



HOWARD C. WESTWOOD, ESQUIRE

Oral History Project
The Historical Society of the District of Columbia Circuit

**Oral History Project
The Historical Society of the
District of Columbia Circuit**

**United States Courts
District of Columbia Circuit**



Howard C. Westwood, Esquire

**Interviews conducted by:
Willis J. Goldsmith, Esquire**

January 21, January 31, and April 17, 1992

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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the U.S. Courts of the District of Columbia Circuit, and judges' spouses, lawyers and court staff who played important roles in the history of the Circuit. The Project began in 1991. Most interviews were conducted by volunteers who are members of the Bar of the District of Columbia.

Copies of the transcripts of these interviews, a copy of the transcript on 3.5" diskette (in WordPerfect format), and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges' Library in the United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcript and diskette are available at other locations.

Such original audio tapes of the interviews as exist as well as the original 3.5" diskettes of the transcripts are in the custody of the Circuit Executive of the U. S. Courts for the District of Columbia Circuit.

Historical Society of the District of Columbia Circuit

Agreement

1. In consideration of the recording and Preservation of the oral history memoir, prepared by Willis J. Goldsmith and me, by the Historical Society of the District of Columbia Circuit, Washington, D.C., its employees and agents (hereinafter "the Society") I, Howard C. Westwood do hereby grant and convey to the Society, its successors and assigns, the ownership of the tape recordings and transcripts of interviews as described in Schedule A hereto. I also grant and convey to the Society all right, title, and interest I might have in such tapes, transcripts and their content, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions.

2. I have not previously conveyed, assigned, encumbered or impaired my rights and interest in the tapes, transcripts and their content referred to above.

3. It is agreed that access to the aforementioned tape recordings and transcripts shall be in accordance with the direction and control of the Society and subject to terms to be set by the Society. I authorize the Society, subject to the above and to any exceptions contained herein, to duplicate, edit, publish, or permit the use of said tape recordings and transcripts in any manner that the Society considers appropriate, and I waive my claim to any royalties from such use.

Date: February 14, 1994

Howard C. Westwood

DISTRICT OF COLUMBIA)
) ss.:
)

Acknowledged before me this 14th day of February, 1994.

ROZLYN K. WATSON
Notary Public
District of Columbia
MY Commission Expires: 1/31/96

Rozlyn K. Watson
Notary Public

Date: 3/23/95

Daniel M. Greer
President
Historical Society of the
District of Columbia Circuit

Schedule A

Tape recording(s) and transcript resulting from 2
interviews of Howard C. Westwood conducted by
Willis J. Goldsmith on the following
dates: January 21, 1992 and April 17, 1992

Historical Society of the District of Columbia Circuit

Agreement

1. In consideration of the recording and preservation of the oral history memoir, prepared by Willis J. Goldsmith and Howard C. Westwood, by the Historical Society of the District of Columbia Circuit, Washington, D.C., its employees and agents (hereinafter "the Society.") I, Natalie W. Lombard, personal representative, heir and beneficiary of the Estate of Howard C. Westwood, do hereby grant and convey to the Society, its successors and assigns, the ownership of the tape recordings and transcripts of interviews resulting from interviews of Howard C. Westwood on January 31, 1992. I also grant and convey to the Society all right, title, and interest I or he might have in such tapes, transcripts and their content, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions.

2. I have not previously conveyed, assigned, encumbered or impaired my rights and interest in the tapes, tranecripts and their content referred to above.

3. It is agreed that access to the aforementioned tape recordings and transcripts shall be in accordance with the direction and control of the Society and subject to terms to be set by the Society. I authorize the Society, subject to the above and to any exceptions contained herein, to duplicate, edit, publish, or permit the use of said tape recordings and transcripts in any manner that the Society considers appropriate, and I waive my claim to any royalties from such use.

Date: 6/11/96 Natalie W. Lombard

STATE OF NEW YORK)
COUNTY OF Westchester) ss :

Acknowledged before me this 11th day
of JUNE, 1996.

Ralph A. DeRosa
Notary Public

RALPH A. DeROSA
Notary Public, State of New York
No. 4712408
Qualified in Rockland County
Term Expires Sept 30 1996

Date: 6/11/96 Daniel W. Gibson
President

Historical Society of the
District of Columbia Circuit

Interviewer Form

Historical Society of the District of Columbia Circuit

Interviewer Oral History Agreement

1. Having agreed to conduct an oral history interview with Howard C. Westwood for the Historical Society of the District of Columbia Circuit, Washington, DC, I, Willis J. Goldsmith, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings and transcripts of interviews, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society, to duplicate, edit, publish, or permit the use of said tape recordings and transcripts in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.



Signature of Interviewer

4/19/96
Date

SWORN TO AND SUBSCRIBED before me this 19th day of April, 1996.

Brenda S. Vaccaro
Notary Public

My commission expires June 30, 1999

ACCEPTED this 26th day of April, 1996 by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.

Daniel M. Gribbon
Daniel M. Gribbon

Schedule A

Tape recording(s) and transcript resulting from three
interviews of Howard C. Westwood (number)
(Interviewee)
on the following dates:✓

January 21, 1992 - pages 1 through 43 of transcript
January 31, 1992 - pages 43 through 108 of transcript
April 17, 1992 - pages 108 through 129 of transcript

Six (6) microcassettes (undated)

1/ Identify specifically for each interview, the date thereof and (1) the number of tapes being conveyed, and (2) the number of pages of the transcript of that interview.

HOWARD C. WESTWOOD

Howard C. Westwood, 84, a partner in the Washington law firm of Covington & Burling and a specialist in airline law, died of emphysema March 17, 1994, at Chevy Chase House in Washington.

Mr. Westwood joined Covington & Burling in 1934 and retired in 1979. Since then, he had been of counsel to the firm.

His law practice included helping develop government regulation of airlines and the Civil Aeronautics Act, and the representation of clients in the airline industry. From the mid-1950s to the mid-1970s, Mr. Westwood also worked on legal aid for indigents. He was a founder of the Legal Aid Society and in 1992 was awarded its "Servant of Justice" award.

Mr. Westwood had written more than 30 articles on the Civil War for historical journals and had presented more than 25 papers to Civil War round tables in Washington and elsewhere. His first book, "Black Troops, White Commanders and Freedmen During the Civil War," was published in 1992.

He was a member of the Burning Tree Club and a board member of the Ulysses S. Grant Association of Carbondale, Illinois.

He was born in Cedar Rapids, Iowa, attended Swarthmore College and graduated from Columbia University law school. He was clerk to U.S. Supreme Court Justice Harlan F. Stone for a year before joining Covington & Burling. During World War II, he was a Marine Corps drill instructor at Parris Island, S.C.

