

## INTERVIEW WITH HOWARD WESTWOOD

This is Tuesday, January 21, 1992. I am Willis J. Goldsmith of Jones, Day, Reavis & Pogue and I'm here this morning in the Covington & Burling office of Howard Westwood in connection with the Oral History Project for the D.C. Circuit. Mr. Westwood, just to start off, could you give me a little bit of your biographical data, where and when you were born, where you were educated, etc.?

I was born December 11, 1909 in Cedar Falls, Iowa. My father at that time was a salesman. In the course of time we had been moved from one place to another, ultimately we were in the Twin Cities in Minnesota and when I was 6 years old, he had decided that he was going to be a lawyer. He had been to law school and had been admitted to the bar in New York and, really, apparently from the beginning, had wanted to be a lawyer instead of a salesman. In any event, in 1916 we wound up in the little town of Sterling, Nebraska. It was a town of about 800 people and there had been one lawyer there who had recently died and my father decided that that's where he would become a lawyer, which he did. He was, two years later, elected county attorney of that county and we moved down to the county seat, Tecumseh, Nebraska, which is a town of about 1500 people. It was only a few miles from this town of

Sterling and that's where I then went on and grew up. I went through school there, and high school. I was graduated from high school when I was just 16. I had an aunt in St. Louis, that's my father's sister, who had been sort of running him in a way and she insisted that I was too young to go to college. She had me come down, with my parent's consent, of course, to live with her and her husband who was a fairly prominent lawyer in St. Louis and go to the John Burroughs School in St. Louis. That was a co-educational, secondary school that was a considerable thing. It had been started only a few years before. My aunt had had a good deal to do with the starting of it and the fact that it was co-educational was rather unique. Well, I was there for a year and it was a tremendous education for me, of course, and while there I decided that I wanted to go to college but in a different part of the country and I wanted to go to a small college and a co-educational college. The net of it was I wound up at Swarthmore the next year and I was at Swarthmore until I got kicked out in spring vacation of my junior year. I got kicked out for reasons that were a little obscure. I think they were obscure to the administration kicking me out and they were a little obscure to me although I had a pretty good idea that they had something to do with my relations with a young lady in my class whom I thought

very well of. But in kicking me out, they assured me that, nonetheless, I would be permitted to finish the year in absentia so that I would have three full years of credit.

Well, up to that point, although all along I had thought that I was going to be a lawyer, I had begun more recently to think that I might become an actor because I was very much involved in dramatics. I had the lead in all the plays and so on at the college. But when I got kicked out, I figured I had to face reality and instead of fiddling around with a possible career in theater, I decided I better go on to go to law school. Well, the net of it all -- it's a long story and there's a lot of complication -- but, in any event, the point is that I entered Columbia Law School in the fall of 1930, after just three years of college. I never did get an A.B. At Columbia, I got along well and at the end of the first year, I was one of those chosen for the Law Review. In those days at Columbia, the, I've forgotten the exact number; I think it was 15 from the first year class were selected to go on the Law Review staff in their second year and the 15 were chosen just automatically, by the average grades. So, I had gotten good grades. Then I, of course, worked, tried to work hard on the Law Review in my second year in law school and the result was that by my

third year in law school I was selected to be the Recent Decisions Editor, which is one of the posts on the editorial staff that had charge of one section of the Law Review. In effect, revising and so the work done by second year people in working up what was called recent decisions which were brief discussions of cases or points of current interest that were felt to be worth noting in the Law Review. Well, in due course, I was graduated in the spring of 1933.

After you graduated from law school, did you stay in New York for any period of time or did you immediately come to Washington?

I was selected at the latter part of my last year there in law school by Justice Stone as his law clerk. Now, how did that work, when you say you were selected by Justice Stone. Was there an application process?

No. He just, he just picked out someone each year. Actually, I think the picking was done by the Dean of the law school. I'm not sure of that, but I think so. And I always suspected that the fact that I was a gentile may have given me a great advantage.

Why is that?

Because there were a hell of a lot of Jews there. They were all my buddies but, I have no idea. I don't want to suggest that Stone was in any sense anti-semitic.

Obviously he was not. But the fact that I was a gentile made me sort of stand out, probably.

Did you have an interview with Justice Stone or were you just hired?

Well, there was an interview but it really didn't amount to anything. It was a case, essentially, of his just taking a look at me. I think he interviewed one other person from the class. I'm a little fuzzy about that but I think he was up there and he actually interviewed two people.

Did he come to New York to do that?

Yeah.

He did that in New York?

Yeah. Well anyway, so after law school I rather quickly became his law clerk and I came down to Washington right after Labor Day in 1933.

Did you start to work for him immediately?

Yeah. That's why, I came down with a guy from the previous class at Columbia who had been chosen as law clerk to Justice Cardozo. He and I came down together. We came down as I say right after Labor Day. Stone did not get to town from his summer place up in Maine until nearly the end of September. There was then no Supreme Court building. The law clerks of each Justice and, incidentally, each Justice in those days had only one law

clerk, worked in the Justice's home where the Justice would have his office.

Where was Stone's home? Do you recall?

