? Or was the report—

Cutler: The report was a general report to Congress.

Riley: When did the focus on North Africa become your major portfolio?

Cutler: When the invasion was planned and they decided to form this North African economic board that I referred to, and then we had a meeting, three or four months of planning before the actual invasion.

Riley: You were meeting with civilian staff as well as military staff at that point?

Cutler: Sure. And State Department staff, economic warfare staff.

Riley: Who were the prime movers in this particular orbit? Who would have been the lead operative?

Cutler: Dean Acheson, Gene Rostow. Acheson was, I guess, I'm trying to remember now when he was an Undersecretary of State. I think that's what he was at the time. Remember, he had resigned from Roosevelt's Treasury and come back in with the war.

Riley: How large a group would this have been, Mr. Cutler, that was dealing with North Africa?

Cutler: The planning group? I suppose 50 people. Sort of a movable feast, but certainly a lot of people from a lot of departments.

Naftali: What was the mission?

Cutler: The mission was very much like the Iraq mission. You're going to land in North Africa. You've got a population of roughly one-third French or Francophile Algerians, and you've got an Arab population, and you're going to disrupt the existing administration. You need to furnish supplies, you need to maintain order. You need to get to them what they need to restore the economy.

Naftali: What were the assumptions that the French would play in restoring order, if you can think back to the planning?

Cutler: We made a place for the Free French Committee and we organized the board as a tripartite board, British, French, American.

Naftali: What were the assumptions about the role that the Arabs would play? We were committed to decolonization at some point; the French were not.

Cutler: We dealt with the government such as it was at the time, which was largely of French origin but had a certain number of Algerians. While it had some resemblance to what we're now going through in Iraq, it was different in the sense that, remember, Algeria had been a department of France.

Naftali: Yes.

Cutler: And that had been true for 100 years, I guess.

Naftali: But we were also thinking about Morocco as well and Tunisia, weren't they included in our planning?

Cutler: We were thinking about them and they were different countries. Morocco was a kingdom, a protectorate of France.

Naftali: So each had to be to be treated differently.

Cutler: That's right, and we had offices throughout the area. We had a Casablanca office and an Oran office, because that was one of the two main ports. Big Algiers office. We even had an office in Dakar.

Riley: So your education at this point is a self-education in briefings with State Department officials about the political realities on the ground in each of these various countries.

Cutler: Right. I never set foot in any one of them. Most of us had not.

Riley: But that wouldn't have been unusual at this period of time. There were so many different—

Cutler: No. Since it was run by Vichy, we did not have an official embassy or delegation there, but we did have consulates, as I recall.

Riley: Can you tell us anything about the internal dynamics of these working groups? Was it clearly the case that the military personnel had a kind of "first among equals" status there, because the military mission had to precede everything else? Or was everybody dealing with sort of equal status?

Cutler: We were all attached in one way or another to Allied Force Headquarters in Algiers. The attitude of the military was pretty much they wanted to get rid of this problem and they wanted somebody else to do it. So it wasn't like the State-Defense rivalry you have in Iraq today.

Naftali: Where were you stationed out there?

Cutler: Our base was in Algiers at a building on a boulevard, Michelin I think it was called, which was where Robert Murphy was. Murphy was the senior American diplomat there and Harold Macmillan was the senior British diplomat there. That's where our offices were.

Riley: Can you tell us how much lead time you had in terms of when you got your orders to the point that you actually put wheels down in North Africa, do you remember?

Cutler: I remember the flight, which was very haphazard in those days too, because we took off from LaGuardia in a flying boat, one of those big Boeing boats. You would go around to Recife in Brazil and then cross over Dakar and then cross the Sahara up to Oran, which was the actual route.

I was saying goodbye to my wife for what I thought would be an indefinite period. That was the day when Jamaica Bay was so calm on Long Island Sound that the flying boat couldn't take off. So after an hour and a half of trying to take off we went back to the standard Marine air terminal and got off and then I had to try and find my wife. I think it took us another two or three days and then we flew to Recife and across and someplace in the course of that I got bitten by a mosquito and got malaria. I ended up in a hospital in Oran, which is where I guess I spent the first couple of weeks.

Riley: Probably not a very good memory of that period.

Cutler: It wasn't that bad. The only good thing about it was I never had to give any blood thereafter.

Riley: So you were in a hospital for a period of several weeks.

Cutler: Yes.

Riley: Meet anybody interesting in the hospital?

Cutler: No, but it took a while to find my baggage.

Naftali: By this time your friend Walt Rostow—

Cutler: This is Gene Rostow.

Naftali: No, but I'm thinking Walt, your other friend Walt, had been recruited by the OSS [Office of Strategic Services]. Did anyone approach you in Washington before you went out to North Africa to join the office?

Cutler: No.

Naftali: When you were in Algiers, did you interact with any of the OSS people who were there? I mean, the American community was not huge.

Cutler: I didn't know the OSS people. I did see the FBI people. I dealt a lot with G3, or G2 I guess, the military intelligence people, who were at the St. George Hotel on top of the bay.

Riley: What were they doing there, the FBI people?

Cutler: There was an American, his name was—

Naftali: Charles Bedaux?

Cutler: I'm talking about a man who was an expert on assembly lines.

Riley: On assembly lines?

Cutler: Yes. He was in Algiers and he was wanted by the FBI. He had cooperated—he was wanted on charges of being a traitor.

Naftali: It was Charles Bedaux, I think.

Cutler: It may have been Bedaux, you're right about that.

Naftali: Do you remember an FBI man named Percy Foxworth?

Cutler: Don't remember by name. I do remember that I had been told, because of my Justice Department connection, that these FBI people were coming over and would I arrange for them to get this guy and take him back.

I went into the mess behind the Hotel Aletti one night. There in the entrance of the mess were two guys in trench coats, fedora hats pulled down over their eyes. They were just caricatures of FBI men. I remember walking up to them and saying, "Do you fellows happen to work for the FBI?" They were flabbergasted; they'd lost their cover. Then I think Ezra Pound was also over there, but I forget whether he was—I think we brought him back for trial too.

Naftali: He went to St. Elizabeth's ultimately.

Riley: So you were, your mission when you got over there was to set up an operation or to set up an office for Lend-Lease.

Cutler: For Lend-Lease, right.

Riley: Was your portfolio purely economic? There weren't any policing responsibilities in your orbit.

Cutler: No. It was essentially economic. It had political aspects to it. When we were traveling around, once when I was in Casablanca, I was invited by the caliph of Casablanca to have dinner with him. He's the brother of the king at the time, and with his six other brothers, or five other brothers. The burden of the dinner, apart from the fact that you had to eat the sheep's eye, was that Morocco wished to become the 49th state, and would I please carry a message back to President Roosevelt that that's what they wanted. They didn't want to be run by the French anymore.

So I went back to Algiers full of this and I drafted a big memo on the conversation and I gave it to Bob Murphy. He read it and then he tore it up and he said, "You just forget that you ever were at that dinner." Then a month later another of our Lend-Lease people also went to Casablanca and he got the same treatment, the same request, and he sent his own cable back to Lend-Lease in Washington. When Murphy found out about it, he put him on the next plane back to the U.S.

Naftali: You were there during the time of the Casablanca conference?

Cutler: Yes. I was in Casablanca as part of what you might call the cast of extras on the opera stage. I got to see Churchill and Roosevelt but I never even shook hands with them.

Riley: Were there any surprises for you when you got on the ground and actually started doing your work there? I mean, you'd invested a lot of time in another location trying to develop some expertise in this area. Did you find that your preparation was suitable, or were there marked deficiencies or marked departures from reality that you expected when you landed?

Cutler: I'm sure if we were going to land someplace else a few months later we'd do it better. We made a lot of mistakes.

Naftali: Can you recall some?

Cutler: One in particular had to do with the landing of a lot of the cargo in Oran. I'm trying to remember, I think it was General [Mark] Clark or maybe even [Walter] Bedell Smith at that point. Part of the errors in landing, loss of ships, and so forth.

Naftali: We also assumed that we wouldn't have to fight going in. Didn't the Vichy French fight us for a little bit?

Cutler: It may have been my hospital period. We didn't fight with the Vichy French, but we certainly had a hell of a fight with [Erwin] Rommel.

Naftali: Yes, that was no surprise.

Ernst: Were you ever concerned about your safety?

Cutler: Personal?

Ernst: Yes.

Cutler: The Aletti would get bombed every second or third night by a couple of Stukas. It had gambling casinos on the roof and in the bomb shelter. The bomb shelter, of course, was in the basement. The casinos, when there was an air raid warning, would go on as if nothing had happened. Nobody in the casino, mostly Arabs and the French, bothered to go down to the bomb shelter. So we got shot at in that sense, but nothing serious.

Naftali: Did you know any French?

Cutler: Oh, I could read French and I could speak French. Although the French would say to me, "Vous parlez comme une vache Espagnol?" My present wife is very fluent in French. I could deal in French, I could read in French, write contracts in French.

Naftali: Where'd you learn French, in college?

Cutler: College and high school.

Riley: How did you go about gathering intelligence, not in the security sense, but gathering data about the region that you had responsibilities for? Did you spend a lot of time going out?

Cutler: The North African Economic Board was like a board of directors and met every morning. The British are so good at running meetings like that, so they always did the minutes. You exchanged information every day for a two- or three-hour session, and that's where you found the problems and dealt with them as you could.

Riley: Did you spend very much time going out in the countryside on your work, or was everything pretty much there at your headquarters?

Cutler: I mentioned we went to Oran, we went to Casablanca, went to Dakar. East—I think, I'm trying to remember the name of the city that's on the way to Tunisia, not Constantinople but something close to that [Constantine].

Naftali: As a fine lawyer you learned how to understand the issues of the case. When you think back on this period in North Africa, what were the big issues that arose? What were the big problems that you spent a lot of your time trying to solve, make sense out of?

Cutler: Most of it was management issues relating to organizing a supply chain. What was needed? Where could you get it? How do you deliver it? Who pays for it? What kind of accounts do you set up? These were not legal issues, really.

Naftali: Were these solely American supply chains? What role did the British play in this?

Cutler: They ran a lot of the meetings. I suppose some of the supplies must have gone through the British, there were British-controlled areas all around the Mediterranean.

Naftali: Most of the time you were tracking American supplies, right to the final consumer?

Cutler: Right, and the Army had compiled a pre-invasion list of what was needed. That was put on board ships and it was based in large part on misconceptions of what the Arabs and the French community really wanted. For example, there were huge quantities of modern sanitary napkins, which apparently the French never use. They were still using linen ones, cloth ones. And the Arabs, I don't know what the Arabs were using. Most of these sanitary napkins in the end got used to wipe down the engines on the railroad.

Naftali: Any misconceptions with regard to food?

Cutler: Green tea. The Army had figured out that the Arabs preferred green tea over anything else, and it's not true.