WILLIS J. GOLDSMITH

Willis J. Goldsmith is a partner in the firm of Jones, Day, Reavis & Pogue, resident in the Firm's Washington, D.C. office, and Chairman of the Labor and Employment Law Section of the Firm's Litigation Group. He received his A.B. from Brown University in 1969 and his J.D. from New York University in 1972.

Mr. Goldsmith represents management in all phases of labor and employment law, including in state and federal trial and appellate courts in matters arising under Section 301 of the Taft-Hartley Act, the National Labor Relations Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, Title VII of the Civil Rights Act of 1964, and in injunction proceedings. Mr. Goldsmith also has had extensive experience in litigation before the National Labor Relations Board, the Occupational Safety and Health Review Commission and state and local fair employment practice agencies, and the Equal Employment Opportunity Commission. In addition, he has been actively involved in collective bargaining and labor contract administration.

Mr. Goldsmith is a member of the American Bar Association (Labor and Employment Law Section, Employee Benefits Committee; Committee on Occupational Safety and Health Law, 1978-92). He is an Associate Editor of *Occupational Safety and Health Law*, published by the Bureau of National Affairs, and a member of the Editorial Advisory Board of the *Benefits Law Journal*. He was formerly an Adjunct Professor of Law at the Georgetown University Law Center. He has authored a number of articles and participated in many conferences focusing on labor and employment law issues and is listed in *Who's Who in American Law*. Mr. Goldsmith has been admitted to the bar in New York and the District of Columbia, various federal district courts and courts of appeals, and the United States Supreme Court.

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

practice at Covington & Burling. I know that there were three cases of particular significance that you were involved in, the Steel Seizure case, the Texas City disaster case and the Perez Jimenez case involving the extradition of the then-dictator of Venezuela and I thought that perhaps we could talk about those three cases this morning. Why don't we start with the Steel Seizure case? When did that arise, if you recall?

Well that, that arose in the spring of 1952. Truman, Truman's administration you see would come to an end in the next year. There would be, as a matter of fact, Eisenhower was elected in, you know in the fall of 1952. So this was right toward the end of the Truman administration. What had happened was that there had been a great dispute going on between the management of steel companies and the labor unions over wages. It finally became evident that there was not going to be an agreement and the labor unions were going to go on strike. What Truman did, feeling that a strike of the steel industry would be a very critical thing, what he did was to prepare to take over the steel companies on the theory that the labor unions would not strike against the United States running the steel plants and, obviously, there had been some overtures with the labor unions and so on on the subject. Well, the likelihood would be that under the, during the time of the federal government having control of the steel

companies, wages would be increased. This was not exactly what management wanted to have happen because there would be no way in the world, as a practical matter, for them to get back to their previous wage levels and continue with collective bargaining with the labor unions. They would be faced with a fait accompli and it was perfectly obvious that the labor unions were sort of playing footsie and playing ball with the federal government in the takeover. The net of it was that the steel companies figured that they were going to have to somehow or other try to resort to litigation to prevent the federal government, the President, from taking over and running the steel industry. U.S. Steel came to us, this was John W. Davis' firm in New York, obviously with the thought that we would be local counsel, but that they would be really handling the matter. And we had quite a meeting with them. Well, Mr. Davis had been an old-time friend of our law firm and we'd, we'd known the Davis firm from way back and our relations always have been very cordial, but we made it fairly clear to them that sure, we would, we would be delighted to jump into the case with them but we were going to be very actively involved, we weren't going to be simply names with their doing all the, all the work and so on.

Was there any resistance to that on their part?

No, no, not really. Now we'd had a very, very happy relationship with that firm over many, many years and we had worked together on a lot of things. Well, the net of it was that as far as our work was concerned, I was pushed in charge of that and working with the Davis firm and ultimately, as I say, with, very closely with Mr. John W. Davis. We began right away, this was on the eve of the seizure, the seizure had not actually occurred yet, but the effort was going to be to forestall it somehow or other. Well, it's a long and very complicated story. The other steel companies all around the country, they too were planning to get into litigation and as matters turned out, although we were working hard on drafting the necessary papers and so on, but as matters turned out, there must have been at least a couple of steel companies that actually filed suit here in the District of Columbia to enjoin, in an effort to enjoin a seizure before we did. Now that wasn't because we were delaying, but we were probably taking somewhat more pains with the drafting of papers than one or two of the other steel companies that got ahead of us on filing the lawsuits. As it turned out, in the end that didn't make any difference. In any case, we soon got our lawsuit filed to enjoin the seizure and a whole flock of other steel companies got their lawsuits filed and the . .

Were they separate lawsuits or did they join in yours?

Oh, no, no. They were separate lawsuits. A whole flock of them. I've forgotten how many, but a whole flock of them. Ours was just for U.S. Steel. But, of course, U.S. Steel was the most prominent and biggest of all the steel companies so their position was very critical. Well, the net of it was that an immediate restraint was sought from the district court and the district judge, well, there was a big argument before the district judge. One of the lawyers, the New York lawyers from the Davis firm participated in that argument. We did not. We were busy, still busy because we knew that whatever happened in that argument, that it would have to go to the Court of Appeals right away and then would get on to the Supreme Court right away because everybody realized that the case was going to be fought to the Supreme Court and that it had to be disposed of almost within a few weeks. Finally disposed of. And it was to be a unique type of litigation. Well, the district judge, in effect, decided in favor of the steel companies. But the whole proceeding before him was a kind of shadowboxing really. It didn't make any difference which way he decided.

Because it was going up anyway?

Oh sure, right. And then it had to get into the Court of Appeals and the government moved very quickly to

get into the Court of Appeals, literally overnight. We, by that time, were taking pretty much of a lead. I had, with me I had two or three of our very best lawyers, Stan Tempko and Paul Warnke, and we were literally spending 24 hours a day and I mean it, moving on this thing. And, as I say, we were really taking the lead by then. All the steel companies, and they were kind of, I don't mean to look down on the others, but we were, it was easy, easiest to sort of coordinate through us and we were, we had been doing rather more fully the research and that sort of thing than had been done by the other local law firms here. You see, with the matter coming on, with everything happening almost overnight, it was next to impossible for law firms out in the country at large, be they Cleveland or New York, or Boston or whatnot. It had to be. Moves immediately had to be taken by the law firms that were right here in Washington and that inevitably put us sort of in the lead. Well, in any event, the matter got into the court of appeals and although, although the steel companies had been successful in the lower court, the court of appeals was not quite of the same sentiment.