Yeah. His home was on Wyoming Avenue on the corner of Wyoming and 24th Street. That's a very nice house, it's still there. The house, as a matter of fact, that he had built. In any event, I had to have some place to work before he came down. Fortunately, the chap that I had come down with, the law clerk to Justice Cardozo, found that Cardozo was here. Cardozo lived in an apartment house at 2101 Connecticut Avenue which was just a block from the Brighton Hotel where this chap and I were staying and he would be working there, in Cardozo's apartment. Cardozo had a big library in his apartment. Well, the net of it was I asked Cardozo whether I could work over there. Cardozo was here at the time. I asked him whether I could work there until Stone got here and he said yes and the result was that I became well acquainted with Cardozo, saw a lot of him. He was a very sweet, wonderful guy and I saw a lot of him, not only during that year that I was with Stone, but also in future years.

What was the relationship between Stone and Cardozo?

They were very close. You see Hughes was then the Chief Justice and Hughes was by no means a warm fellow or one who encouraged exchange of ideas or what not and I had

the impression then -- neither Cardozo nor Stone ever told me this -- but I had the impression that both Stone and Cardozo were a little bit annoyed at there never being much in the way of actual conferring and exchange of ideas between the Justices under Hughes' regime. But Stone and Cardozo did exchange a great deal between them and they were very close and were in agreement in most matters. Well, in any event, when Stone got down here at the end of September, of course then I began working in his home. One wing of his home was a big library with, and his law clerk was on, a desk on a balcony at the end of the library. And, I had a very, very happy, very pleasant, very fruitful year working there with Stone.

Were there any cases that you recall having worked on that were of particular significance?

Well, no, not really. You see, this mind you was the year 1933-34 and the great cases that were coming out of the New Deal period didn't come along for a couple of years. There was one case, an interesting conflicts of law case, Yarborough v. Yarborough. Stone was the dissenter in the case and that was the only case really where I was able to do much in the way of the writing of an opinion. He practically let me write his dissent in that case. In the other cases, in the main, I found that he worked so fast he would have a draft of an opinion, the

case having been assigned to him to write the opinion on Saturday afternoon after the Saturday midday conference. By the time I'd get there on Monday morning, he would typically have a draft of every opinion that he was assigned. He worked very, very fast and it was hard for me to try to keep up with him as far as his opinions were concerned or to tell him what to say or how to vote or anything like that. But in this Yarborough case, it was interesting. He made it a point of, in effect, turning over to me the writing of the opinion.

Why do you think he took a different position with that case than with the other cases that he was working on?

I've no idea. I think he sensed that I was interested and he was busy with the opinions which he was writing for the Court and I think he just decided that he'd give me some leeway. And, as a matter of fact, this was fairly late in the term. Matter of fact, what I wrote he did not really revise very much in the way of his dissent. He revised it a little bit but it was essentially just editing. And, of course, by that time, this, as I say, this was late in the year, by that time, I understood how his mind worked and what he had in view and so on. But, well, I emphasize that because I know that a lot of law clerks, later on, did a hell of a lot in the way of writing opinions and so forth. But Stone was not



like that. I had a very, very difficult time keeping up, keeping abreast of things with him.

Do you think he was unique among the Justices at that time in having that view or did almost all of the Justices write all of their own opinions with little input from the clerks?

No. I think he was not the only one but I think he was one of the few where the law clerk really had very little opportunity to do much on the opinion itself.

You stayed with Justice Stone for approximately one year?

Yeah. I had intended to practice out in the Midwest, my thought was to go to Milwaukee, Wisconsin, which had a socialist mayor and I'd been a very active socialist all through college. In law school I'd organized the student's strike at one point and I wanted to bring on the revolution and get rid of the capitalist system. The socialist mayor in Milwaukee seemed to me to indicate that that would be a pretty good place to go and live and maybe I could start the revolution there and get the capitalist system overthrown.

Did you wind up going to Milwaukee?

No.

What happened?

Well, what happened was that along about March or April of 1934, toward the end of my year with Stone, I had a call from Tommy Austern who was a lawyer with the firm

of Covington, Burling, Rublee, Acheson and Shorb. I had met Tommy Austern but I didn't know him well and I never heard of his law firm. But he told me in this phone call, the call may have been about the end of March, I should interpolate something here. In those days, you didn't get jobs a year ahead of time the way you do now. You got them at the very last minute and I didn't even think of looking for a job until around that time. Well, in any case, about the end of March, Austern called me and told me that there was one of the members of his firm, a man named Acheson, wanted to see me. Well, I didn't know, I never heard of Acheson and I never heard of the firm. I had met Austern just in passing but I thought well, maybe I'll just see this guy. The net of it was that I came down to the Union Trust Building, 15th & H, 7th floor, and went into the office of a man named Dean Acheson and he immediately offered me a job to begin the following September. And he asked me how much I received in pay. Well, in those days, the law clerk, a Supreme Court law clerk was paid what then was a very good salary, \$300 a month. And I told him that. He sort of gulped but he said that they would pay me that amount. Their regular pay was only a couple of hundred dollars more than the regular starting pay in the big New York law firms. And New York law firms in those days they would start a lawyer

at \$1800 a year and Covington, I think they were starting lawyers about \$2000 a year to be just a little ahead of New York in order to attract the . . .

So you were way ahead of the going New York rate at Covington?

That's right. I was way ahead. And I was engaged to be married the end of July and my wife was on the Law Review at Columbia and she had been in the class behind me, my proposed wife. And she would be getting out, being graduated of course, in June and we were to be married, as I say, the end of July and all of a sudden, as Acheson was talking with me, I realized well, maybe I ought to have a job instead of just aiming at going out to Milwaukee and starting a revolution out there.