Ernst: The career Foreign Service people weren't that much help, then?

Cutler: Certainly some of them knew, but maybe they weren't in the supply chain in the U.S. It was probably all done in the Pentagon.

Riley: Would you have spent more of your time then dealing with logistical matters in the American supply chain, or would you have spent more of your time in dealing with negotiations with your British and French counterparts about the relative roles in the economic rejuvenation and restoration of the area?

Cutler: I'd say we did both.

Riley: Which did you find more vexing as an administrator?

Cutler: I guess the ordering and delivery of materials, and then following the materials in Africa to see what happened to them.

Naftali: Was there ever any time when you doubted that we would win the war when you were in North Africa? You're there during the Kasserine Pass disaster.

Cutler: Yes.

Naftali: What do you remember of that? It was our first taste of—

Cutler: I was happily in Algiers, but I had several friends who stopped off and stayed with us, military people, en route to the front. It was certainly, the whole North African operation was very touch and go. We weren't ready for a Normandy invasion yet, it was two more years. We wanted to do something other than just sit there in North Africa. Rommel had nothing much to do himself because the French had gotten out of the war. The trench warfare had come pretty much to a standstill so that North Africa became a static theater. Of course, in Churchill's mind, North Africa and the Greek peninsula were the place to go next, the soft underbelly.

Naftali: What was the word on the street about Eisenhower? You were very far away from that level, but you did interact with people who had interacted with him.

Cutler: That he was a hell of a good politician, a very attractive man. That he could handle Bernard Montgomery and Arthur Tedder and that he was destined to be, once George Marshall decided not to take on the European command himself, that it was bound to be Eisenhower in the end. But I didn't have that much interplay with him. I would go to occasional meetings that he would be at or Bedell Smith would be at.

Riley: What were your own perceptions of him at these meetings?

Cutler: About what I said.

Naftali: What were your impressions of Harold Macmillan, if you saw him in a meeting.

Cutler: I saw a lot of Macmillan, because he was right at the level of the NAEB [North African Economic Board], the board that we had. I liked Macmillan very much and he was one of those professional British politicians who would be in and out of the Cabinet. I don't think any of us dreamed at that point that he was going to become Prime Minister, but he ran the NAEB very well. It was my first contact with the tidy, efficient, British way of running things.

Naftali: Tell us a little bit about Couve de Murville, whom you saw something of. He would later be very important in French history.

Cutler: Right. Very cool customer, very self-contained, didn't give away much of himself. Whereas Leroi Beaulieu, who was actually involved in some of the assassination plots, was totally different.

Naftali: Did Jean Monnet move in—?

Cutler: Jean Monnet was in and out, yes.

Naftali: Tell us about what you remember of Jean Monnet.

Cutler: I have a Jean Monnet story to tell you later when we get to wiretaps.

Riley: Was there any point during your time in North Africa where you were approached about leaving to take another post?

Cutler: Yes, I mentioned this earlier. I was approached to take a commission and to be assigned to the civil supply task on the landings in Italy, which was Sicily first and Anzio second.

Riley: Right. But you did not.

Cutler: Instead I went home and got drafted.

Riley: How long then were you in North Africa?

Cutler: Nine months.

Ernst: Did you have any ongoing dealings with businessmen in the export industry in this capacity, or you didn't have to interact with them?

Cutler: Not in any official capacity, no. There were a lot of people I met over there whom I later interacted with a lot, like the editors and the owners of the *Des Moines Register* and the *Minneapolis Tribune.*

Ernst: I was just trying to think of a moment when you first really had exchanges with business clients. This wasn't a lawyer-client setting at all, but whether you would get any impressions from your work about business people and their ability to see large issues. It doesn't sound like this provided you any opportunities to do that.

Cutler: No, I was working with business people who were already in the Army or in one of the wartime agencies.

Ernst: Could you generalize about whether they had sufficient breadth of vision, whether there was something that you as a lawyer were bringing to the table that they couldn't?

Cutler: I think they had a lot of vision, yes. Most of the issues were not lawyers' issues and there was very little self-seeking in it. It is true, of course, we had no rules in those days. Averell Harriman became our representative in Moscow. He continued to invest very heavily in Russian manganese and other mineral operations and everybody just took it for granted.

Naftali: How about journalists? Did you meet any American journalists while you were in Algiers and befriend any?

Cutler: Of course there were a lot of journalists there, but I didn't make any particular journalistic friends there.

Riley: Was there any point in this period of time that you reconsidered your chosen career path of the law?

Cutler: Not really. I was later offered a job, it would have been a legal job, but I was offered a job with *Look* magazine.

Riley: Not as a writer but as a—

Cutler: This would have been to be the general counsel. Remember that was owned by John and Gardner Cowles.

Riley: So you returned to Washington.

Cutler: I returned to Washington. I got assigned to the combat engineers. I joined my battalion. We maneuvered in Tennessee and I was a reconnaissance sergeant. I'd worked my way up to being a sergeant. I got called in by the major in charge of the battalion. He handed me a piece of paper that said, it was a so-called shipping order, "Enlisted men, quantity one," with my name on it, to go to the Brooklyn port of embarkation. He said, "How did you maneuver this?" I knew nothing about it.

So I called some of my friends who were then in the Pentagon, had also been in Lend-Lease. "Say, could you tell me what this is all about?" They called me back and they said it's to go to London to work on the Normandy invasion. But you can forget about it, because we've countermanded the order. They were all involved in the code breaking, this group. They had a right to take anybody in the armed services and we had colonels working for sergeants. We had language professors, we had economists, historians, Wall Street brokers, lawyers, we had the works. That's what happened to me. I literally went to the Brooklyn port of embarkation and got fished out the night before the ship sailed.

Naftali: Do you remember when this was?

Cutler: This would have been, I would say something like April of ’44. I may be off a couple of months.

Riley: So you’re actually assigned in Washington or New York?

Cutler: I ended up in the Pentagon.

Riley: In the Pentagon.

Naftali: Let’s talk about the Special Branch, which is where you ended up.

Cutler: Yes.

Naftali: Tell us about Colonel Carter Clarke, who was the head of the Special Branch.

Cutler: He had come up the military attaché route in the regular Army. He got assigned to the Special Branch as one of the military attaché types and then they brought in Al McCormack to do a lot of the work. He was a regular general, he loved being a general, he loved high command. At the end, he was the one who was sent to see Tom Dewey about the intercepted messages relating to the Battle of Midway.

Naftali: So that he would say nothing about it in the ’44 election?

Cutler: Asked Dewey to keep quiet and Dewey agreed to keep quiet and did. Then, at the end of the war, Clarke got a command in Korea and I think he was General [William] Dean’s deputy commander. Dean was a victim of the invasion and got captured. If Carter Clarke had been captured, it would have told the Chinese and the Russians an awful lot. I guess they would have gotten it out of him one way or another. When we heard that he was assigned to Dean, Phil Graham and I went over to see Frank Pace, who was then the Secretary of the Army, and said, “You’ve got to get Clarke out of there before he gets captured.” They fished him out and put him in charge of a hospital unit someplace in Japan.

Naftali: Why was Phil Graham involved, was he in Special Branch too?

Cutler: Yes.

Naftali: Was he the one who got you? Who fished you out and put you into Special Branch? Who said, “We need Cutler”?

Cutler: A fellow named Louis Stone, who had been a contemporary of mine at Yale.

Riley: Had you kept in touch with him in the succeeding years?

Cutler: Yes, very much so.

Riley: How aware were you of the kind of work that he was doing before they fished you out?

Cutler: Well, I knew he was in Special Branch, I knew it had to do with intelligence but I didn't know it was code breaking.

Naftali: Which section were you in in Special Branch? Was it section A and B and C?

Cutler: You know pretty much the structure and all the different things that were done, but every day we prepared a report for the President and the Secretary of War and a few other people, and eventually the theater commanders, on what was in the traffic of interest. It would quote a message we had and then they would quote an article from the *New York Times,* giving some of the background, and having our analysis of whether it was a reliable message or whether it indicated a political change was about to occur or a military maneuver of some kind.

Naftali: I always thought—

Cutler: I was assigned to that. There were three of us. Jack Bingham was another, Jonathan Bingham. Third was a man named Henry Rigby, who was one of my contemporaries at Cravath.

Naftali: So then you were right under Clarke, then. You weren't in one of the sections. The sections were feeding information to you.

Cutler: No, we wrote this daily paper and that would go directly to McCormack.

Naftali: There was something called the "magic summary."

Cutler: That was it.

Naftali: Which by 1944 was going to President Roosevelt. For a year he wasn't getting it, there were a couple of reasons.

Cutler: And we never gave it to the OSS and we never gave it to the State Department while Adolf Berle was there.

Naftali: Didn't? I thought people above—I thought Assistant Secretaries of State received it.

Cutler: It may have been at a later stage, but in the beginning they kept State out.

Riley: Why was that, Mr. Cutler?

Cutler: They mistrusted Berle.

Naftali: Why did they mistrust Berle?

Cutler: The book about the modern corporation. I guess he was thought of as a flaming liberal.

Naftali: That's interesting, because the FBI didn't mistrust Berle. The Navy withheld its traffic until 1944, but you were getting Navy SIGINT as well, weren't you? The Navy work on the Japanese Naval codes, the JM 20-25.

Cutler: The breaking of the Japanese Naval code, yes. We were getting that product and analyzing it and drawing conclusions, some of which the Navy disagreed with, particularly about Midway.

Naftali: You weren't there then, but you had heard about this afterwards.

Cutler: But our degree of estrangement from the OSS was so strong that unknown to us, while we were reading the Japanese Naval codes very easily, the OSS broke into the legation, the Japanese legation in Lisbon, and stole the code book. As a result the Japanese changed all their codes and it took us months to get back in again.

Naftali: Well, the OSS also took Vichy French materials when we were able to read their ciphers.

Cutler: Yes.

Naftali: We were not just reading the German and Japanese and Italian ciphers, we were also reading the French.

Cutler: We were reading the French diplomatic, we were reading most everybody's diplomatic messages.

Naftali: The Turks, the Finns.

Cutler: We had hundreds of messages between the French officials in Vietnam and Paris.

Riley: Your responsibility in this process is as a winnower of intelligence to determine what ought to be raised to the level of presidential viewing, or was your primary role as an interpreter, to massage this into a language that a layperson in the White House could easily comprehend?

Cutler: I would say it was the former. We were reading the messages so well, they came through, they spoke for themselves. Then, at one point, based largely on the message traffic, we were able to identify a Japanese ethyl fluid plant. At that point there were only three or four ethyl fluid plants in the world. We had two of them, the British had one, and I think the Germans had one. We knew the Japanese were very short of ethyl fluid; they were actually carrying it by submarine from Germany all the way around to Tokyo. Once we located this plant I was sent out to Leyte, where we had found a bunch of barrels with the name of the plant on it. By that time we knew these were ethyl fluid barrels and that this was an ethyl fluid plant. The B-29s were sent up on the basis of all of that to go bomb the plant, which they did.