Did you handle the argument in the court of appeals?

Well, yeah. You had to because the argument, in effect, was really an argument having to do with a temporary relief. The government was just going to go

right on. See, they could go on to the Supreme Court directly. The question was whether there would be any kind of an outstanding injunction while they went on to the Supreme Court. Well, the net of it was that the court of appeals, we had a big argument one day and then, and the court of appeals, in effect, rejected our position. But, this meant that they would be going right up to the Supreme Court.

Did the government make any effort, immediately upon the dissolution of the district court's restraining order, to take over the steel mills or was there an understanding that it was going to be litigated?

Well, this was the big issue. On the day that the matter was argued, this, I've forgotten how long after the matter had been disposed of in the district court, it could have been the next day, it was all very fast. The first appearance in the court of appeals, when, at the end of which the court decided against us, apparently it had not been really focused on that if the seizure were not held up, the case kind of became a moot, moot in a sense. And what we did, at the end of the first day when the court immediately announced that, deciding against us, what we did then was to, the lawyers were all lined up before the bench when the court called us back to announce their decision . . .

That same day, the day that it was argued?

Yeah, oh yeah. It was argued in the morning and the court had us back there about, oh I don't know, about 3:00 in the afternoon.

Do you remember who was on that panel, which judges? It's obviously a matter of record, but I'm just curious.

Yeah. Well, Lord, I can't remember names but they were very important judges. No, this was a time when the court of appeals had some real top flight judges, I'll tell you. Well, anyway, when the decision was announced, it was, it seemed obvious that the court had not focused on the fact that if the, that the case might actually get mooted if the government went on with a seizure while the matter was still pending before the Supreme Court. So here were the lawyers lined up in front of the judges as the, right after the announcement of the decision and I, in effect, took the lead in saying well now, wait a minute your honors, we gotta hold this darn thing lest it become moot. Because it's going to go to the Supreme Court right away. I didn't say it in so many words, but it was perfectly obvious that I was getting across the idea that this was just a waste of time. Well, the net of this was that the, in very dramatic circumstances and I can't give you all the detail of it, but it was really like a movie. The net of it was that the judges decided that they would

have a further proceeding the next day, not to review their decision, but to see what, if anything, should be done in the way of holding things up until the matter got to the Supreme Court. Well, the next day I was the guy who really did the argument for all the steel companies because everything was, it was a great emergency and I and my brethren worked, literally we worked right straight through the night getting ready for the appeal because that was what was going to be critical. The net of it was that at the end of this argument the next day, what the court decided to do was not to give us an injunction pending appeal, which we were seeking, but to give us what would amount to a temporary injunction. That is, they would frame an order on the appeal from the district court, they would so frame an order that the government would not become free of restraint until, oh, I think it was the following, about three or four days in the future, I've forgotten just what the time element was.

So they were not going to permanently hold this . . . ?

Obviously they were giving us, intending to give us an opportunity to get to the Supreme Court and let the Supreme Court really decide what the hell was going to be done. OK. So then it became perfectly clear that the real big burden was going to be on us and our law firm here . . .

And on you?

Yeah, and on me. And Paul Warnke and Stan Tempko. And it was one other guy, gosh, I can't remember his name now, who was working with us, the four of us were working on this thing and I'll tell you, we got very, very little sleep. But what we had to do, first of all, we had to get a petition to the Supreme Court to review the case and even though, even though we had been successful down in the district court, there was nothing to prevent us, the successful ones, from petitioning for direct review by the Supreme Court instead, and skipping the court of appeals.

And why again would that have been the case?

Oh yeah, the Supreme Court would have an opportunity as soon as an appeal was filed in the court of appeals, the Supreme Court could grant direct review by it instead of waiting for the court of appeals to review the matter. And that's what we were all, that's what the government wanted to do, you see, after losing the case in the district court. And the, all this argument in the court of appeals about injunction, that all would be only temporary while the matter was getting on to the Supreme Court. Well it was perfectly obvious that the government assumed that they could get their papers, oh, maybe by the end of the week, for Supreme Court review and they were absolutely dumbfounded when, before they filed anything in

the Supreme Court, we had, on behalf of U.S. Steel, we had papers filed in the Supreme Court seeking review, even though we had been the successful ones in the district court. But the point was, we also were seeking injunctive relief pending appeal so that the matter wouldn't be mooted.

Right.

This caught the government completely by surprise. They were amazed. And we had been able to do this because literally we worked all night and we had damn good papers. The reason we were doing it was tactical. We figured that the most likely way of getting protection by a temporary injunction pending appeal issued, or a restraining order pending appeal, issued by the Supreme Court itself would be by gearing up and getting things filed and making it clear that there really was a great emergency, etc. The net of it all was that we were ultimately successful in that tactic and the net of it was that the Supreme Court actually did, immediately, issue a restraint on taking over the, against any seizure pending the determination of the matter on the merits by the Supreme Court. And they also set the case for virtually immediate argument. I think the argument on the merits was, oh, I've forgotten the exact timing, but maybe a couple of weeks. So we had to brief the case and then get

to the argument, all, you know, in overnight periods. Well now, what we did, I, with Stan Tempko and the other guy, we actually went to New York City and worked directly with Mr. Davis, at Davis, Polk there in New York City, on the papers, the brief and so on to be filed in the Supreme Court.

Was he going to do the oral argument in the Supreme Court?

Oh yeah, oh sure.

And that was understood?

Oh yeah, what the hell, John W. Davis. And they, ultimately what happened was that all the steel companies, in effect, bowed to him to have him do the argument except for, there was one company that insisted that their lawyer, Charles Tuttle, be, or participate in the argument. Charles Tuttle, incidentally, had been my first father-in-law. [Laughter] But he was no longer my father-in-law by that time. But, in any event, it was John W. Davis and the brief filed by U.S. Steel would be the brief that would be the leading brief and that's what we were working on in New York. And we played, we played a principal part in the writing of the brief, working directly with Mr. Davis. There was one of the partners in Davis, Polk also was involved, but nowhere near as much as we were. And I found it extremely interesting because I'd always been a Socialist and John W. Davis, of course, had

been the Democratic candidate for president in 1924, which, that whole campaign year was, to me, sort of a joke. That was the year of the third party, when Wheeler and LaFouette. And I'd always tended to think of Mr. Davis as kind of an instrument of the capitalist system. [Laughter] But here I became really very well acquainted with the guy and the guy was wonderful toward me. Here I was very, very young compared to him. By that time he was an old man and world famous but he treated me as an equal and we had a great time there in New York working together on this brief. And I, I may say that for me, not only did my esteem for Mr. Davis go high, higher than a kite, but it was a tremendously exciting experience. Well then, ultimately, there was, of course, the argument before the Supreme Court and the brief that we had done on behalf of U.S. Steel was obviously the lead brief and the case was won to the amazement of everybody.