How did you come to have your socialist views? How did they develop, was that from your family?

No, no, no, no. Not the family. My dad was a conservative republican. No, my views were the result of just, of seeing the world and observing all the injustice that characterized the treatment of people who didn't have much in the way of advantage.

I think the earliest writing of yours that I was able to uncover and I'm not sure if it was one of the ones that I sent to you or not, but it was a book review that appeared in the National Lawyers Guild Quarterly in the mid-'30s, actually the late '30s. The book reviewed was published in 1937. It was

called "Reconstruction: The Battle for Democracy" and one of the things that I wondered about was whether or not you had been a regular contributor to the National Lawyers Guild publications or whether that was just a coincidence.

No. That was coincidence.

The National Lawyers Guild in the late '30s though was a socialist or at least very liberal left organization?

Yeah. Yeah. But I was never particularly active in that and I don't think that had started at that time. I think the Lawyers Guild came along oh, a year or two later. Well, anyway, here I was going to be married so I figured well, maybe I ought to go ahead and take this job. So by the end of the interview with Dean Acheson, I'd said yes. And I told him I was to be married so that the idea was that I would come to work, I was to be married in July, we would have a honeymoon in August and so I would come to work right after Labor Day in September.

Was that an acceptable arrangement for him?

That, he thought that would be alright. And that's the way it was.

What kind of a firm was Covington at that point?

It . . .

Was it a local general practice firm or was it . . .

No. Well, that's a long story. I've written the history of our law firm and it's a large volume.

Right.

Covington, the firm at that time had about, oh, I've forgotten the exact number, I think it was about 16 or 17 lawyers. It was, I think there was one other law firm in Washington that may have been 2 or 3 lawyers larger. But that was a firm that was engaged almost entirely in tax practice. Covington had a national practice, a significant amount of local stuff, but most of it was national. But it was by no means confined to any particular field.

When you say national, do you mean that the firm was already representing clients on a nationwide basis?

Oh yeah. It had been started on. In 1919, it was the first of January, 1919, the firm had been started. Judge Covington and Mr. Burling joined together at that time. The judge had resigned from the bench the previous April. He had started his own individual practice in July of 1918. Mr. Burling and he were good friends. Mr. Burling had come here during the war and Mr. Burling saw how interesting was the practice that the judge was getting right at the beginning and he decided instead of going back to Chicago where he had lived and built a practice, he would stay here. And, from the beginning, their idea was to concentrate on matters of national import instead of just local affairs.

Where was Judge Covington a judge?

He had been the Chief Justice of the Supreme Court of the District of Columbia. The Supreme Court of the District of Columbia was, that was the court that, well, it stemmed from the Civil War. Its jurisdiction embraced the jurisdiction of the present United States District Court, and the Superior Court. And as a matter of fact, when I started practicing in 1934 here, it was still the Supreme Court. The division of the court into two branches, the Superior Court and the District Court, had not yet occurred. And so the Judge was the Chief Justice of the, of that court.

When you started at Covington in 1934, were there any particular types of matters that you tended to specialize in or did you get experience in the whole range of problems that a young lawyer starting off would be exposed to?

No. What happened to me was that for several months I was mainly just writing memoranda on one point or another that one of the older lawyers needed. I do not recall in those very beginning months, I don't recall anything in the way of anything other than writing memoranda. And, as a matter of fact, I was pretty bored. And I decided that I wouldn't stay and I got a hold of the chap who was second in command in the Solicitor General's office at the time.

Do you recall who that was?

Yeah, I never can remember any names anymore. He had been Brandeis' law clerk the year before I was with Stone. He now is one of the most distinguished law professors, and has been for some years, at Harvard, what the hell is his name? He's pretty much retired now. Oh, ...

Not Erwin Griswold?

No, no. That's . . .

He was in the SG's office earlier than that I think.

No, no. No, no. Well, anyway, he was, at that time, he was second in command down in the Solicitor General's Office. The Solicitor General was Reed. I told him that I was bored with private practice with the Covington firm and they offered me a job right away. And they were a little bit shocked at the amount that I was being paid. Reed seemed to think that was too much to pay a lawyer, but he suggested that maybe they would be able to pay me that much and I was offered the job and I accepted. I'd not told anybody back here at the firm. And I figured that in a day or so I would tell them at the firm when I was going to leave because I hadn't yet worked out with the Solicitor General exactly when I would leave.

However, about, I think it was actually maybe the very next day after I'd had this session at the Solicitor

General's office, I had a call from Spencer Gordon, who was one of the partners, to attend a meeting that evening at the firm. There was a case, he said, that was very interesting and he was going to have to handle it and he was going to need some help, and he wanted me there. The case was being brought by a couple of lawyers from Baltimore. They were coming over to have a session and tell him what the case was about that evening. So, that evening I came back to the office and Judge Covington was there. Of course, anything that involved Maryland, the judge was probably in charge of because he was famous in Maryland.

And Judge Covington and Spencer Gordon and I from the firm and two lawyers from Baltimore, one of the leading firms in Baltimore, I've forgotten now the name of it, they represented a electric utility company, a holding company. One of the companies that it owned had a plant in a little town in Oklahoma called Hominy, Oklahoma. Their franchise there had expired and the town had refused to renew it because the town was getting a grant from the Public Works Administration to build a municipal power plant but the private company was continuing to operate, of course, until the municipal plant could be built. And what these fellas had been trying to do, they'd filed lawsuits out in Oklahoma and they'd been trying to figure



out some way of stopping, putting a stop to this proposed construction of a municipal plant and require that their own franchise be renewed by the town. But that hadn't been able to get anywhere. Nobody could figure out how to do it. I think they'd actually filed suit in one or two places which had been just thrown out. And so now they were coming to Washington desperate, trying to figure out whether there's some way to sue the Public Works Administration which was run by Harold Ickes, the Secretary of Interior.