Then at the end of the war when we did the bombing survey, we discovered the Japanese had built five ethyl fluid plants, so probably all we did was confuse them.

Naftali: The Navy generally takes credit for their handling of the cipher at the time of Midway. Tell me the story. I mean, even though you weren't there in the Special Branch at the time, somebody must have talked to you about this.

Cutler: Yes, Walter Friedman I guess his name was, who was the actual cryptographer who broke the code, was a hero all over the place. In those days the computer capacity that you needed to play out all of the different combinations was huge. It would take a bunch of these Hollerith machines, the card machines, that would fill up this office and probably my office next door in addition. What the messages showed was the Japanese were going to feint at Midway and send the main fleet, the carrier fleet, toward the Philippines. We got some other messages indicating that there were some water and other equipment problems at Midway itself. We were able to identify that this had to be Midway by the messages.

The plan was, or a plan, which the Navy took a long time before it accepted, was to concentrate our main fleet on blocking an attack on Midway by the Japanese. That turned out to be the right decision, so we were there and we inflicted a lot of damage on them. We had to worry, of course, that their fleet might try to go to Pearl Harbor, and it didn't. So the group that conceived the plan to attack Midway turned out to be right.

Naftali: Did you see any evidence of the Holocaust in the signals traffic that you were preparing for the President?

Cutler: No. Of course, that would have been German traffic.

Naftali: Yes, but we were—

Cutler: We had German, we had the Enigma machine. We had the Japanese so-called purple traffic. The answer to that is no.

Riley: Can you give us a sense—I'm sorry, Tim, do you have a follow up?

Naftali: I wanted to know whether you had ever met Telford Taylor. At that time, perhaps Telford Taylor was in England.

Cutler: I knew Telford Taylor. I knew him when he was at the FCC [Federal Communications Commission].

Naftali: Can you tell us a little bit about Telford Taylor, because he had worked on the German police traffic and was sort of an expert on that, of course later became a prosecutor.

Cutler: Yes.

Naftali: Was he in the Special Branch when you arrived in 1944?

Cutler: I don't think so, at least I did not run into him there.

Riley: Can you give us some sense about how large the volume of incoming traffic was that you typically had to winnow through in order to get your report prepared and what percentage? Maybe that's an unanswerable question, but I'm trying to get a sense about the manageability of this load. You said it was yourself and then two other people.

Cutler: The three of us really operated at what you might call the post-winnowing stage. There would be hundreds or thousands of pages of traffic that we were reading. We had a lot of people, many of whom would pick out parts of that traffic they thought were interesting. The three of us and notably Hank Rigby, who was in charge of the three of us, would look at that and then decide, this is something we should cover and report to the President or the Secretary.

Riley: So there are sets of filters or screens operating at several different stages before the winnowed product actually gets to you.

Cutler: That's right.

Riley: So you're not getting all of the raw traffic, and I'm wondering how many steps in the normal course of business, how many sets of screens would have existed before the traffic actually got to you.

Cutler: I think it probably changed over the period. I remember after the war going back in at the time of the Chinese invasion of Korea, or counter-invasion, just as part of a group looking to see what we missed, if we missed anything, and I asked to see a day's traffic. It was about this thick.

Riley: It looks like about five inches, six inches.

Cutler: As I was going through it, lo and behold, I read a message from myself to somebody in Europe about the Bank for International Settlements. By that time we were supplying the traffic to the State Department.

Naftali: We'll get to the Brownell Commission after, but I'd like to focus on again the key issues for you in this period. Are you analyzing German traffic for this report to the President or is it just Japanese?

Cutler: It would be anything. German traffic, French diplomatic traffic, whatever.

Naftali: Let's start with one key issue. What do you remember about the problem of post-war German resistance, the fear that after the Wehrmacht collapsed that in fact we would have to fight these SS renegades? That was one reason why Eisenhower decided to invade all of Germany rather than to do what Montgomery wished, which was to go straight for Berlin. Do you remember concerns about how the war would end?

Cutler: I don't remember seeing any traffic on that subject. Is this before the Japanese surrender?

Naftali: This is in February and March of '45. How about concerns about German use of chemical weapons, that the Germans might, in the last months of the war, use chemical weapons against the allies?

Cutler: We were following as closely as we could anything that seemed to relate to nuclear or atomic fusion, buzz bombs, V-bombs, missiles. I don't remember anything in particular about chemicals.

Naftali: On the Japanese side, the Japanese-Soviet discussions where it looked as if the Japanese might be interested in surrendering.

Cutler: Yes.

Naftali: What do you recall of that issue and how you were following it?

Cutler: I recall a lot of messages back and forth with Ambassador Naotaki Sato, who was the Japanese ambassador in Moscow. He was always urging that the Japanese should sue for peace and that they should use the Russians as the intermediary to do that. Finally he did get an instruction to inform the Russians the Japanese were ready to negotiate a peace. The Russians never told us. The reason they didn't tell us presumably was they wanted to wait until they could transfer their forces and get into the Pacific war and have a larger claim to Japanese territory and Chinese and Mongolian territory.

Naftali: Did you ever get the sense that the President, that Roosevelt, much earlier, reacted to this information? Did you ever get questions from the White House for additional information on certain intercepts that were described in the daily report?

Cutler: No, but McCormack and [John] McCloy got very involved in the issue of whether, when we did finally develop the first two bombs, whether we should use them or not. They both argued, and so did Stimson, if I recall correctly, at Potsdam, against using it. But Truman went ahead on the advice of Jimmy Byrnes, who by that time was in the White House. I guess he was Secretary of State by then.

Naftali: Yes.

Cutler: Essentially the advice of Marshall, who had said that he thought a land invasion of the main island would cost a million casualties in the end.

Naftali: I was actually trying to focus on one of the great puzzles for students of Roosevelt, because Roosevelt didn't write marginalia. Winston Churchill has left for historians wonderful notes on the intelligence that he was given. Roosevelt wrote almost nothing on what he was given. But you were sending him product, not you personally, but your office, every day. I wonder if you could recall any reactions from the boss that filtered down to your level from

McCormack or Clarke that the President is very interested in this, wants more on this, that sort of thing.

Cutler: I would say that that was probably above my pay grade.

Riley: What was the procedure for the report once you prepared it? It went to McCormack and he took it personally to the Oval Office, or did somebody else?

Cutler: No, all three of us had worked for McCormack in the Cravath office, and Rigby would assign something for us to write. That would be distributed to McCormack and others. Whether he censored any of it or edited it before it went, I don't know but I don't think so. There were just too many other things going on.

Riley: Sure.

Naftali: What kind of procedure did they have for you to get a security clearance at that point, since you were seeing the most secret information, next to atomic information, about the United States government.

Cutler: I don't have a clue.

Naftali: You obviously had clearance. Was there a clearance process?

Cutler: I'd been working on various kinds of classified material ever since I joined Lend-Lease, but we didn't have the elaborate vetting system that existed later.

Naftali: If you saw, when did you start to see Soviet intercepts?

Cutler: I don't think I ever did. I saw Chinese intercepts about the time of the Brownell Report.

Naftali: In '45. Do you recall any discussions about whether the Soviets should be a target of our intelligence activity? As you know there was a debate in 1945 whether we should—

Cutler: I recall nothing about it. I might have known about it at the time.

Riley: Do you recall ever being surprised at the intelligence you were getting? Maybe it was a constant process of being surprised.

Cutler: In a very real sense, one of the major reasons we won the war was we were able, in effect, to sit—to go back to the poker analogy—sit behind somebody and know exactly what he had in his hand, especially when you were planning the Normandy invasion, deciding whether to feint or not. We knew, for example, about the bombing of Coventry being planned, the carpet bombing, and Churchill allowed it to happen rather than take the risk of giving the Germans the knowledge that we knew they were about to bomb Coventry.

Naftali: Mr. Cutler, I want to be sure—you know this from the British, or do you know this from something you read afterwards, because I believe this is a myth.

Cutler: It would have been something I read afterwards, but I thought it was pretty authoritative.

Naftali: No, it's a myth.

Cutler: Then you know more about this than I.

Naftali: No, no, if you had direct knowledge then that trumps—to go back to a card analogy—that would have trumped. But if it is from secondary, no, it's a myth. But I'd like to ask you about—

Cutler: And if there was such traffic, I don't think we ever saw it in the Special Branch.

Naftali: I want to be sure I understand. The magic summary included information on countries other than Japan, Japan and other countries, it wasn't exclusively Japan.

Cutler: That's right.

Naftali: In many ways it's like the precursor of the President's daily brief. I don't think anything like that had ever been prepared. What was the structure of this? How many pages? Was it one or two pages? Was it written for a policymaker in mind or was it written for someone who would take time to read and understand an issue?

Cutler: It was three to four, six to eight pages perhaps. It would be delivered to the customer by hand and the customer would be expected to read it and give it back. I remember a big to do, since all of us ultimately reported to McCloy, who was Assistant Secretary I think at the time, he had a German maid. He had his niece as a secretary and I was a good friend of the niece. One morning the German maid called up for the niece and said, "Mr. McCloy seems to have left some materials under his bed, what should I do with them?" McCloy had taken home his summary. How he was allowed to take it home, I don't know. So there was much to do about that. It never became an official inquiry. But the idea was, you let the person read it and then you took it away.

As the war progressed and we were fighting in more and more theaters, we put our own people with the military commanders and we sent the material to them in our own ciphers and they showed it to their generals.

Riley: You had mentioned a couple of minutes ago that the traffic escalated around the Normandy invasion. Was this something you were particularly focused on at the time? Were you involved in the intelligence background, if you will, in the development of the plans for that invasion?

Cutler: I saw a lot of the Rommel messages, which we would report on. Presumably the military planners were receiving all this information themselves and making their own decisions. But we made a number of feints, didn't we, as I recall, at other places.

Naftali: But you didn't have official knowledge of the deception?

Cutler: No.

Naftali: Let's talk about a surprise for the allies, the Ardennes offensive, what we would then know as the Battle of the Bulge. Do you remember how that surprise happened and were there any inquiries afterwards to learn about what had gone wrong?

Cutler: If there were inquiries, I was not involved in them. But I think we observed at the time that the Germans had managed to achieve a remarkable radio silence when they planned the counter-offensive. From an intelligence point of view, it was a surprise for the U.S., although it was the same area that had been fought over in every world war.

Naftali: One concern, when the Brits looked at this problem after the war, they felt that maybe at a certain point we became too enamored of signals intelligence because it was such a wonderful source, and didn't combine it with other less sexy forms of information to form a more sort of all-source view of what was going on. You said that you did try in these summaries to add context, so you did add other sorts of materials. Did you include intelligence that was from human agents? Did you get any human intelligence that you could combine with the SIGINT that you were sending forward?