Was it really to your amazement?

Well, we, by that time I suppose we had convinced ourselves that we were going . . .

It is always the risk that any litigator has.

Oh sure.

But, when you started off, did you think that it was really

...

When we started off, we figured it was going to be one hell of a fight and the chances much against us. After all, here was the President of the United States and how in the hell could a bunch of steel companies enjoin the President of the United States from doing something that he figured ought to be done.

But the constitutional questions were certainly very serious. I haven't read that case in many, many years, but thinking back on it, it doesn't strike one when you read the case as it having been, constitutionally, an uphill battle.

No. No. That's true and you know, you look at it as surely, purely as an academic matter. But practically speaking, politically speaking, the idea of in a great economic emergency, which there was, . . .

And the sole emergency being that if the steel companies went on strike, everything would stop all, or a lot of manufacturing and so on.

Oh sure.

Do you recall whether the steel workers, the Union, actually participated. I don't recall, were they in the litigation?

Well, I, for the life of me, I don't remember whether they were a party to the, a party, yeah, they must have been a party to the litigation. In any event, they certainly were very much involved in the whole . . .

And that would have been, would that have been when Arthur Goldberg was General Counsel to the Steelworkers?

Ah, yeah. I think, isn't this ridiculous? I think Goldberg was involved.

That would have been about his time there. I'm not really certain, but that was quite an array of legal talent that was brought to the matter.

Oh, this was, this was blue ribbon stuff, there's no doubt of that. But for me personally, the exciting thing was to become so well acquainted with, and work so intimately with John W. Davis and it, I was absolutely amazed that one who had been in favor of maintaining the exploitation of the masses by the capitalists' society should be such a nice guy. [Laughter] He was absolutely wonderful toward me and he treated me, in every sense, this wasn't just a pose, as an equal and we, there in his offices, we were preparing the brief, we would have regular sessions, the two of us, there in his office with two or three others sort of sitting around as though they were audience, arguing back and forth exactly how the argument should be developed and so on. And the guy was marvelous. Well, that was a big case and that was won. Did you continue to represent U.S. Steel after that on Washington matters?

Well, oh yeah. We had done, I can't remember whether there were other U.S. Steel matters that came up after that. U.S. Steel, their regular counsel, of course, was

Davis in New York and it's very likely, because we had done, over the years we had done a lot of work with Davis, Polk. For them here in Washington and they for us in New York.

I see.

See, in those days you didn't yet have a lot of Washington offices of law firms outside. Law firms hadn't, nothing like what has happened since where law firms are spread around.

Right. You also were involved in the Texas City disaster case?

Yeah. Well that . . .

The disaster, as I recall, it was refinery explosion. Is that right?

Well, it was, a tremendous amount of material was being loaded on to a vessel in, this was explosive material, down at the wharf in Galveston. Or in Texas. Down in Texas City, down there at this wharf. And it exploded and it, of course, was a tremendous, tremendously damaging thing. Not only property but otherwise. It was a huge, huge explosion. Almost incredible. Litigation was begun. Practically every lawyer in Texas was involved in it. We were not involved. Practically every lawyer in Texas was involved.

This would have been personal injury litigation and the like?

Oh, a whole flock of things. And the matter went up to the Fifth Circuit Court of Appeals.

Which matter would that have been, Mr. Westwood?

Well it was . . .

What were the federal questions or . . .

Yeah, it, I'm trying to, this is ridiculous. I'm trying to think now. I'm trying to think what the basis for the federal jurisdiction was, whether it was, it could have been diversity.

Were you involved at the Fifth Circuit?

Oh no. No. We weren't involved at all. But in any event, the Texas lawyers, the plaintiffs' lawyers had been successful in the, in the district court level. They got up to the Fifth Circuit and they lost. And that's when they came to us. And the matter was brought, as a matter of fact, to Mr. O'Brian. Now Mr. O'Brian, you see, was getting to be a pretty old man. He was 70 years old when he came to our firm.

Really?

Yeah. He came in 1945 and he was, he was 70 years old. But he was still very, very vigorous at that time. Of course, this was, this Texas disaster case was in 1950, I guess it was the fall of '52 that, or late summer or fall of '52 that it came up. So Mr. O'Brian was, he was still vigorous, but he was getting pretty old. I was the

guy who was assigned to work with him and work on the briefing of the case and so on and help him get prepared for argument.

Before the Supreme Court?

Yeah.

Who was the defendant in that . . . was it . . . I want to say Mobil or one of the, one of the major oil companies, but I can't remember.

Hmm.

Well, in any case, that side of it we can easily fill in the blanks on.

It's perfectly silly the way I'm running into blanks. I'm just getting too damn old to remember these things. Well, in any event, we had to prepare a petition for cert and that got dumped in my lap, which we did, and cert was granted. Then there was the matter of briefing and ultimately the argument. The Texas lawyers had, as I say, nearly every lawyer of any consequence in the whole state of Texas was involved in this case; but what the Texas lawyers did was very sensible. They had wanted Mr. O'Brian, they had very deliberately decided that they wanted him to be handling the case in the Supreme Court and what they had done was to, was to agree that a particular lawyer would work with us and with Mr. O'Brian instead of having a whole flock of lawyers trying to

work. And one of the leading partners in a leading firm in Houston was picked for that. But there were also involved in this case some admiralty issues, or at least potentially involved and there had to be an admiralty expert who would be with, helping with and available to Mr. O'Brian in, and us, in working up the brief and potentially in the argument. So, in addition to this leading lawyer in Houston working with us, there was also another lawyer in Houston who was one of the leading admiralty lawyers in the country as a matter of fact but certainly down in that part of the country, who was likewise designated to work with us, or at least be available on call in connection with any admiralty issues. That lawyer was a guy named Brown, first name John. He had grown up in the state of Nebraska. He'd somehow or other gotten to Texas and had developed quite a practice there. Ultimately, of course, he got to be on the court of appeals for the Fifth Circuit. Ultimately he became Chief Judge of the Fifth Circuit. Ultimately the son-of-a-bitch was coming to visit me about every, every few months and ultimately the son-of-a-bitch was here only about two weeks ago.

Is that right?

We became very, very close friends.

As a result of that litigation?

Sure. That's where it . . .

That's where it began . . .