Is that how the case came to Washington to begin with? I was going to ask you how a power plant problem in Hominy, Oklahoma wends its way from Oklahoma to Baltimore to Washington.

Yeah.

So that Washington had already become a center of litigation, at least against the government?

Well, if you were to sue the government, you had to sue in Washington in those days. There was nothing that would permit a lawsuit elsewhere. If you were going to sue the Secretary of Interior, you had to sue the Secretary. You had to, mind you. You couldn't just sue the United States Government, you had to sue individual people and you had to sue the Secretary of Interior if you wanted to stop him from doing something. And he was here in Washington, so you had to bring the lawsuit here in Washington.

You had to get personal jurisdiction?

Yeah, yeah. That was before the law had been changed. Well, in any event, they wanted to sue Ickes and prevent the money from being sent out there, to Hominy, Oklahoma. They couldn't figure out what else to do, but they didn't know what would be a basis for a lawsuit. Judge Covington didn't seem to know, Mr. Gordon didn't seem to know, but I knew. I had done a book note, a book note for the Law Review the preceding year on Warren's Congress as Santa Claus which had just come out in, I think it was published in 1931 or 1932, I've kind of forgotten. And, of course, it was a popular sort of study of the spending power. And, with all the cases that involved disputes over the spending power, there was a considerable amount of dispute on that subject prior to the Civil War days. In later days, nobody could ever quite figure out what limitations there might be on the power of Congress to spend money. But back in the earlier days of the country, there was a lot of dispute and Warren, in his book, had been through all that and I'd done a book note on it for the Columbia Law Review. So I had some ideas and at that conference I told them that there were limitations on the spending power of Congress and that there were cases in the courts. Well, needless to say, I had a very important mission right away and I quickly forgot all about going to the Solicitor General's office.

Had that meeting not been scheduled, presumably you would have gone to the Solicitor General's?

Oh, I would have gone to the Solicitor General, yeah. So I told this friend of mine in the Solicitor General's office, forget it. I got something to do. Well, our lawsuits against the Public Works Administration were famous. I literally drafted the complaint and sought an injunction. Of course, the matter was thrown out by the Supreme Court of the District of Columbia as soon as it was argued. I didn't argue it, it was argued by Spencer Gordon. But I had drafted the memoranda and so on. Did that case lead to a flurry of cases challenging the spending power of the government in various contexts other than in the public works area?

Yeah, I'm about to tell you that.

Okay.

We were, I've forgotten exactly when the lawsuit was filed but it must have been around the first of May and we had to have a restraining order, of course, in order to keep the money from being sent out there because if the money once left here, then that mooted the case and then these people, they would be stuck because they had no way of suing out there and getting anywhere. So we had to keep the money here to keep the case from becoming moot and only here could we have this argument that Congress

could not spend money or the United States Government couldn't spend money for this purpose.

What was, if you recall, the theory? Why was it that Congress couldn't spend money?

Well, because it was a local matter. It wasn't a federal matter. It was a damn local light plant that they were going to spend money on out there in Hominy, Oklahoma. What the hell was national about that? You may not think that was a good point but it was a hell of a good point. And despite the fact that I was a left wing socialist, I got a big bang out of making an argument like that because it was completely contrary to all my, all my sentiments and beliefs and it was very stimulating to have to construct an argument for a capitalist electric utility company, an enterprise that was very evil because it exploited people and stole money from them by overcharging them and otherwise. I got a big bang out of being able to construct an argument in support of someone whom I hated. Well, in any event, the, at the level of the Supreme Court of the District of Columbia, our case was dismissed. The government made the mistake of moving to dismiss instead of simply opposing a motion for a, an injunctive order to keep the money from being sent out there. That meant that we could immediately appeal. Which we did. All this happened in the course of, oh, hardly much, not much more

than a month. So, by late June we had papers filed in the court of appeals with a request for an injunction pending appeal.

And would that have been what is now the U.S. Circuit Court here?

Yeah, yeah. The U.S. Court of Appeals had been created along about 1890 and it's been the same all along. So appeals were taken from the Supreme Court of the District of Columbia to the U.S. Court of Appeals?

Yeah, right. Well, we had to move very fast and otherwise the money would be sent and that would moot the case so we had to get, as I say, an injunction pending appeal. I put together the papers but Spencer Gordon was going off for his summer stay up in New England. Mr. Burling was going to handle the matter instead of Spencer Gordon. So I was working with Mr. Burling and I slapped together papers seeking an injunction pending appeal so that when we filed the appeal, we also filed the papers on the injunction. The matter came up for hearing before the court immediately after the 4th of July. I worked like hell getting the papers done and so on and keeping Mr. Burling posted. He and I went down to court, I coached him to make sure that he knew how to argue the case. I had been coaching him all along. He seemed to be listening, paying attention to what I was teaching him.

We got into court, he got up and said very little except to introduce me. I damn near died.

You had no idea that that was going to happen?

No I didn't.