Cutler: No, we did not have access to any human intelligence. We had access to all open source material, books, magazines, et cetera.

Naftali: To your knowledge, no one really was combining the signals intelligence with human intelligence and open source materials to give an all-source view. In this period, that was not happening.

Cutler: No. In fact, we tried very hard to be sure that the reader would know what he was reading that was signals intelligence. Whereas today, as you know, from the DIA [Defense Intelligence Agency], the daily summary that the State Department and others prepare, you get a bunch of gobbledygook, you get a statement which is based partly on signal intelligence. Then after it you get a series of initials and acronyms indicating what the source was. There are so many of them, you couldn't tell which included radio intelligence and which did not. So the average reader today would have great trouble telling you whether he thought something was based on an intercepted message.

Naftali: When do you leave the Special Branch?

Cutler: It would have been right after August of '45, when to get out of the Army you had to have 85 points. I think I had 20, but you could get out if you got a letter from the Secretary of State or the Secretary of Defense saying, "This person is needed for some mission in connection

with the peace." I got requested from the State Department to liquidate foreign property in Latin America that we had supplied to all the Latin American countries, which came really out of the whole Lend-Lease operation.

Naftali: Before we move to that, I just wanted to ask you, Mr. Cutler, to put on the record your recollections of William Donovan from that summer job that you had at Donovan & Leisure.

Cutler: Well only that he was a very Teddy Roosevelt type of fellow, very outgoing, very outdoorsy, breezy. Must have made a wonderful jury lawyer, I would have thought, although I never saw him in court. I worked with Carl Newton and with Ed Lumbard, who later became a judge on the two great cases of the moment. One of them I think was for the general, it was Fred Perry's divorce.

Naftali: The tennis player?

Cutler: Fred Perry, the tennis player with the long trousers. The other was a deal between Disney and ABC, which Carl Newton had worked on. This had to do with what are now Disneyland and the parks and the fact that ABC had the right to use, or refuse to use, any television material produced by Disney. In the litigation we got that unwound.

Naftali: Television material?

Cutler: The *Mark of Zorro*, the *Mickey Mouse Club*—

Naftali: No, but I mean—that's later.

Cutler: Yes.

Naftali: I was thinking, you worked for Donovan & Leisure, though—

Cutler: Yes, but I'm just saying what I did with people in the firm later on.

Naftali: Okay. The other question I had was, did you meet Allen Dulles before the war or was it after the war?

Cutler: After the war.

Naftali: Did you consider at all a career in intelligence after this experience with Special Branch, before you went to the State Department?

Cutler: I considered it at the time when McCormack took over in the State Department, running State Department intelligence after the war. I could have gone with him. I didn't. The only other time I would have considered it was when I worked for President Carter and I did a lot in this whole area at the time. But if he'd gotten re-elected, I would have been interested in becoming the CIA head.

Naftali: He wasn't going to ask Stansfield Turner to continue?

Cutler: Who knows.

Naftali: Why didn't you say no to McCormack?

Cutler: I wanted to get out, I wanted to get back into law practice.

Riley: I have two questions for you. One is, do you recall when you first became cognizant of the Holocaust?

Cutler: Probably all I would have known about the Holocaust was what would have been in the American newspapers. There were a few things, like Kristallnacht that were in the American newspapers. Then, for example, the famous McCloy letter that's in the Holocaust Museum, having to do with whether the allies should bomb Auschwitz. I never knew about that until I went to the Holocaust Museum.

Riley: And that was basically the reason for the question, because of the ongoing debate about what the President had known. One wonders whether one in your position to help funnel intelligence traffic might have had access—

Cutler: He certainly knew a lot because Rabbi [Stephen] Wise and others were talking to him.

Riley: Sure.

Cutler: I know the feeling in the Pentagon and I know from McCloy personally was that you'd risk killing a lot of Jews if you did it, whoever was in the camp. That the more important thing was to win the war and liberate the camps.

Naftali: You talked to McCloy about this after the war, I presume?

Cutler: Yes.

Naftali: Do you remember when?

Cutler: I used to see him quite regularly. He's the man who hired me at Cravath in the first place. I was with him on a number of German-American projects. In fact, when Monnet died, I was with McCloy in Hamburg, and I went with him to the funeral, which was in that little Catholic church near the farm they had outside of Paris.

Naftali: You said that you had a Monnet wire-tapping story.

Cutler: This has to do with Joe and Polly Kraft, Joseph Kraft the columnist and Polly, his wife, who is now my wife. Joe and Polly were in Paris, I think at the Crillon. They were there covering the Vietnam negotiations being carried on by Harriman and [Cyrus] Vance, I think. I forget who the Vietnamese person was. At that time, Joe was being wiretapped by the plumbers in the White

House and by the FBI because Nixon suspected him as being a source for Henry Kissinger. The inquiry really was, was Kissinger leaking to Kraft, Walter Lippmann and others?

Joe and Polly are in the Crillon, making various phone calls. At the same time, through the FBI, they're being monitored by the French Sûreté in the neighboring room. One of the calls Joe made, listed in this tape we have, we subsequently got from Elliot Richardson and [William] Ruckelshaus. In the tape it says that Joe was talking to, and then it reads, "JOHN MONEY?" because they didn't know who it was. William Sullivan, who was Hoover's deputy, sends this over to [John] Ehrlichman, saying, "We're going to identify who John Money is and let you know." And of course it was Jean Monnet.

Naftali: You said you got this tape from Ruckelshaus?

Cutler: Yes. You remember when Richardson and Ruckelshaus came in and Ruckelshaus took over the FBI. We had been in communication with the Justice Department about the tapes, the tapes were known to exist at that point.

Naftali: Who are "we"?

Cutler: I was Joe Kraft's lawyer for this purpose. The government kept pushing us off, saying, "We're in litigation with Tony Lake, with Mort Halperin and others. We need that material for those cases, we can't give it to you." Then came the big shakeup, the Saturday Night Massacre and Ruckelshaus comes in. They decide that there was no national security basis for the wiretap at all and let us have the transcript.

Naftali: With John Money.

Riley: To draw you back in time, do you remember where you were when you heard that Franklin Roosevelt had died?

Cutler: I think I must have been in the Pentagon, I guess.

Riley: Were there any perceivable changes in your work or in your workload in the immediate aftermath of that? A corollary question, was there any intercept traffic of note about perceptions of this new incoming President, skepticism about him, worries about him, things of that nature?

Cutler: I remember, of course, there was a national worry about it, had been in the Prendergast machine, that he was just a Senator with no experience, et cetera. But I don't recall any traffic about it.

Riley: Should we take a five-minute break and then we'll come back for about another hour and a half.

[Break]

Riley: In the break we were discussing Mr. Cutler's prized possession, which is a memo on the wall here that I probably should read into a subsequent transcript so that we have it, but we were telling [Richard] Nixon stories.

Cutler: I went out to the Nixon funeral with President Clinton, took along about half of the Nixon cabinet with him, people who were here in Washington. The first thing I want to mention is that Billy Graham presided and started out saying, "We will first have a minute of silence." A great friend of mine named Peter Stone—wasn't there at the time, producer of *1776* and a number of other plays—said, "What he should have said is, 'We're now going to have eighteen and a half minutes of silence.'"

But anyway, I went out, sitting next to Al Haig. I asked Haig, "Is it really true that you urged Nixon to destroy the tapes?" He said, "Yes, it is true. I asked him to do it and he said, 'I can't do it. The lawyers are telling me I'm not allowed to do it since they have been asked for by the judge.' And he said, 'Besides that, I knew that sooner or later [Harry] H.R. Haldeman or Ehrlichman would turn on me to save themselves, and I had to be able to prove that they were involved.'" Now how paranoid can you really be?

Naftali: That was the entire administration.

Cutler: Then, I was sitting there and I get clapped on the back by [Charles] Colson, "Lloyd, how are you?" And I told him about this. I didn't mention, after Colson got into his own trouble, his ex-law partner came to me and wanted me to be his counsel. I had plenty of reasons for not doing it. So I told him about this and he said, "Oh we used to have such fun in those days. I remember when your friend Joe Kraft came to see me and asked, 'How can I get back into the good graces of the Nixon administration?'" Which isn't a likely story in itself. Colson said, "I told him, 'You might try slashing your wrists.'"

Riley: An overall pleasant group of people. I thought funerals were usually times of forgiveness and tales of camaraderie, but it sounds like in this case that was not true.

Cutler: I think all the official speeches were full of respect and forgiveness.

Riley: Oh, sure.

Naftali: Clinton seemed to have a peculiar relationship with Richard Nixon.

Cutler: I think all Presidents have a peculiar relationship. That is, the link between Johnson and Nixon was a very good example. You mentioned the [Bebe] Rebozo thing, but it was Nixon who arranged for Johnson to put a helicopter pad at the ranch after he was President. Carter and [Gerald] Ford and Nixon, to some extent, bonded when they were all sent over to go to the funeral of [Anwar] Sadat.

Naftali: I guess because they shared—they are a very small and exclusive club.

Cutler: That's right.

Naftali: But do you remember Clinton talking to you about Nixon at any point, musing with you about him?

Cutler: We didn't talk much about Nixon. That's a whole other set of stories; we'll never get this done.

Riley: We'll get it done. We thought what we would do, we have about an hour and fifteen minutes left. Since Tim is not going to be with us for the next session, we thought we'd stay with the intelligence theme, since we have our resident expert on that, and deal with Brownell, anything that may bridge between where we were and Brownell. Then let him ask you some questions about your Kennedy administration experience. So if you're amenable to doing that, then we'll dial back in time later. So Tim, why don't you have at it?

Naftali: We'll skip over the State Department period?

Riley: That's fine, unless—

Naftali: Actually, the way I'd like to do that: Mr. Cutler, what would you like to put on record about this period when you were at the State Department? Again, what were your objectives, what did you learn from this experience? Do you recall a story or two that illustrate it? I think it would be nice to get that on record since your mind is now in 1946, let's keep it there for a while.

Cutler: I really had very little experience in the State Department. By Carter's time I'd taken on various special foreign negotiating tasks, but they were in and out and most of that I did from the law firm. In fact, I was never fully on the government payroll after World War II as foreign liquidation commissioner, except for the two times I went in to be White House counselor.

Naftali: But this foreign liquidation responsibility, you were full time? It was not full time?

Cutler: That was full time, but it was only four months, I think, and it occurred almost entirely in South America. Nobody in the policy-making part of the State Department cared what we were doing; we were just trying to get rid of everything.

Riley: Where were you physically located?

Cutler: Originally in Panama, at Albright Field, I think the name of it is. I remember because we were right in the glide path of these B-29s, or whatever we had. They would land with their wheels so close to the roof of the office we were in, that the papers would rise off the desk like this with all the vibration. Then we were in Rio and we had a suite at the Copacabana. That was the best part of the trip.

Riley: That's hard duty.

Naftali: Did you see Berle there?