Oh yeah. We got very closely involved because they, these two lawyers from Texas, including that guy, practically had to live with us doing the brief because there was a tremendous record; it was terribly important to get the brief done in a way that would meet all of the needs and the views and so on of all of these lawyers in Texas. And, at the same time, would be a damn effective brief.

And writing briefs by committee, the most difficult thing of all to do?

And we were extremely successful and I may say the Texas lawyers were very smart not to try to intrude but to leave everything to these two guys they had picked to work with us so that it turned out to be a very, very smooth operation. And then the matter ultimately was argued.

Did Mr. O'Brian do the argument?

He did but I had to get into it.

In the argument?

Oh yeah.

How did that come about?

Well, he, Mr. O'Brian was getting very old and there were parts, he and I had divided the argument. He was going to deal with certain aspects and then I was to come along and deal with the other aspects. As it turned out,

I had to, almost to take up my part of the time, I've forgotten whether we each had a half-hour or each of us 15 minutes, whatever the, I don't remember now. But, in any event, it was darn near necessary for me to cover the whole, the whole matter.

In your time?

In my time, yeah. But, in any case, the case was ultimately decided. Every one of the good judges, justices on the Supreme Court voted our way. The trouble is,...

There weren't enough of them?

[Laughter] There weren't enough of them. Right. I've forgotten now what the vote was. I think it was 4-3; it seems to me there were two who did not participate. I'd have to double check. I think that's right. And we got, we got the three best.

Well, there's some solace in that isn't there?

Oh yeah. But it really was very funny. Frankfurter, let's see, Black, Frankfurter, I think it was Black, Frankfurter, I don't know, I'd have to check it, but, and Roberts I guess, maybe voted with us and then, and these other idiots voted against us. It was, and, of course, the opinion that the Court wrote was absolutely impossible and . . .

Impossible to understand?

Oh yeah. Sure. And they haven't adhered to it in future years.

Do you recall what the major issue was in that case?

Well, the, what the hell were we arguing about mostly? I guess the real basic issue was whether there had been negligence of some kind. In other words, any kind of culpable conduct in the loading of this stuff. And, the opinion that was written in effect held that there was not and in, and I'm about 99% sure that not once, but several times since, there have been decisions and opinions by, even by the Supreme Court itself, that are just plainly inconsistent with what was dished out. And it was perfectly obvious that the, the thing that was wrong, the weakness in the plaintiffs' case was that they asked for too much money. And we told them that. When the matter first came that the complaints and so on that had been filed simply, for that day and age, asked for too much money. And there is very little question but that the Supreme Court was, the majority of the Supreme Court was moved to decide the case as they did because there would have been involved entirely too damn much payout.

A practical reason.

I don't think there's much question about that. And I think lawyers at the time pretty much agreed that the tactical mistake made by the Texas Bar was very serious

when they, when all the litigation was first being evolved. They just were reaching for the moon. That's been a practice in Texas that's continued unabated. Why don't we talk about the Venezuelan extradition. The extradition of Perez Jimenez who was, as I understand it, the then-dictator of Venezuela, is that right?

Well, he was not at that time. He had been.
I see.

Yeah. In the summer, in August of the year whatever it was, I'll have to doublecheck the year. On a Saturday, I was working in the, in my office at the firm. Saturday mornings in those days I found very important because they, you could really get some work done at that time. And there looked in on me Dean Acheson, he was working also on that day and he told me that there was an extradition case that was going to be coming from Venezuela and he wanted to know whether I would handle it. Well, I never heard of an extradition. I guess maybe Dean Acheson had heard of extradition, but he didn't know anything about it. But I always figured that I could do anything. I was not an aviation lawyer or any other kind of specialist. I was a lawyer and lawyers are supposed to be able to do anything that a client needs. So I said sure, I'll handle it.

The net of it was that the, I was soon meeting with the Ambassador of Venezuela, the Venezuelan Ambassador. The Embassy, incidentally, was just around the corner from my home which . . .

Made it very convenient.

In the end that made it really very convenient indeed. This was, yeah, this was in 1959. That's right. In August of 1959, yep. Well, to make a very involved story somewhat simpler, it, I was advised by the Venezuelan Ambassador that Perez Jimenez, who had been the dictator of Venezuela, was living in Miami. That the Venezuelan democratic government had, in effect, overthrown Perez Jimenez and had installed what was a genuine democracy down there and that proved to be quite genuine. It was extraordinary. That they had found that Perez Jimenez had committed various crimes. He had, in effect, misappropriated money and stuck it in his own pocket. He was also accused of causing the murder of certain people and they, the democratic government of Venezuela wanted to extradite him and get him down there and try him on both the murder charges and also the mal..., what they call malfeasance, misappropriation of funds. Stealing.

Not to put too fine a point on it, but stealing.

So the Ambassador told me that the papers were coming right away and all that, apparently all that was necessary was that I just get them filed and, well, I didn't know anything about extradition and the firm didn't know anything about extradition.

Nor do I, yet. So you're going to have to educate me a little bit.

And Dean Acheson wasn't involved. He was, he was spending his time mostly working at his farm and otherwise enjoying his post-active life. Which incidentally, after the Truman administration, after his time as Secretary of State, he came back to the firm and he was wonderful. He was very helpful to us and he did a certain amount of work. But, obviously, he attracted things and obviously the extradition had come because of him. But it was all, as it turned out, it was all turned over to me and Dean had nothing to do with it from there on and I was completely, utterly accepted by the Venezuelan Ambassador and ultimately the Venezuelan Government.

Well, we, the papers got here. There was nervousness about it and great secrecy because it was feared that if word leaked out and Perez Jimenez heard that there was going to be an effort to extradite him, he would flee. As it was, he was installed in a residence down in Miami and living a perfectly comfortable life and the Venezuelans

were very nervous; they wanted to be sure to get him before he had an opportunity to get away. Well, the papers got here. They were in Spanish. We had a hell of a time. There was some English, but the English wasn't much. The net of it was, what I had to do was to put together a team in a great hurry. We had to deal with the Venezuelans, we had to explain to them how things were done here, we had to get papers translated and everything done in, under great pressure and in a great hurry. Well, it's a long, long story. On the face of it, I found I had to do some looking into what extradition was and you read the pertinent statutes and so on and it looks like, and also even the, a certain amount of textual material and even a certain amount of judicial decisions and on the face of it, it's like a preliminary hearing in a criminal case. You don't have to prove anything really. All you have to do is just show that there's reasonable, reasonable cause to detain the alleged criminal for later trial. And the, on the face of things, apparently, the analogy to a preliminary hearing in a criminal case was an exact analogy and that's what I thought we were getting into after I'd looked around a little bit over this first weekend. So that didn't look like anything terribly complicated and the only problem was to get papers filed in a great hurry before Perez Jimenez got wind of it and

decided to flee. Well, fortunately, it turned out that despite the fact that the papers that came were, many of them in Spanish, and that we had to fiddle around and get something that would, that could be read. I did get down to Miami in a hurry and we did, fortunately, we got a lawyer there, a local lawyer who was really very, very good and very helpful. I can't now remember his name but he was one of the leading lawyers in Miami and he worked with me in great style, made things very easy for me and didn't try to take over in any way, just tried to ease my way and help me in various ways.