Was that the way things were done or was he unusual in that regard?

Well I think that was pretty unusual. There were three judges, three judges of the appellate court were sitting and so I got up and I made a hell of a fine argument. And the net of it was that they decided they would issue an injunction pending appeal and, obviously, the appeal on the merits couldn't be heard until the fall. I did not then realize as I later did that it really wasn't my argument that made the difference. The very fact that Mr. Burling had appeared, that's all that was necessary. Because one or two of those judges knew Mr. Burling well, they knew that he was a leading lawyer in this town and they knew damn well he wouldn't be coming down to the court unless this was something of importance. But I was, as far as I was concerned at the moment, I figured I was a real bigshot. Well, in any event, at that point, utilities from all over the country began rushing to us because they'd been getting nowhere in efforts to stop the Public Works Administration from financing municipal power plants. And we ultimately had, and once we got the

injunction pending appeal in the Hominy case, it was clear that we could get injunctions from the Supreme Court of the District of Columbia and the Department acquiesced in that. They realized that there was no point in just trying to resist so, very quickly it developed that all that was necessary for a utility to put a stop to, temporarily, to a financing of a municipal venture was to come to us and see me and I would have the papers drawn up and we'd get injunctions.

Was there any other law firm in Washington that figured, this is a good thing, why don't we do this too? I mean, after all, you had created the law in that area and it would have been easy enough for another firm to follow your lead.

No. No, it was sort of understood by everybody that all the utility companies, they'd come to us. We ultimately had something over \$400 million tied up in temporary injunctions which for that time was an enormous amount of money. Of course, ultimately the case got to the Supreme Court. It was decided in 19--, I think it was decided in 1937 by the Supreme Court, or maybe 1938, I don't know, I can't remember. Ultimately, John W., not John W. Davis, Newton Baker, was very much involved. Oh lawyers came from all over the country, and I became closely acquainted with them. Newton Baker and I became good friends. I wanted to hear all about World War I. So

instead of talking about the lawsuit, he and I would talk about World War I.

And who was Newton Baker again?

Newton Baker had been the Secretary of War in World War I. My God! Don't you know Baker, Hostetler? Yes. That I didn't know, a Cleveland competitor.

That was Newton Baker.

No, I didn't know that.

He and I became real buddies. Of course I'd been just a tiny kid in World War I and he got a big kick out of telling me all about what. Well, the net of it was that, of course, ultimately the case was decided and it was decided against us, in favor of the government, which I knew it would be that way all along.

How long did it take? We can check if you don't know when it was decided, but the money was tied up . . .

Oh, for 3 or 4 years.

Quite a long time?

Yeah. Oh yeah. So, and needless to say, utility companies all over the country, a lot of them were able during the time that there was a temporary injunction in effect, a lot of them were able to persuade the municipality to, not to go forward with it and so on. A lot of things happened. But I knew from the beginning that we wouldn't win in the end. But what we did win was



the essential opportunity for these utility companies to make deals. Well, anyway, so I was spending an awful lot of time on that. Although I wasn't working on that exclusively. I was doing some other things too.

I've kind of forgotten what they were but about mid-year of 1936 an aviation matter came up. And that got referred to me.

In 1936, the aviation industry, although not in its infancy, was certainly new, at least the commercial aviation industry. How did that industry develop?

Well, the Air Transport Association had been formed in January of 1936. It was a trade association of the airlines. There were, my vague recollection is that at that time there were, well I don't know, fifteen or sixteen domestic airlines and one foreign airline, I mean international airline, Pan American. They had had no trade association of their own prior to 1936; they had been in an aviation organization but it embraced a lot of aviation manufacturing and other activities. Of course, no aviation activity in those days amounted to a great deal but, in any event, as of January 1 of 1936, these airlines decided they should have their own trade association and set it up. Heading it, they got as the president of the association a man named Edgar Gorrell. He, as a young man, I think in World War I, he had been

only about 28 or 29 years old. He'd been one of the early aviators and in World War I actually had been head of the aviation of the Army. His picture incidentally is there on my wall.

Which one is he?

He is the one just this side of Dean Acheson, you see. Stone is above Dean Acheson and just this side of Dean Acheson is Colonel Gorrell.

How do you spell his name?

G-O-R-R-E-L-L. Gorrell had been, actually, the top aviation man in World War I. He had accompanied Pershing to Europe and had been there at headquarters with Pershing throughout the War doing all the planning and directing and so on of the aviation activity. He had gone into the automobile business after the War and had been very prominent in that. He had been a West Pointer. He, very fortunately, was one of the few people in the country who sensed that a depression was coming. He liquidated his investments on the very eve of the depression and put them in, oh, I don't know bonds or what not. In any case, the result was that he was in very good shape because he had a lot of liquid assets at the time of the depression and was able then to reinvest on very advantageous terms. I mention all that by way of indicating that he was, by 1936, he was a man who was comfortably fixed, was not

dependent on having a job with a company. He had been famous, of course, in the aeronautics field, so when the airlines decided they would have their own trade association they went to him and asked him if he would head it and he agreed to do it; and so he left the automobile business and became head of the Air Transport Association.

He had an uncle who was very much involved in the Cannery Association. That uncle had been one of the earliest clients of the Covington law firm.

How did that happen, if you know?

Well, he lived in Baltimore, he knew Judge Covington and he needed a Washington lawyer back in 1918 and '19 and came to the firm. It was one of the first clients of the firm, and it is still.