Cutler: No, no.

Naftali: One more question on McCormack. Some of the smart money was on McCormack to become an intelligence czar of sorts in 1946. He certainly wanted to be one. Can you recall him ever talking to you about that? I don't know how close you were to him.

Cutler: I talked a lot about it to him, and to Amory Bradford, who was another New York lawyer who had been with us in the Special Branch and went with McCormack to the State Department. There was a fellow named Palozoides, you remember him. T. A. Palozoides, who was another career government person who had been in Special Branch and went over with McCormack to State Department intelligence. But Al ran afoul then. It's hard to believe, considering how conservative he was. He ran afoul of Congressman [Andrew Jackson] May and May somehow got it into his head that McCormack was pro-Communist, one way or another. It sounds ridiculous.

Naftali: Ridiculous.

Cutler: But May was a terrible fellow, a big autocrat. He was chairman, I guess, of what today would be Armed Services. That ruined McCormack's career.

Naftali: Single-handedly, he ruined his career.

Cutler: I think a lot of this is written up somewhere. My recollection is fairly dim but that's what happened.

Naftali: I thought a role was also played by the geographical heads in the State Department, who were not happy—

Cutler: That could be, that could always be true. That's the way the State Department is organized, geographically and functionally, and never the twain shall meet. In fact, the Undersecretary for Economic Affairs has below him an Assistant Secretary for Economic Affairs, who reports directly to the Secretary and not to the Undersecretary.

Naftali: Tell me, when did you meet Sherman Kent?

Cutler: It had to be during or shortly after the war, but I'm really not too sure.

Naftali: But you remember Sherman Kent?

Cutler: I remember Sherman Kent.

Naftali: So how do you remember him? If you don't remember exactly—

Cutler: I just remember him as an intelligence figure.

Naftali: So you were out of the game. Are you tapped for any work or advice in the first couple of years of the CIA, or is the Brownell Commission your return to the study of intelligence?

Cutler: The Brownell Commission is my return.

Naftali: How are you recruited to do that work?

Cutler: Brownell you know, this is George Brownell, brother of Herbert Brownell, who was himself an Army colonel and a Davis, Polk partner. He was assisted on this, his deputy is a fellow named Bill Jackson, from one of the other New York blue-blood firms. The next person in line was Ben Shute, a former Cravath partner, and a good friend of mine whom I had worked for at Cravath. He's the one who recruited me. We had a couple of others; one was named Harmon Duncombe, who had also come out of Cravath. Among us we did the analysis and wrote the report. I was the principal author of at least parts of the report, which was two-fold. It was first, what, if anything, did we miss? And second, how should we organize the intelligence arms, the myriad arms of the U.S. government, into one coherent package? We made recommendations on that.

Naftali: Are you the father then of the NSA [National Security Agency]?

Cutler: We are the ones who recommended the creation of the NSA and also that the Director of Central Intelligence has that job, in addition to being the director of the CIA.

Naftali: That you didn't get.

Cutler: We got it on paper, but it didn't happened then. It did happen somewhat later.

Naftali: What role did you play?

Cutler: I was a draftsman of the report. The two things I worked on were, first, how do you avoid judging what you could glean out of the traffic and avoiding the prejudice or distortion of hindsight? It's so easy if event B follows event A, and you know that it led to event C, to say, if you missed something, if you'd only had event A you would have gotten to C. It's often very likely that even if you knew about event A, you never would have gotten C, or you can't tell one way or the other.

It is true that the Chinese, if I recall correctly, achieved a virtually total surprise. We had no idea that they were mobilizing to invade or that they would actually invade when they did, or counter-invade, whatever you want to say it is. We thought, on the traffic side, that without resolving the issue—we never said, "Something was missed and had it been found, we would have known about this." But we did think that the way in which the three services competed to collect intelligence was a hell of a mess and very duplicatory, and that it would be much better to have a single agency for all of the armed services. That became NSA and that we did recommend.

In those days the President could do it more or less by executive order. Today, I suppose he'd have a hell of a time.

Naftali: So there was nothing like the Special Branch that existed in 1950 to pull together the signals product from the different agencies.

Cutler: There may have been a Special Branch then; there may have been a Pentagon operation, but it had no control over the collection by the three services. We recommended not only that you create NSA, but that you also create an Assistant Secretary in Defense for Intelligence, which I don't think happened until several years later.

Riley: Did the Defense Department view this as a friendly exercise or a hostile exercise?

Cutler: It depended on where they sat. The people who were in the big jobs at the time were very busy protecting their collective asses. I remember going over to see a General [Clayton] Bissell, I think, who was the G2. In a sort of joking way I'd left word with my partners in the office that if I wasn't back by 5 o'clock, they should go get a writ of *habeus corpus,* because I'd never joined the Reserve.

I remember Bissell saying to me, "You were in the combat engineers," and I said, "Yes." "And your serial number was so-and-so," and he had it all on a piece of paper. Then he said, "And you were in the Special Branch, and your number—" this one I remember, "0926438," I think. He was very clearly putting me on notice: one troublesome thing in our report, and I was going to be called back into the service.

Naftali: Now you raised a very important problem, which is how to avoid the trap of 20-20 hindsight, which is always the problem when you analyze an intelligence failure.

Cutler: Right, and we're about to go through it again.

Naftali: Exactly.

Riley: Absolutely.

Naftali: That's why it's especially relevant, will always be relevant, because you will always have intelligence failures. In 1950, what was the perceived wisdom, as best you can recall, about why Pearl Harbor happened? I mean, why did people think we could have known, or we should have known, that it was the breakdown of signals intelligence cooperation that made it possible? What was the lesson that people were trying to learn from Pearl Harbor?

Cutler: I think there it was that we had an opportunity to know, and if we had not been on, in effect, a leisurely weekend schedule at Pearl Harbor, that we would have reacted in time. Because one of the messages, I think the Four Winds message, was from Tokyo to the Japanese embassy in Washington, saying, "Destroy all your secret papers." That should have been enough all by itself to put Pearl Harbor on a very high alert. It was always muddy whether that message, which never got in time to General [Walter C.] Short, was mishandled because of the weekend.

Naftali: Was there also some discussion of the problem of resource allocation, the fact that the Army and the Navy were both focusing on Japanese diplomatic traffic, when if you had taken time to break JM-25, which was the admiral fleet code, you would have had it? Or at least you would have had more evidence that something was going on.

Cutler: And there was also the embarrassment of Stimson having shut down the Japanese code-breaking effort in the 1920s and '30s.

Naftali: People were still thinking about that?

Cutler: And you remember it was Stimson who said, "We're going to shut it down because gentlemen do not read one another's mail."

Naftali: Well, that's right. He tried to correct that by bringing Al McCormack into the Pentagon to establish a Special Branch.

Cutler: Now, I'm a big Stimson fan, I'm not criticizing him, but that was his ethic. That's why we neglected the code-breaking opportunities.

Naftali: Now 1950, did we have a message like that, Japanese message, but in this case with regard to the Chinese that might have given us, if viewed properly?

Cutler: I can't recall a strong one, anything resembling, "Destroy all papers."

Naftali: But we had good coverage, pretty good coverage of the Chinese in 1950.

Cutler: I don't know. I don't remember, but it's hard not to think if we'd had good coverage we would have noticed at least a substantial increase in signal activity, whether we were reading it or not. You'd think, to assemble, what was it, half a million troops or something like that, to assemble and move around that force, you'd have to use signals to do it.

Riley: How difficult was the political environment within which you were operating at the time, given the kind of virulent anti-Communism that's beginning to emerge at this period? Are you having to be doubly careful about how things are presented to people because of the fear of what an irrational actor well-placed in the political system might do to your report or your career?

Cutler: Not to me personally. I was just called back in to work on this one report and I was home free again. But you had first this cult within the Republican Party, "Who lost China?" which is still with us. Second, you had [Joseph] McCarthy, who was such a swashbuckler. He probably had everybody convinced he'd won the war and it was all over.

Ernst: Not just to switch topics for a moment, did you participate at all in the [Adlai] Stevenson campaigns of '52 or '56?

Cutler: I voted for him in '52. I had many friends working with him; George Ball was a very close friend of mine. I worked for George Ball at Lend-Lease.

Naftali: That's where you met him?

Cutler: Yes. And I knew Bill Blair, his law partner. So I was all for Stevenson, but I was too young to be a very active person.

Ernst: Did you know Thomas Finletter from State when you were at Lend-Lease?

Cutler: Yes, Finletter mainly not so much in the Air Force as in the State Department.

Ernst: In the State Department before you went to Lend-Lease, or when you were at Lend-Lease.

Cutler: Yes.

Ernst: My understanding was he was quite active for Stevenson.

Cutler: Could well be.

Ernst: He was supposed to be awfully good and awfully cool.

Cutler: Finletter?

Ernst: Yes.

Cutler: Yes, very good. Just as [Stuart] Symington was very good.

Naftali: You mentioned that your period of political activism, or great political activity, really begins with Kennedy. How do you get involved with the Kennedy campaign? When do you get involved for the first time?

Cutler: I got involved in the spring of 1960, really in two ways. I had a number of friends who worked for Kennedy from the beginning, like Byron White, like Lou Oberdorfer, who was our law partner here, now a federal judge who went to work in Bobby Kennedy's Justice Department. Bill Orrick, who ran the Kennedy campaign in California, also later became a judge and worked in the Kennedy Justice Department.

In the spring, or January and February of 1960, I went down to Florida to visit with my friend Louis Hector, who was later chairman of the CAB, the Civil Aeronautics Board. He had a good friend who became my friend named Bill Baggs, who was the editor of the *Miami News* and a protégé of Ralph McGill, one of these liberal Southern journalists. Baggs was working on a story involving Nixon and Bebe Rebozo. Nixon would come down every weekend with George Smathers, they'd all go out to Rebozo's house, and then a bunch of call girls in Miami would be summoned by Bebe to be out there with them every weekend. I worked with Bill on trying to develop that story, but as we developed it, the first thing we found out was that in addition to all

those mentioned, also at Rebozo's every weekend was John F. Kennedy. He would come down with his friend Smathers, so we decided to drop that.

Then Kennedy gets elected; the Justice Department is staffed with a lot of people I knew well. I was sounded out about taking a job in Justice, but that was just about the time that we were putting this law firm together. If I had done that, it never would have happened.

Riley: So you didn't really have any major activity in the campaign, then, in 1960.

Cutler: No.

Riley: I want to ask you a contextual question and that is about Richard Nixon. Had you had dealings with Nixon at all before the 1960 campaign? It seems that he was involved in some ways in foreign policy-making before he became Vice President. In Congress—

Cutler: I don't recall having any personal dealings with him at the time. I saw him more when he was President and after he'd been President, but I had no real relationship with him. Not only was he more or less a domestic policy liberal—EPA [Environmental Protection Agency], for example, was his creation—but he was a superb political analyst. That is, he could tell you today who's going to finish where in all the primaries, who's going to carry which state, and who has the best chance of getting elected President, and be 95 percent right about it. As you say, he was a very difficult person to admire.