The net of it was that we were able to get papers filed.

They were filed in the U.S. District Court in Miami?

Yeah. Yeah. And we were able to get papers filed and served very quickly. And were able also to have the matter set for immediate hearing and what we wanted to do was to get the district judge to, in effect, to put the guy under restraint and then have an immediate hearing. Which is the way extradition was handled apparently on the basis of all the, all the statutes and treaties and other things I had read, the whole darn thing would be disposed of in a matter of maybe two or three days. The guy would, if reasonable cause had been found, and we had a lot that we figured showed reasonable cause . . .

Then off you would go?

I would be shipped off. So this would end my interruption of my summer vacation. Well, of course, it quickly developed and wasn't going to be like that.

Who represented Perez Jimenez?

He, right away, immediately got a lawyer in Miami who was a leading criminal [lawyer] there and a very able guy and who . . .

Do you remember his name?

I can't remember his name. I, no, I don't remember. In the report of the case, obviously, is his name. Well, it's silly. I just can't remember him.

I think we're going to run out of time on this tape so let me just change tapes. There, I think we're back on tape. When we left the other tape, I'd asked you if you had recalled the lawyer representing Perez Jimenez and you didn't and we agreed that we'd come up with his name perhaps when we saw the reported decision. But, in any case, it did not, I gather, turn out to be the three-day sojourn in Miami and then back to summer vacation. It turned out to be something far more complex than that?

Yes indeed, it did. Matter of fact, it was not, it was, I think about a week longer than three years.

[Laughter] Well, I guess the fellow in Miami was pretty good then.

Oh, he was. He was good. That was an extraordinary experience.

How did that turn into three years and a week?

Well, in the first place, he immediately indicated that, well, he got free on bond right away and, of course, that made us very nervous because we figured what the hell, he would skip out and run away and the Venezuelan Government was extremely nervous about it. But I think he, I think he was somewhat over-confident. I think he figured that with this lawyer that he had there in Miami, who was a very, very top flight lawyer, and probably with his own background of experience that all you had to do was, was slip money to people and everything would be done the way you wanted it, I think he really did not think that there was a very serious threat. I may be wrong in my judgment.

It sounds plausible, for sure.

But, in any case, he didn't flee and he did post a bond and it was a substantial bond. But then, instead of having an immediate hearing, it was indicated to, by his counsel to the judge that some time would be necessary. As soon as I realized that this was going to be a serious proceeding, I had to focus on the fact that I couldn't read Spanish and that it was going to be necessary to have witnesses, it was gonna be a real hearing, it was not
. . . .

Not what you thought you were getting into.

I was amazed. Well, the net of it was that we got ready to do a big job. One of the first things that was necessary for me to focus on was that it would be like a criminal proceeding.

Had you had any experience at all in criminal cases?

No. I had had some, but oh, I'd gotten assigned to some criminal cases, but that hadn't amounted to anything. This was something for the American Civil Liberties Union and some other things in my early, early career. I suppose I ought to tell you something about those. Some of those were, well the newspapers, newspapers carry great pictures of me with my clients.

[Laughter] We'll have to come back to that.

But, in any event, this thing was, I really had to get ready for something that was going to be more than just what I had assumed to be a normal criminal preliminary hearing and right off the bat, there was the problem of translation. I couldn't rely on the translations that would come from the Venezuelans themselves because they were not expert in writing English the way, in a way that was suitable for the reading of our courts and so on here. Fortunately, I stumbled on to a guy who was not many, not long out of law school who was, had been an expert in, had concentrated, majored on

Spanish matters, had actually done some work in South America and who was floating around the city of Washington. He was a young man apparently not having a regular job, but he was a lawyer, not having a regular job and trying to make ends meet by translation. And I grabbed him to do some translating. I saw immediately, almost immediately, that this guy was a pretty smart fellow. The net of it was that ultimately we hired him. And he became very much involved in the Perez Jimenez case and was enormously helpful.

Did he stay on with the firm after that case?

And he stayed on after that for quite some time. But he ultimately decided that he wanted to move out on his own and he did. And became, and he still is, a rather prominent lawyer who, here in Washington.

Who is that?

Oh my God. He's a good friend of mine.

Well, it's just another blank we can fill in.

Isn't that ridiculous?

Well, you got him to do the translating?

Yeah, and when I realized that he was also a good lawyer, as I say, the thing to do was to hire the guy because this was then a quick way for me to find out just what an awful lot of the materials meant. It also turned out that there was another young lawyer in the firm who had just

come with us and who had been Editor in Chief of a law journal out at Stanford and had been a law clerk to one of the justices of the Supreme Court, I've forgotten now which one, and he had just come with us shortly before -- Bill Allen, who was absolutely tops, and I grabbed him. And we really began to move on this thing. When we finally, when we focused on the fact that we had hold of something that was going to be a huge case of international import, well, ultimately there were proceedings in the, in the court, not only before the district court but before the court of appeals for the Fifth Circuit. We had hearings in Petersburg.

Petersburg, Virginia?

In, not Petersburg . . .

St. Petersburg?

St. Petersburg in Florida, hearings in New Orleans, hearings in Miami. There was actually some incidental litigation that came up in New York. This had to do with efforts of some people to get his property, or get at his property. I had, as a matter of fact, I had David Acheson working on that. Because I was having to be in about six places all at once and it, it evolved very quickly into what turned out to be probably the biggest extradition case that had ever, ever occurred.

Wouldn't the, again, forgive me, I don't know a thing about extradition, but I would guess that most of the issues were constitutional issues. Whether or not he was being given due process before being shipped out of the country, or were there factual questions?

Well, to a degree there were some factual questions. His lawyers were awfully clever, they could make a great big show out of nothing. And we had, we had to show that there was some reason to accept the allegation of corruption and the allegation of murder because you don't extradite just because you say there was.

Right. But did you have to bring people from Venezuela?

Yeah. We ultimately had to, had to put together an evidentiary proceeding . . .

Almost like trying the murder or stealing cases?