One of the, one tends to think of "Washington lawyer" as a fairly recent innovation, having developed in the last 30 or 40 years, something like that. But obviously from Covington's perspective, and your perspective, it's a much older concept.

Well, no, Covington pioneered it, there isn't any doubt of that. But it was the concept of this firm from its very beginning in 1919 and, there isn't any question but that the firm, at that time, when it was started, was really unique in terms of its conception of what the nature of its practice would be in the main. Although we

always had a lot of local practice and still do. But the thrust was on the national level. Well, anyway, after Gorrell, oh I think it was along about July of 1936, had a legal problem and his uncle suggested that he come to Covington. So he showed up, his headquarters were in Chicago incidentally, so he showed up and whatever his problem was and I've forgotten now what it was, it was handled, and handled well, by Tommy Austern. Gorrell obviously was impressed. So in about a month or six weeks, he came back and he said what he really needed was a regular lawyer as counsel to the Association because there were constantly problems and, among other things, he wanted to be able, or find some way, for the airlines to enter into agreements that would prevent them from wasteful competition because the airlines were in very bad shape; it was impossible for them to make any money and they were competing when they shouldn't be, and they just couldn't get along properly. So he needed a lawyer to give him some guidance on all these matters.

Well Tommy Austern, he came to Tommy Austern, Tommy was real busy but Tommy got a hold of me and had Colonel Gorrell sit down with me. So here I was, this was in 1936, I was 26 years old, and I'd been with the firm a couple of years but I found this was kind of a fascinating thing. And despite the fact that I had this very

interesting business going on with the Public Works Administration, this airline stuff sounded even more fun and, when Gorrell explained everything that he had in mind, I pointed out to him that there was such a thing as antitrust laws and that he couldn't have these airlines entering into agreements not to compete and so on. But I said there is, in the steamship business, they've got a provision whereby water carriers can enter into agreements and, if approved by a government agency, they're exempt from the antitrust laws. It's section 15 of the Shipping Act. You need something like that. Well, Gorrell was a very, very good guy and he quickly sensed that I knew what I was talking about and he agreed that that's what they needed.

So, the question was how the hell do you get that kind of legislation? Well, one thing we did was to go have a session with Clarence Lea who was a Democrat, he was Chairman of the House Interstate and Foreign Commerce Committee. Gorrell knew him from World War I days when, well, that's a long story, but, and it's kind of a fascinating story, but I can't just go on. What the hell, I'll never stop.

Well I'm enjoying it. Keep going.

Well, anyway, we went to Clarence Lea and Lea said well, you can't get legislation just exempting you from

the antitrust laws. It's got to be part of something. Well, the net of it was we decided what we really needed was a, something like the Interstate Commerce Act regulating the railroads. To have such an act that would regulate the airlines but include in the act a provision such as in the Shipping Act, providing for this exemption from the antitrust laws for agreements between airlines that were approved by the regulatory agency. That was what it was decided we would do.

I'm sure he thought that was a great idea also.

No kidding. The entire history of the Civil Aeronautics Act, and it was a long history of getting that thing adopted, but we ultimately got it adopted in 1938, but all the pulling and hauling and everything, it was all as far as where the airlines were concerned, all that was done was to get that section 15 in there. And nobody, nobody ever, ever realized that that's what, except the airlines themselves, nobody on the Hill or elsewhere, they never realized that the thing we were really interested in was that. And we put on, Gorrell put on a tremendous act and finally, in 1938, the legislation was adopted.

Did you accompany Gorrell to the hill?

Oh sure, sure, sure.

So that was . . .

Oh no, well I was right in the middle of the whole thing, the drafting, and that's a long, long story. The

legislative history of the Civil Aeronautics Act is quite a story. It started as, at Congressman Lea's suggestion, it started as a proposal to amend the Interstate Commerce Act. Such a proposal was actually introduced in 1937, was a big battle about that. Oh, it, I could go on and on and on about this. The net of it was that, ultimately, it was decided, instead of an Interstate Commerce Commission, to have a separate and new agency created, what was first called the Civil Aeronautics Authority. It later became the Civil Aeronautics Board and it had regulatory jurisdiction, as well as a lot of other powers. But, from the airlines' standpoint, it was regulating the airlines. But we had that provision for, if an airline agreement is entered into that was approved by the Civil Aeronautics Board, it was exempt from the antitrust laws.

Now, your involvement then with the airline industry began then, but it continued throughout your career?

No, well, not really. I, from there, by 1938, all that PWA stuff, all that had been done. I think that all wound up in 1937. By 1938, obviously, I was up to my ears in this aviation stuff and once the statute was adopted, then there was a matter of setting up the Civil Aeronautics Board and creating various industry agencies that were called for. And the airlines were very small. Airline lawyers were not experienced to any great extent

in anything in the way of regulation or anything of that sort. I, as the lawyer for the Air Transport Association, was sort of looked to by everybody as the leader and ever so many of the problems of the airline industry would be handled by the Association, which meant that I would be doing the legal work and so on. So I was just busy as the devil. And it was all very fascinating. And, of course, from the firm's standpoint, it was very desirable because it meant that the firm was becoming more and more well known all around the country. And the net of it was that I was very much involved with that right up to World War I, ah World War II.