Riley: We're going to come back and deal with this much more extensively later, but I didn't know whether your paths might have crossed during this earlier period. So anyway, when the Kennedy administration is being put together, you're otherwise occupied with trying to form your law firm.

Cutler: Right.

Riley: Are you doing anything in an informal way, in terms of consultation with people who were putting the administration together on personnel questions or anything like that?

Cutler: Yes. I helped Jeeb Halaby become the FAA [Federal Aviation Administration] administrator. We were all helping to recruit people on the lower level. Then I got another job offer to go into the State Department to be Assistant Secretary for Economic Affairs, but I had to turn that down for the same reason.

Naftali: I wanted to ask about just one more Eisenhower-era question. Did your paths cross with any other major figures in the Eisenhower administration? Were you one of those who felt by 1960 that this was a tired administration, it needed new blood? Obviously you wanted a Democrat to win, but had you the sense that the Eisenhower administration was running on empty or at least on autopilot for the last few years of the 1950s?

Cutler: Well, it was doing pretty well in the Cold War, of course, and rebuilding Europe. The only people that I knew or worked with within his administration, apart from Milton

[Eisenhower]—and that really came later, in the ’60s—or George Humphrey, I guess, only George Humphrey. That was because I had been to school with Perry Bass, the Texas oil family, and their rich uncle was Sid Richardson. Richardson was very close to Ike and had first tried to get Ike to accept the Democratic nomination, which he wouldn’t do. Then when he took the Republican nomination, Richardson stayed with him and supported him. When Ike got elected, Richardson would come up here fairly often and he would call me up. I had gotten to know him through Perry Bass, as I said, and he’d say, “Let’s go to the races.” And we’d go, usually with George Humphrey, who was Secretary of the Treasury and a horse breeder himself.

I remember Richardson saying, or rather Humphrey saying, that a Secretary of the Treasury who goes to the racetrack has got to be out of his mind. But he said, “I always feel comfortable when I go with George Humphrey, because if anybody asked me about it I can always say, ‘I’m with our best customer.’”

Naftali: When did you first meet John Kennedy?

Cutler: I first met him in the campaign. I never knew John Kennedy very well personally in the sense that my now-wife knew him very well. Bobby I knew quite well. I met him several times during the campaign, at different rallies and other things.

Riley: Do you remember when you first met Bobby?

Cutler: Same period. Then I got involved, as you know from these papers, in the whole Bay of Pigs prisoner ransom. I worked with Bobby on that. Then when Bobby decided they were going to fire Chester Bowles and it ended up with Harriman, I was one of the people Bobby interviewed. But he decided to go with Harriman.

Naftali: Let’s talk a bit about that. You had already turned down the State Department position. I assumed you turned down the State Department position in January or February of ’61, or maybe December of ’60. That was around the time when they offered it to you.

Cutler: I think it might have been later than that, April.

Naftali: Now we’re talking about September or October of ’61, because Bowles is fired I think in the fall of ’61. They come back to you, Bobby contacts you or does Oberdorfer?

Cutler: Oberdorfer. Really for two things, one was the Bay of Pigs and the other is the organization of the Lawyers’ Committee for Civil Rights Under Law, which originated when Bobby—you know, the Kennedys were very slow to come to the importance of civil rights. They regarded it as something of an obstruction to their foreign policy/national security priorities. But when they heard about it, and you had the problem with Governor [George] Wallace standing in the university door, you had Governor [Orval] Faubus in Little Rock, civil rights workers unable to find lawyers to defend them in the South. You had Bobby saying “Where are all the lawyers?”

At Oberdorfer’s request, we put together a group of major lawyers from leading law firms and bar associations all over the country. First we put out a few statements about Governor Wallace

and Governor Faubus. Then we organized this committee to provide legal services to the civil rights workers.

Riley: Were these by and large Northeastern or Atlantic seaboard lawyers?

Cutler: They started out pretty much Northern, I would say. Really every place but the Deep South, where you couldn't get a white lawyer to represent a civil rights worker. We opened an office in Oxford, Mississippi, and sent down my former partner, Jim Robertson, who's now a federal judge here in Washington.

Riley: Were you involved in the recruitment process for trying to get lawyers to join the committee?

Cutler: Oh yes. Our real stock in trade was that we could contribute legal services on a pro bono basis of lawyers all over the country.

Ernst: The lawyers who responded weren't from one particular party?

Cutler: No, it was totally bipartisan. They weren't necessarily solely from the big Northern cities. We had a number of others who helped us.

Naftali: I just wanted to be sure I understood. Did you say, Mr. Cutler, that you met with Robert Kennedy to discuss your replacing Chester Bowles in the State Department?

Cutler: They made a decision to get rid of Bowles. I had been recommended to them, I guess, by Oberdorfer and Orrick and others, and Bobby interviewed me. But he eventually decided that they'd feel more comfortable giving the job, which I think was Undersecretary, or I'd say Deputy Secretary, he gave it to Harriman.

Naftali: So that was also roughly the fall of 1961. And this is also the same time that you first hear about the administration's interests in ransom for the Bay of Pigs internees?

Cutler: I may have the sequence slightly wrong, but after the fiasco, the question of ransoming the prisoners came up. The Cubans were demanding, in effect, a ransom in the form of partly cash and partly medical and hospital supplies of one sort or another. Our firm was counsel for the pharmaceutical industry at that time and we were asked if we would contribute at least some of the medical supplies.

We all agreed to do that, provided we could get two rulings, which we got. One of which was you could collaborate with one another on which company is going to deliver which supply—it was an antitrust ruling—and the other was a ruling about the value of the goods you were contributing for tax purposes. The way the rules worked in those days, if you delivered supplies worth, let's say, in the market a million dollars, your cost of making that million dollars' worth of supplies, the marginal cost of the additional production, was $100,000. You would book a profit of $900,000 on the transaction, which when you go through the deduction process, would

mean you made money on the deal. So we worked out a way in which you couldn't make money on the deal.

Naftali: Did the amount of the ransom change, or from the beginning did you know how much?

Cutler: There were lots of negotiations and some of them I was not involved in. There was a big issue about whether it could all be in the form of supplies, which we wanted, or some of it had to be in hard cash. Hard cash looked too much like a ransom. In the end I think we did come up with some cash.

Riley: There was some background political noise on this too, right? Because the pharmaceutical industry at the time had just been through a rather rough period on Capitol Hill?

Cutler: With Estes Kefauver, that's right, about the duration of patents.

Riley: My assumption is that you had been involved in working with the industry on Capitol Hill up until that point?

Cutler: That's right.

Riley: Could you tell us a little bit about your role? We probably will want to deal with this at greater length in a subsequent session, but as context here—

Cutler: I think I covered a lot of this in the Charlottesville interviews.

Riley: Okay.

Cutler: What Kefauver was trying to do was to prohibit patents on combinations of drugs, which the industry used in order to run other people's drugs off the market on a patent basis. We made a classic defense about the costs of research. I think we came up with 15 Nobel Prize winners, all of whom had made some important drug discovery financed by one of the companies. Then I said to Kefauver that there's also a quality question, when you have these so-called me-too drugs made by companies with no reputation, you might get a deficient product.

I said, "It's like whiskey. On one hand you have Jack Daniels; on the other hand you have old rotgut. I can assure you, Senator, that they're both bourbon whiskeys." At that point Kefauver jumped right in and he said, "Mr. Cutler, you're a very smart lawyer, you know better than that. You know perfectly well that Jack Daniels is not bourbon whiskey, it's Tennessee whiskey." If you look on the label that's true. So he cut off my argument before I could really spell it out.

Naftali: I was wondering whether during the Kennedy administration, if you were involved at all through your legal work in either steel issue or the railroad rules case, two huge cases.

Cutler: On the steel, we were working for the American Iron and Steel Institute and primarily Roger Blough.

Naftali: You were, oh.

Cutler: So I know a lot about that, because they got muscled and forced to withdraw a price increase.

Naftali: Let's talk about that a bit. Tell me about Roger Blough. He infuriated Kennedy.

Cutler: That's right.

Naftali: They thought there was a deal. Kennedy thought—

Cutler: I thought they had a deal, the steel union thought they had a deal, and Blough at some point got talked out of it or he couldn't get the other companies to go along. Kennedy wanted to criticize him, snub him publicly, and do whatever could hurt US Steel.

Naftali: But Blough actually kept his word. It was just he couldn't deliver, is that what happened? Because Kennedy thought he had broken his word.

Cutler: I'm not quite sure of the details, but it's all spelled out pretty well, I think, in the Kennedy biographies and in the Evan Thomas biography.

Naftali: I was just wondering what you remembered of that.

Cutler: I remember that and I remember later on, what the steel companies got out of all of this was a so-called voluntary restraint agreement. The State Department negotiated an agreement with other steel producing countries under which they would hold back on steel imports to create a demand, it was a price-fixing quantity allocation deal.

We went in to see Clinton Anderson, who was then the chairman of the Appropriations Committee, and we told him that we had 83 Senators who had signed on to this bill. Anderson said, "Did you say 83 Senators?" We said, "Yes." He said, "Let me tell you something. That bill will never pass. People will sign on to a bill like that to get you out of the office, relying on some responsible committee chairman like me to make sure it never happens." A good lesson.

Naftali: What do you remember of the Cuban missile crisis? Obviously you weren't in the government; you were on the outside, but a pretty tense time.

Cutler: I remember being in Colorado Springs when it happened. Of course, it was probably *the* most serious event in the whole post-war world. It was negotiated to a point where we never exploded another weapon, which General [Curtis] LeMay wanted to do.

Naftali: Now the ransom negotiations were going on at this time. I believe before the missile crisis, Donovan, this fellow James Donovan, and of course it would continue afterwards. What structure did you participate in? Was there a committee that was formed where you represented the pharmaceutical companies? How was this managed?

Cutler: On the ransom?

Naftali: The ransom, yes.

Cutler: Well we had the Pharmaceutical Manufacturers Association, which included all of the companies. We had to deal with one another to get these blanket rulings that I talked about, and then each company had to get a separate ruling related to its own products and the prices to be charged for its own products. It was all worked out the way lawyers work things out.

Naftali: Did the Justice Department play a role in managing it from the government's side?

Cutler: Very much so. They gave the [Nicholas] Katzenbach side the ruling on the antitrust issues, which we had all negotiated together. The Treasury people signed off on the tax issues.

Naftali: Did you go to meetings at the Justice Department?

Cutler: Yes.

Naftali: Who else was at the table?

Cutler: Oberdorfer was there at all times. I remember in addition to Donovan, a fellow named John Mooreland, another lawyer, a tax lawyer here. It was pretty much the same group. It was clearly spearheaded on the government side by Oberdorfer in the Justice Department and on the company side by the PMA, for whom we were counsel.