Of course, it didn't have to be as thorough as a trial, but inevitably, it was a lot more thorough than most criminal preliminary proceedings. And, ultimately, in the long run, the judge did find that we had not proved the likelihood sufficiently of murder. But he did hold the guy was extraditable on the financial corruption charges.

I wonder if that would mean that, after he was extradited, the Venezuelan authorities were somehow precluded from trying him for murder.

Oh yes. It meant . . .

How would U.S. courts monitor that?

Well, there's no way, there's no way they could monitor that. The United States Government would have to monitor that. But it, part of the treaty of, extradition treaties provide that when a man is extradited, he can be tried only on the charge for which he is extradited. He can't be, you can't pull something else on him.

Right.

But this matter, of course, became internationally famous and it led to all kinds of complications and international notice and just endless proceedings. It went on and on and on.

Did it become famous because of who was involved?

Yeah. Sure.

Were the legal issues also of great note?

Well, the legal issues . . .

This seems like an extraordinarily drawn-out . . .

Well, the legal issues were of great note in the sense that the, what had happened in Venezuela in the way of a revolution against Perez Jimenez and the overthrow of a dictatorship and the ascendance into power of a true democracy and then all that had happened since and it goes on and on and on. This was headline stuff all over the world and it, every time, every time anything in

connection with the case was even mentioned, there was immediate interest and excitement and concentration. We ultimately, well, ultimately, it, we got a favorable decision at the district court level. Went to the court of appeals and there was a big argument there. Ultimately, we got a favorable decision there. Then he went and sought certiorari of the Supreme Court and in, there was a, this was, I can't quite remember what time of the year it was. In any event, there was a special, if he were going to get in the Supreme Court, he had to get some kind of injunctive order from the Court pending appeal or pending action on his petition for certiorari.

Otherwise, as a result of the Fifth Circuit decision, he would be off to Venezuela?

Yeah. Sure. The matter of some kind of restraining order or injunction pending came up before Justice, the labor . . .

Goldberg?

Goldberg. On a Saturday. I had been, Bill Allen and I and, we'd been down in Miami, I had to fly up here on Friday night and appear before Goldberg on a Saturday down in chambers. Down at the Supreme Court building and his lawyer was there. What Goldberg was doing was deciding whether some kind of a restraint should be issued. And we had quite a, quite a session with him and my argument was

against restraint and his lawyers, of course, were arguing for a restraint.

What was your argument against restraint? I mean, you knew that they were going to be appealing, that cert would be granted or not and if it wasn't that would be the end of it.

Well, my argument was that there was really no basis for cert, that there wasn't sufficient merit in his case to, for the Supreme Court to bother with it.

So it was a likelihood of success on the merits argument and that allowing him to stay in this country pending that was just dragging out his time here and delaying the inevitable?

That's right. Well, in the end, Goldberg agreed with me and . . .

Did he write an opinion?

I don't think he wrote, I, well . . .

Or would you just get an order?

I'm pretty sure it was just simply an order. And I think, we spent the morning down there and I think he issued the order along about the latter part of the afternoon and then I had to fly back. God, I hadn't had any sleep. I had to fly back to Miami and well, we figured that we were going to get the guy. We were wrong. The State Department then got into the act. All this had begun you see under Eisenhower.

And now you're under Kennedy?

And now we're under Kennedy. And for some crazy reason, the Kennedy regime, the State Department regime under Kennedy, got the idea that there just might not be a fair trial in Venezuela. That there would be prejudice against this poor devil. Well, I nearly died. The very idea of the administration of John F. Kennedy, this great left-wing liberal, suggesting [laughter] that this right-wing criminal who had been dictator of Venezuela should not be sent back to face justice. I couldn't believe it.

A little too much for you to take.

It was incredible.

And how did the State Department get involved? You'd already had an order from the Supreme Court, you go back to Miami . . .

No. But you see, you see, extradition is not a court order.

Oh, I see.

Extradition is still a climatic order. The State Department, they don't have to extradite, even if . . . Even if there is a court order?

Oh yeah, sure. They don't have to. And this thing went on for months. In the meantime, the Venezuelan Ambassador had changed and there was a new guy who turned out to be awful good. The original ambassador was very, very good but he was sort of an academic type, the old

school type. The new Ambassador, matter of fact, is presently one of the leading lawyers in Caracas.

Is that right?

Yeah. I can't remember his name but we became very, very chummy and well, he and his wife liked me and they entertained us and we entertained them. But, in any case, we had, I think we got, my vague recollection is that we got the decision, a favorable decision, from Goldberg along about, oh, say January or February of 1962 or '63 and we didn't get the guy actually extradited and put on an airplane to ship back until I can't remember whether it was July or August. But it was exactly, exactly three years from the time it had begun and it must have been, it was, I think it was about six months after all the litigation had been ended.

Before it really happened?

Before it really happened.

What happened to him in Venezuela? Do you know?

Oh, in Venezuela. He was, he was jailed and they made up a special jail cell for him that was like an apartment and he immediately had all kinds of lawyers lined up, leading lawyers in Venezuela and it went on and on and on down there for a long time. He was kept in jail all that time but he had visitors and he ultimately, ultimately there was a trial. Ultimately he was found

guilty and the, I think it was actually tried before the Supreme Court of Venezuela. And he was found guilty and sentenced to imprisonment for a length of time which coincided precisely with the time we had had him in jail here and the time he had been in jail down there.

I neglected to point out when we finally got the extradition proceedings done before all the courts, then we got him in jail and he was, so he was, all this time, between the ending of the litigation in courts and the time we actually got him extradited, while we were fiddling around with the State Department, the guy was in jail down there in Miami. [Laughter] It was incredible. But, in any event, he got, after his trial in Venezuela, he was found guilty and sentenced to a term of imprisonment that coincided exactly. So he was immediately released and immediately took, this had obviously all been arranged, he immediately took off for Spain and I think at one time after that, this was in 1962, '59, '60, yeah, 1962. At some time after that it seems to me there was an attack on Venezuela from Peru and I think, I think PJ, I think he was back there in Peru while that was going on, thinking that it might work. It might work and he'd be back in office?

I don't know, he may still be alive. I'm not sure. Was that the one and only extradition case you had?

That's the one and only.

Didn't start any extradition practice at Covington & Burling?

No. As a matter of fact, extradition is a rare, a very rare proceeding and 99 percent of extradition is just a routine formality. There, we did, of course, research extensively. There had been a few Supreme Court cases on dealing with extradition in one way or another. An extradition from one state to another is a very different matter. Extradition from one country to another, and it, literally, what we were dealing with was an area that was virtually without significant precedent. Actually, extraditing a head of state, I don't think anything of that sort had ever been done. I don't think it's ever been done to this day.