World War II came along, I had a low draft number. I probably would have been drafted by late '42 or early '43 had it not been that I was right in the middle, at that time, of a very important project for the airlines which involved negotiating with the government, means for the government, for the military, the War Department, in effect, to run the airlines without actually taking over ownership. And we set that up, this was to avoid the kind of thing that had happened in World War I where the government actually took over the railroads. And this was a much better arrangement. It was a contractual arrangement. It was a contract which all the airlines became parties to, with the government, which in effect



said anything the government orders, we will do and then compensation will be worked out for carrying any particular orders. Well, I was in the middle of doing that when my time would have come up. So I got a deferment from the draft on that account. In the meantime, back in 1939 and 1940, I'd been divorced, I'd been remarried to a lady who had a child so that I had a family to support and, but that is not what actually contributed to the deferment of my draft. The point was, it was all this airline stuff that was going on. In any case, we ultimately got all the airline business worked out.

And what do you mean by that, the Civil Aeronautics Authority was set up, the CAB was in place, . . .

Oh, that had already been. That was all done earlier. No, this was in the War Department they set up the Air Transport Command, the airlines had representatives there, and what they did was, in the War Department, actually with the Air Force ready to receive any kind of an order that the Air Force wanted to give and then we worked out channels thereupon for the order to be transmitted through industry agencies and the airline would immediately drop everything else it might be doing and carry out the military order.

So that's the system that was in place and all set up?

Yeah, we set it up. Well, in any event, all that finally got set up and at that point there was no basis for deferring the draft of me. However, I found by that time, it turned out that anyone with dependents was not being drafted. So here I was, I had escaped the draft by this deferment and I was, my conscience would have hurt me like hell if I had thereupon just taken advantage of the deferment and escaped the draft entirely. So, even though I was no longer liable to be drafted, what I did was to enlist in the Marines. I wanted to be a Marine because my then-wife's cousin, of whom she and I had been fond, had been a hero at, in the Marines, at Iwo Jima, he had been killed and I decided I would be a Marine. So, I tried to get a commission but that was turned down. I think probably, I've never known, but I think that lots of people were getting commissions and I never could quite figure out why. I think probably it was because I had been a Socialist and what-not.

In any event, I went to Parris Island, I went through boot camp and it turned out that while I was in boot camp, the Marines decided what the hell, all the drill instructors who'd been there from the beginning of the war, it was time for them to go to war. So anybody who was then in boot camp who had been to college was picked to be a drill instructor. So when I got through boot

camp, I was made a drill instructor. I was 34 years old, which was an old man. Matter of fact, I think in my boot platoon, I think I was, if not the oldest, the second oldest in the platoon. I became a drill instructor and that was really something. That was fascinating.

It's quite a change from being a Washington lawyer to being a drill instructor at Parris Island.

I was a drill instructor until the end of the year, this is 1944. By the end of the year, the Marines decided the war was about over; they made a big mistake and they actually began to cut back. So I was about to be sent off to fight the war instead of just instructing kids at Parris Island. I found, however, and Colonel Gorrell had a hand in this, I'm sure, I'm almost sure. In any event, it's a complicated story but I found that instead of being sent to the Asian War theater, I was brought back to Washington and I was put in a job down in the Navy Department for a while, which was terrible; a stupid job but I later discovered that I was, that was not the reason I'd been brought back here. I'd been brought back here to become Secretary to what was called, to be called the Air Coordinating Committee. That was a new committee . . .

Was that within the war Department?

It was a sub-cabinet committee, State, War, Navy, Post Office, CAB and Department of Commerce. The top officials

from all those agencies were members of the Air Coordinating Committee that would coordinate all wartime aviation activity. Anybody in the government. Everything. And I was to be Secretary to that Committee. What did being Secretary involve?

The people who were running things assumed that the Secretary should build up a great big staff and have a whole big agency and see that whatever the Committee decided should be done by anybody was carried out. My idea was that there should be no staff at all and I didn't have anything more than two ladies, one was my secretary, stenographer, and the other was sort of my assistant. But each of the agencies that was involved in the Committee had a person designated as liaison with me. So the Committee would meet, not once a week, but nearly once a week, the Committee would meet and very important decisions would be made. Then what I would do would be to see that the decisions were executed. Not by the Committee's staff but by the several agencies of the government that were involved.

What kind of issues came up before the Committee?

Oh, everything you can imagine, all kinds of things. Moving airplanes from one place to another, getting supplies for the military in some remote island in the Pacific where the supplies were in the hands of somebody

back here and they had to be transported and, just everything you can think of that would involve any kind of non-military airplane. And if it was the military airplane, obviously the military itself would be doing it, I mean the particular military agency would be doing it, but the Air Coordinating Committee, what it was doing was, in the main, handling any kind of aviation matter that went beyond the War Department.

So would this also have to do with coordinating or setting rates, compensation for the airlines?

Compensation, yeah and rates, of course, would be set by the civilian agency but if it was a matter of having to work out compensation for some particular mission that was done by an airline, then this Committee would be involved in seeing that it was properly done.

Did that Committee supersede, during the war, the Civil Aeronautics Board?

Oh no.

Or just work side by side?

No. No. They weren't side by side. And as soon as I, when the war was over, in September of 1945, I wanted to get back to civilian life as soon as possible and it was wonderful. They let me do it. This Committee continued its work on for quite some time. But I left that post by the end of September of 1945.

Did you come back to Covington?

Oh yeah. Sure. That Committee continued in, God I don't know whether it still exists or not, but it went on and on for a long time. But instead a few weeks, maybe even a few days after I left, they had a huge staff.