Riley: Was Bobby Kennedy actively involved or—

Cutler: Very much so.

Riley: His presence was as an intermittent presence?

Cutler: Intermittent. But when the cash issue came up, he worked very hard on that and then he went out and raised some cash.

Naftali: At these meetings would Donovan report on his discussions with [Fidel] Castro or was that a separate side that you were not party to?

Cutler: I knew about it sometimes directly from Donovan and sometimes through Oberdorfer.

Naftali: Could you give future researchers a thumbnail sketch of Donovan, James Donovan? What was he like? What do you remember of him?

Cutler: Good, amiable Irishman, good negotiator, very ingratiating with people. He had the confidence of the Kennedys and the companies.

Naftali: Wasn't he also running for office in New York?

Cutler: I don't remember that. Something was going on.

Riley: Were there any members of your association, Mr. Cutler, who were reluctant to go along with this idea, notwithstanding your success in getting the administration to concede the two major points?

Cutler: I think we had some holdouts, at least for a while. But in the end I think almost everybody went along with it, because the public perceived it very favorably.

Naftali: I'm just trying to get the sequence straight in my mind. The negotiations started, then the Cubans raised the issue of drugs, or did the Justice Department at the very beginning think this would be a good source of ransom and went then through Oberdorfer to you as representative of the pharmaceutical industry?

Cutler: Where I come in is when Oberdorfer asked me. What went on before that I'm not too familiar with.

Naftali: But by the time they asked you, the plan was rather—

Cutler: The plan was that in return for needed medical supplies, which the Cuban health system really needed, the Cuban people really needed, the prisoners would be released. It was meant to be an exchange of good will efforts by both sides. All sorts of haggling arose before it was over.

Riley: During this period of time, there was a prescheduled association board meeting, or something like that, in New York City, at a very crucial interval. Do you have any recollections of the timbre of that meeting or the degree of receptivity of the people, the kinds of questions that you might have?

Cutler: There were two meetings. There was one in Washington where Bobby himself met with the CEOs, and the other in New York where Oberdorfer went. Those were really the key meetings.

Naftali: Do you remember the day when the deal was done?

Cutler: I remember the day when the prisoners arrived at Opa-Locka. It was a very moving moment.

Naftali: Where were you?

Cutler: I wasn't there.

Naftali: You weren't there. Did you have to choreograph this with the Cubans? Did the drugs actually have to arrive in Havana before the prisoners were released? How was this arranged, do you remember?

Cutler: I don't remember, but there were a number of points on which the thing almost foundered before it happened.

Naftali: Do you recall any of those points?

Cutler: One of them was cash, would there be some cash involved or not.

Naftali: You mentioned recalling when Kennedy spoke at Yale. Were you at that Class Day when he spoke?

Cutler: No.

Naftali: Where were you when John Kennedy was assassinated?

Cutler: I think in my office. Of course I had the same feelings that everybody else had.

Naftali: Tell us a bit about, if you don't mind, your friendship with Phil Graham. This is a very hard time for the Graham family.

Cutler: Yes. Phil and I had known each other first when he was the president of the Harvard Law Review and I was the editor-in-chief at Yale. Then World War II comes along. He's down at the Special Branch, I end up at the Special Branch, so we knew each other during the war. Then of course, he marries Kay Graham, and becomes the number one son-in-law, the person Eugene Meyer is very fond of, because no other member of the family was interested in running the papers. Eugene Meyer arranges the stock of the *Washington Post* company so that the so-called A shares, which have most of the voting power, are in Phil's hands rather than spread among the Meyer children.

Then Phil becomes a manic-depressive. He does very well with the paper. He becomes a great friend of Johnson. He's instrumental in getting the vice presidential nomination for Johnson. He gets appointed to form the Communications Satellite Corporation. He picks me as his counsel for that purpose. It was a government-created company and we worked together on that. We began doing a lot of work for the *Washington Post.* They have other lawyers, but we work with their lawyers.

Then shortly after Frank Wisner, whom we may cover at some occasion, Phil commits suicide out of his depression. In those days we still didn't have lithium chloride and we had no way of treating true depressions and often didn't recognize them.

Naftali: Let me ask you about Frank Wisner then. When did you meet him?

Cutler: I met him probably right after the war and he was in charge of—

Naftali: OPC [Office of Policy Coordination]?

Cutler: HUMINT [human intelligence], really, operations. His wife is a very good friend of my wife's, of all of us. When he was stationed in London, he was put over there because of his own depression. He committed suicide.

Naftali: So you met him through the Georgetown social network.

Cutler: Right.

Naftali: In the case of Phil Graham, you were a great friend of his, so it must have been very sad and traumatic to watch this inexorable decline.

Cutler: Yes, it was.

Naftali: No doubt there were warning signs, but it's harder to think about now. Lyndon Johnson, did Phil Graham introduce you to Lyndon Johnson? How did you meet Johnson?

Cutler: Well, I'd met him up on the Hill years ago. I think I met him at least once during the war, when he had that national youth administration job or some such thing. Then I got to know him well in the Kennedy administration. When we put together the Lawyers' Committee for Civil Rights Under Law, Johnson—of the three of them, the President, Bobby, and Johnson—Johnson made *the* most effective and persuasive speech of all three to this assembly of 200 lawyers.

Riley: Did he have an ongoing role then in working with you and others to get the Committee initiated?

Cutler: When it began, yes.

Riley: Did he make phone calls to lawyers to get them to consent to join the Committee?

Cutler: Knowing Johnson, he probably did, but we were all making phone calls.

Naftali: Was this a surprise? It was unfair assessment no doubt, but Johnson had a reputation for being Southern, conservative on civil rights issues. There were a number of people in the liberal community who were very upset when he was selected to be Kennedy's vice presidential nominee.

Cutler: One of the preparatory papers you gave me was something I did for the Johnson oral history, in which I made a comparison of Kennedy and Johnson. I relate this business about the speech. I read it just the other day getting ready for this and I think it stands up pretty well, about the differences between the two of them.

Then when Johnson became President and [Joseph] Califano became his chief domestic policy advisor, between the two of them they got me involved in all sorts of things.

Riley: Do you want to pursue that or—

Naftali: Sure, why don't we.

Riley: Tell us about some of—

Cutler: One is the Commission on Urban Housing, which was created to get American business and labor unions to help finance low-cost housing. The theory was you could take the assembly line method of making cars and build houses with it, which turned out not to be true in the end. But we did create a housing partnership, which passed through the profits and losses to the shareholders. Edgar Kaiser, a client of mine was named as the chairman, and I became the counsel to that committee, which did a very good job. It led to the creation of the equivalent of a subchapter S corporation, if you know what I mean, in which there was a special incentive if you built low- or moderate-income housing, or a certain percentage of it.

Then I was recruited to be the Undersecretary of Commerce when Jack Connor was the Secretary, and I agreed to do that finally because Connor and I were such good friends. I had to tell my partners and all of that got into the *Washington Post.* Then as far as Johnson was concerned, it never happened. If somebody leaked an appointment that he hadn't announced yet, the appointment was off. That's what occurred then and Johnson said it had never been decided, it hadn't been done, and then three weeks later they came back and asked me to do it again. But by that time I'd come to my senses and it wasn't worth the job, especially working under Johnson.

Riley: Did you have direct communications with Johnson in that—?

Cutler: No, it was all a personnel director named John Macy and Connor and Califano. But he had plenty of direct communication with the press. Then came the Violence Commission.

Naftali: You during this period ,of course, were maintaining your friendship with George Ball, and in 1965 he asked you to help him out. Tell us the story, please.

Cutler: Well, a lot of it is set forth—you have your materials—and then I think in the Walter Isaacson, Evan Thomas book, there's a description of it. But essentially it was Ball wanting to take one last crack at the President on negotiating a settlement in Vietnam before we had a major troop build-up.

Riley: This was in '65?

Cutler: Sixty-five. George assigned me and a young assistant of his named Tom Ehrlich to do it. Ehrlich later became the president of the University of Indiana, I think. He brought in Acheson, who had been a hawk but was getting disillusioned with the war itself.

Riley: Can I ask you why he sought you out for this role? Do you know what it was in your demeanor or in your background that commended you for this particular path?

Cutler: No, we worked together a lot. We thought alike. We talked Vietnam endless hours and what a mess it was.

Riley: This was before ’65.

Cutler: Before ’65, yes.

Riley: Can you tell us about those conversations, Mr. Cutler? You said you had endless conversations about what a mess it was. You were recognizing before—

Cutler: Essentially, even assuming that the domino theory was correct, could we make enough of a difference to prevent the takeover of South Vietnam by North Vietnam? George’s feeling was we couldn’t. People who had to fight that war and the general public, especially with Johnson’s guns and butter theory, would say why are we in this war, became less and less popular. And I agreed with most of them.

Riley: Were you getting your information about Vietnam through the newspapers or were you privy to information by virtue of your friendships with these people?

Cutler: I knew a lot of the people who were going back and forth. I knew David Halberstam, I knew [S. Douglass] Cater. I knew Walt Rostow very well.

Naftali: Rostow’s view, of course, was very different, so you must have been having debates with him.

Cutler: Oh yes. Walt was a hawk from start to finish.

Naftali: What was the central flaw in his argument as far as you were concerned?

Cutler: Exactly what I just said, what George said. That was (a), the domino theory may be unnecessary and wrong, as it turned out to be, because we didn’t lose any other state in the area to Communism. And (b), we probably couldn’t make enough of a difference, unless we put in massive troops. We couldn’t sustain massive troops for a very long period of time and we didn’t know anything about fighting jungle warfare.

Naftali: How did you meet David Halberstam?

Cutler: He was back and forth and he was a journalist.

Naftali: Is this when you met him?

Cutler: I met him in Georgetown. I was a lawyer and very good friend of [James] Scotty Reston and Joe Kraft.

Riley: So you’re brought in to help draft—

Cutler: That's right. To help draft a plan and sell it, at least in Washington. I never went to Vietnam, actually. And we did make a sale in Washington, although with [Dean] Rusk you could never get a commitment. But [McGeorge] Bundy signed off, [Robert] McNamara signed off, and then General Maxwell Taylor torpedoed it. He was our co-ambassador in Vietnam at the time.

Naftali: This was a plan for the withdrawal of U.S. troops?

Cutler: It was a plan for a cessation of violence in the South, more or less a ceding of at least daytime authority to the local governments in South Vietnam, rather than being interfered with by the Viet Cong. An amnesty for all Viet Cong people, an opportunity to get back into the civil life of South Vietnam. If you didn't do all of that, we'd bomb the hell out of you. Sounds familiar, doesn't it?

Riley: Shock and awe.

Naftali: But in the summer of '65, President Johnson makes the big decision to accelerate the deployment of American troops in Vietnam. Was this before? This plan, was it mooted before Johnson made the July '65 decision?