That's the Washington way.

It was funny as hell, really. No kidding; it was tremendous. We had done a great job. We just . . . And the war was over . . .

Oh the Air Coordinating Committee went on for a long, long time.

Did you pick up with aviation-related work when you came back to the firm?

Oh, when I came back, in the meantime, when I left, the Air Transport Association obviously then was without a lawyer and what they had decided to do was to set up their own legal department. Now, as a matter of fact, there was one of our lawyers ultimately went with them and was one of their legal staff. But they got a guy who became what amounted to their head counsel and Stuart Tipton had been prominently involved in the government on the aviation side. I'd worked with him and so on and he, Colonel Gorrell, persuaded him to come with the Association and he set up a legal department so that all that was done as soon as I left.

But you remained outside counsel to the Association?

No, no.

No?

No, this was done after I left.

Oh, I see.

No, as long as I was there, I was it.

Right.

And the firm was it. But it was only after I left that all this was set up by the Association.

And when you came back after the war, did you pick up where you left off?

No. When I came back after the war, I had been approached, as a matter of fact just before I came back, by American Airlines which was the largest airline of the U.S. airlines. It was larger than Pan Am and larger than any of them. And they wanted me to become their principal lawyer and so, that's what happened. And when I came back, there was some talk about my going to New York. Well, their headquarters were at first in Chicago and then were moved to New York. There was talk about setting up an office in New York and having me go there and I refused. I wouldn't, I was coming back to the firm. I wasn't going to their payroll, but I would be there, their lawyer. And that's what happened. That went on for, oh, I don't know, about 20 years. I was head over heels in

that aviation work. It was an enormous amount of law work for airlines right after the war.

Did you begin to represent airlines other than American or only American?

Only American. Oh you couldn't because of . . .

Conflicts?

Conflicts of interest. We did do some work for Penagra. That was, as a matter of fact, I had done some work prior to the war with the Grace Lines. Grace Lines owned half of Penagra, Pan American owned half and Grace Lines owned half of Penagra, which operated from the Canal Zone on down the west coast of South America.

Did you come into contact with Welch Pogue during those periods?

Well sure. He was Chairman of the CAB. Oh yeah.

Welch was representing Eastern, I think, for awhile.

No. No.

Pan Am. Do I have it wrong?

Well, after the, of course he was Chairman of the CAB.

Right.

Now after the war, they, Welch, the Pogue firm represented, they did quite a lot of work for several airlines from time to time. Eastern was one. Well, my memory is fuzzy. But, of course, one of my very close friends was Bob Oliver.

Right.

And he still is.



Was most of the airline work regulatory and legislative in nature?

Yeah.

As opposed to much litigation?

No, there was regulatory. Now there was some litigation involved in all that.

Were you yourself doing any litigation at that point or had you given most of that up for others in the firm?

Well, no.

After your success in the initial argument . . .

No, I, from 1945, late 1945, when I got back and we started this work for American, on to nearly the end of 1950, I did practically nothing except American Airlines and that was, a lot of that was administrative agency hearings, and so on. There was a certain amount of court work but usually that was in the appellate court. I don't remember anything in a district court in the way of a trial for American.

Were most of these matters involved with rates? Can you pigeon hole it in any way?

Well yeah, it was regulatory when new routes . . .

Routes?

There was a lot more of fighting over routes than there was over rates. There wasn't much in the way of rate regulation because the rate levels, there was a, you

see, competition was carefully controlled and, back in those days the airlines were really on a pretty stable level. They were expanding, growing rapidly, getting along very well and with the kind of regulation provided by the CAB, there was not much in the way of cutthroat competition. Things were handled on a pretty healthy basis and the, the net of it was that it was just unnecessary to get involved much in the way of government activity, notably on expanding of routes. The new route cases. There was a hell of a lot of that and competitive disputes about one thing and another and so on. But it was a large order.

Was there anything that happened in 1950?

Yeah. Among other things, American had acquired an interest in, along with a steamship company, in American Overseas Airlines ["AOA"] operated from New York to Europe. And this had been started right at the end of the war. In the immediate post-war period, there were a hell of a lot of regulatory problems in connection with AOA. It was, of course, a competitor of Pan American and so on. So I had a lot of that work to do as well as all the tremendous amount of domestic airline problems.

In 1950, C.R. Smith decided that there was really no very attractive future in international aviation. So . . .

And C.R. Smith was?

The head of American Airlines. So AOA was sold to Pan Am and there was one hell of a battle about the sale as to whether it would be okayed because it had to be okayed by the government and there were a lot of arguments against that.

Was American the principal shareholder in AOA?

Yeah, yeah it was 50/50. Well, the net of it was that we were, we had to go to court, the president, Truman was then president, the sale of AOA to Pan American was approved. There was litigation; we had to go to court; we won the litigation and so on. It was a big, a tremendous case; it attracted a lot of attention and was quite a famous case. And I won it. After that, I decided I'd had a belly full of aviation and from there on, most of the aviation work was done not by me but by others in the firm. You'd just gotten tired of dealing with the issues or the people or the . . .?

Yeah. I continued, obviously, I had to continue to be involved to an extent but I mainly got off on other things.

This is January 31, 1992, and I'm meeting again with Mr. Westwood. We left off when we last met, Mr. Westwood, with your having, as you put it, more or less having had a belly full of aviation and moving on to other matters in your law