Cutler: I think it was born and died during 1965, so it had to be before the troop expansion at the very end.

Naftali: Was there any sense that de Gaulle's initiative was useful? De Gaulle was seeking a neutralization, I believe, of Vietnam. Do you recall that being part of this discussion at all?

Cutler: No, I recall as part of the history of it all, of course, that de Gaulle asked for help at Dien Bien Phu and then thanks to General [Matthew] Ridgway and Ike, we turned it down. But Ike apparently, according to all the books, did say to Johnson, "You cannot withdraw." I think he said the same thing to Kennedy.

Naftali: Yes.

Riley: I'm going to ask a general question about the relationship between the Kennedys and their people and the Johnson administration. This is a subject of ongoing debate and scholarship. I wonder if you've got any observations about the extent to which the old-line Kennedy people felt alienated in the new administration, and your views on who the prime candidates were in that.

Cutler: To this day, if you've read the new [Robert] Dallek book about Kennedy, it is still, as he called it, an *Unfinished Life*. And I guess we'll never know what Kennedy would have done. But there's no question that Kennedy was the one who signed on to the first investment of troops, 16,000, to train the South Vietnamese. He did that at the urging of Cardinal Cushing and Cardinal Spellman, who were so worried about the Catholics in South Vietnam.

Naftali: You must have known Cyrus Vance.

Cutler: Very well.

Naftali: Did you know him in this period, in the early ’60s?

Cutler: Yes.

Naftali: Did you ever talk to him about this issue, since he was Secretary of the Army, I think.

Cutler: Yes. I guess he’d been Deputy Secretary of Defense, too. I’m not too sure about the sequence. Of course, he took part in the Paris negotiations, which I think had preceded all of this. This was the John Money business. Wasn’t it Harriman and Vance who were the negotiators?

Naftali: Yes, later on, but I meant in the Kennedy administration, Cyrus Vance was Secretary of the Army.

Cutler: Right.

Naftali: I wondered if he’d shared any insights with you about this question of Kennedy versus Johnson and the differences between them.

Cutler: No, I worked with Cy in those days on the riots, the [Martin Luther, Jr.] King riots, the Detroit riots, and how you could put all that back together again.

Riley: We’ll probably want to cover that next time. We’ll get back to that.

Naftali: I want to ask you about Acheson, if you could give us a portrait of the Acheson that you knew, since you worked with him at different stages in your own career.

Cutler: A marvelous man, a giant of a man. Funny, bright, totally ethical, very, very good in appraising people, and given the right person to work with, like Truman and Marshall, a totally loyal and dependable person. He certainly drew a lot of flack for defending Alger Hiss, for his imperious mustache and his general manner. But I regard him as one of our foreign policy giants and legal giants. And the last man, except Cy Vance, who resigned on principle.

Naftali: It is sometimes said about him that the McCarthy experience embittered him and that it meant that he was more of a hawk later—with the exception of Vietnam, which we’ll get to—in order to prove something. For example, he is very hawkish in his counsels to President Kennedy on how to handle the Soviets. Would you say that you noticed any evolution in his thinking? You’d met him in World War II, you’d seen him after the war, continued to stay in touch with him. Did you notice any change in his thinking about the world?

Cutler: Not really. If you read his books, the books are remarkably consistent, no matter what period of time you’re covering. I don’t think it had anything to do with his own experience with McCarthyism. I mean, those were going to be his views no matter what.

Riley: Maybe another way to get at this is to ask you a question about his deftness as a political figure. How would you rate his political sensibilities?

Cutler: I would rate them very high, except for this one weakness of what he said about Alger Hiss. Hiss really did him a great disservice, because we think we now know that Hiss, or at least Hiss's wife, were if not Communist agents, certainly very close Communist sympathizers.

Riley: Was he somebody who in your view had a good understanding of Congress and the role of the legislative branch?

Cutler: Oh yes, think of how well he handled Senator [Arthur] Vandenberg, how he kept Republicans with him on every initiative, if it was a foreign policy initiative. Think of the Marshall Plan. Think of aid to Greece and Turkey. While Truman deserves a lot of the credit being President, they were all remarkable efforts and in the light of history, very unselfish and selective efforts, successful efforts. Certainly if you contrast reparations after World War I and the Marshall Plan after World War II, it's all the difference in the world.

Riley: Are there others that you would consider from the entirety of your career that you would consider his peer in terms of intellectual deftness and political sensibilities?

Cutler: Marshall.

Riley: Marshall alone?

Cutler: No, I think [Robert] Lovett was very good. I think moving to a later generation, or somewhat later, Harold Brown and Bill Perry were very, very good. And they brought something to the table which the Marshalls and the Achesons couldn't, and that was some comprehension of how nuclear weapons and all the other weapons worked. In fact, when you think of our smart bombs and everything else we have today, those were the weapons developed by Harold Brown and by Bill Perry in the Carter era. That's when those weapons were designed, contracted for, and built. This is why we have them today.

Naftali: What was Bill Perry in the Carter era?

Cutler: He was Undersecretary, first, for Procurement or Scientific Affairs, but he was the house scientist along with Harold. Then he became Secretary of Defense himself, as you know.

Naftali: Yes. I want to go back to, if I may, 1965, when you were writing these memoranda for George Ball. How did Acheson participate? Did you send him drafts or did he comment?

Cutler: We would exchange drafts. We would meet at the State Department with Tom Ehrlich one or two times a week while we were working on all of this.

Naftali: And how long did this continue?

Cutler: It must have been two or three months.

Naftali: What did it produce?

Cutler: It produced a memorandum about this plan and Ball had written other memos that were with it.

Naftali: And what was the follow-up after you produced and gave this to Ball?

Cutler: It was then submitted by Ball to the President, to Rostow, to McNamara and Bundy and they all were willing to sign off on it.

Naftali: Including Rostow?

Cutler: Well, Rostow was against it, we knew that. But it was then sent to Taylor and to U. Alexis Johnson, who was the other ambassador. My recollection is we thought we could persuade Johnson, but Taylor shot it down.

Naftali: Did you have a personal relationship at all with McGeorge Bundy?

Cutler: Yes.

Naftali: Did you know him when you were at the law school and he was an undergraduate?

Cutler: No. In fact, I knew both of the Bundys down here when they were working in the Kennedy administration.

Naftali: That's when you met?

Cutler: Yes.

Naftali: Do you have any Kennedy questions?

Riley: Only one in terms of the question of continuity. You were obviously very much involved in trying to persuade the President in 1965. Later on, as I understand, most of what you were doing for the Johnson administration was related to domestic issues. I'm wondering, did you have any continuing involvement on the question of Vietnam through the end of the Johnson administration or was this pretty much it?

Cutler: I remained in contact with George Ball as long as he was there, but that was my sole role in Vietnam. I do remember the later demonstrations, the Cambodian demonstrations, helping Greg Craig organize demonstrations down here and do it in a way in which he would not get arrested.

Naftali: I have three more questions.

Riley: That's fine, that will about exhaust our time.

Naftali: The first is, was it your impression—it was a long time ago, I know—but was it your impression in 1965 that Dean Acheson supported a U.S. withdrawal from Vietnam?

Cutler: Yes. He later became more of a hawk.

Naftali: Because by ’68, he changes his mind again.

Cutler: We’re so deep into it by that time and we have all the troops there.

Naftali: So he changes his mind and becomes more of a hawk afterwards.

Cutler: Afterwards, yes.

Naftali: You stayed in touch with him, so did he explain to you why he changed his mind in ’67 or ’68, or whenever he changed his mind?

Cutler: I don’t recall specific conversations, but a lot of it is set out in [Clark] Clifford’s book.

Naftali: The second question I have is a Yale question. Did you play any role in the selection of Kingman Brewster as President?

Cutler: Not in the selection, but I worked closely with him while he was president.

Naftali: Would you like to put on the record your recollections of 1970 at Yale, the May crisis at Yale of 1970?

Cutler: Well, I remember talking to Brewster about it. I remember the episode of the hockey rink. I remember Brewster getting into some trouble with at least one segment of the alumni because of his tolerance of the demonstrations and the sit-ins.

Naftali: Well, talk about the hockey rink. Wasn’t there a rumor that there was a bomb at the hockey rink, isn’t that what it was?

Cutler: I don’t recall, I thought it was more of a sit-in.

Naftali: I think there was—

Cutler: But you may recall more of this than I do.

Naftali: I went to Brewster’s funeral, to his memorial, at Yale.

Cutler: Oh did you?

Naftali: Yes. I talked to some of the police officers who were there later on, that’s why I knew them. They actually had changed their mind on Brewster. Initially they were furious at him for

having opened up the campus to all of these ruffians, but then they came to realize that he probably saved the place.

Cutler: Maybe it was that he allowed them to stay inside the hockey rink, that might have been it.

Naftali: He allowed them to stay in all the colleges and served them coffee and doughnuts. So there was no vandalism, or almost nothing.

Cutler: I first got seriously involved with Kingman when I would go up to Yale on sabbatical and teach. He asked me to help on formulating the Capital Fund Drive in the mid '70s that raised a record amount of money. We split the co-chairmanship, a fellow named Ed Swenson did it for two and a half years, and then I did it for two and a half years.

Riley: We'll quiz you more about that next time.

Naftali: My last question is one that has particular relevance today and you actually began to answer it and I think you didn't finish up, probably my fault. One of your tasks with the Brownell Commission was to think about how to understand intelligence failures, not to be too smart after the fact, correct?

Cutler: Right.

Naftali: What did you learn doing that, what do you recall of that sort of intellectual exercise?

Cutler: That you had to be very careful. That in the light of hindsight, it was almost impossible to come to a practical conclusion. There's going to be so much doubt as to whether if you had known A, you would have said we could have figured out B or C. So even what we know now about the messages involved in the 9/11 affair, it's still hard to say that if an agent had put it all together, if whatever her name was, if that memo had been seen by all the right people, they would have been rounded up everybody who had been in a flight school who was Arabic, which is what you would have had to do.

Riley: Any follow up?

Naftali: No, thank you very much.

Riley: We're off to a good start. I appreciate this very much, we'll review notes. What we'll do, we'll go back, there's a lot of material about your private practice that we didn't pick up in the '40s and '50s that we'll want to go back to. We'll touch on some of the major political events that we didn't hit on. Tim is not going to be with us next time, and we wanted to get a lot of the intelligence stuff out of the way. I hope that Jim Young can be with us next time, and there may be some questions going back to New York, but if you're amenable to us sort of jumping around a little bit, we'll take care of it that way.

You wanted us to read the transcript, is that correct?

Cutler: There is a transcript that is being sent to me. I have to look at it myself to see what part I actually played in the questioning.

Riley: We'll hold that on the shelf until you decide it's the appropriate time for us to pull it off and deal with it.

Cutler: Fair enough.

Riley: Okay. Thank you very much.