That's probably so. I certainly don't recall having . . .

Mind you, this was for an alleged crime committed while he was head of state. I don't think it's ever been done, I'm sure it's never been done before and I don't think it's been done up to now.

I think that you're probably right. Mr. Westwood, in reading some of the many articles that you wrote during your career, one of the things that really stands out is your long-standing commitment to legal aid. It seems that that was something that you first became heavily involved in as early as the early 1950s and even before. I'd like to spend a little bit of time

talking about how you first came to have an interest in legal aid and then how you came to be interested in making sure that the concept of legal aid, and legal assistance for the indigent in general, was one that the rest of us became aware of. I know you were active in the ABA in that area, so why don't you start from the beginning. How did you first get involved with legal aid?

Well, from the time I got to the firm initially, I had hoped that I would get some experience actually in trial work and I had obviously thought some about overthrowing the capitalist system and I, not too long after I had started I would go down to the court and put my name in to be assigned to cases. I didn't have to ask anybody here at the firm, I just did. The firm was very, very informal. We had no formality. I did things that I never, never asked anybody about. I just did them. Of course, I soon became very, very busy at the firm. I earlier mentioned the PWA cases that I got involved with. Well, that was a tremendously demanding thing and I got so deeply involved in that and some other matters early on, that I really had very little in the way of opportunity to try to do anything in the way of assigned cases or anything of that nature. But I also found, this was somewhat disillusioning, that although now and then I could get an assigned case, I would find that the guy was

really guilty as could be and it'd be much, I could get a better deal for him by pleading him guilty than by pleading innocent and then . . .

Going to trial?

Going to trial. And the fact of the matter is that I went to some considerable trouble trying to get experience in trying cases on a pro bono, or on an assigned basis with next to no success. And I, I really oh, I had one or two very dramatic episodes which got in the newspapers. Big headline stuff.

Do you recall what those cases involved?

Yeah, well I've got, there's a notable case, this is in 19--, this came along in 1936. Some ladies were picketing the auction of Franco, the brother of the guy, the Franco, the dictator who was starting to overthrow the democratic government in Spain and these ladies picketed the auction.

What type of auction was it?

His household goods. He was getting back to Spain and in order to participate in the Franco army, in the Spanish Civil War, and he'd been assigned to the Spanish Embassy over here. He was leaving here, leaving the United States and he wanted to get rid of his stuff and there was an auction of his household possessions. And there were three ladies who picketed. They, their general

idea was don't patronize this character, he's an evil man. Well, they were arrested for parading without a license in violation of a regulation of the District of Columbia Commissioners that required a license before you could parade. And no one had ever suggested that a mere picketing a place was a parade.

Right.

But it was now suggested and these people were actually arrested and it was going to come up before a police court. This was before there was a United States District Court and a United States Superior, this was, there was still the old Supreme Court of the District of Columbia which was formed during the Civil War and continued right up to recent years. And there was also a police court. A police court was a court in a great big building at the southwest corner of Judiciary Square on 9th Street, a huge building and there was a great big room on the first floor of that building, it was a huge room, that's where the police court sat and there was a bench down on one end of this room and these ladies were to be tried before the police court for violation of a district regulation and it, I can't remember now whether, what was really threatened in the way of punishment, but there was an obvious legal issue as to whether picketing a place was a parade and the American Civil Liberties Union defended

them and they got a hold of me and asked me to handle the case. So I did. And the case was being prosecuted by the Corporation Counsel's office, just one of the lawyers on the staff. I got moving on that case, the police court judge was a very conservative old fellow. To him, I'm sure, every communist was an evil person, but he was a good lawyer and I was not talking communism, I was talking law. And I was, I had a lot of points that I was making and he took me seriously and pretty soon the courtroom became filled and pretty soon the Corporation Counsel's boss came in and took over. [Laughter] It was the funniest thing that ever happened.

I finally got, I give you my word, before noon of that day, that room had become so full of spectators, many of whom were lawyers, you know, who would hang around the court getting, picking up cases. That room was so full that I hardly had room to pace up and down in front of the bench. Barely. And this judge was getting a great kick out of it because all, no one could have been more violently anti-communist than that judge. I've forgotten his name now. He was a damned smart guy and he was taken by the fact that I was not dishing out a lot of junk, but I was making, I was making good, legal arguments and the Corporation Counsel was going crazy. Back and forth we would go. Well, the net of it was, when we got, the

evidentiary part of the proceeding had been nil. I mean that was . . .

You mean it was conceded. Everyone knew what they had done.

Oh sure. But finally I pulled an argument. I had found a decision of our Court of Appeals, it must have been in the early days of our court, it must have been around, I can't remember now, it must have been as early as about 1900. You see we had no court of appeals here until about 1890 and I think this was a decision along about 1900 to the effect that you do not take judicial notice of regulations. The Corporation Counsel never had approved regulations. Hell, they were all in pamphlets and published and so on. And here was a parading ordinance. There was a regulation, you gotta get permission, a permit for a parade and there it was, all printed up. But I was making, among other arguments, I was making, waving this in the air. What is this? The thing that they were charged, that my clients were charged with violating is a piece of paper here. There's no crime, no crime is committed for violating a, viewing something that is inconsistent with a piece of paper that nobody ever heard of, what is it? The net of it was, the judge agreed with me. And the Corporation Counsel damn near died.

Because that presumably called into question the validity of all of their pieces of paper regulations?

Oh sure. I've always meant that, I meant after that to double check to see what the hell they ever did about it, but I, I had it worked out very nicely. And needless to say, there was a lot of stuff in the newspapers about that, including pictures of me with my flying suit on. Well, did that, did that pique or begin your interest in legal aid and doing it?

No. I was, really, see this was in 1936 that this happened and the aviation stuff was just beginning then and I was still doing a lot of the . . .

PWI work?

PWA. That was going on and the aviation stuff was starting and it, in just a few weeks after that, I got literally so busy I couldn't do anything except carry on the work in the firm and it was very frustrating. But I, by the time I got through everything in 1950 and by then I quit full-time on aviation matters and began getting into other things. I was still kept so busy in an effort to get into things in addition, apart from the aviation, you know, you don't do that just between nine and five and, as I said earlier, in those days we worked oftentimes seven days a week and hell, the kind of hours people keep these days, wasn't anything like that in those days. But in 1955, the

spring of 1955, my daughter was in her first year in college up at Skidmore . . .

That was the town that I grew up in.

Did you?

Yeah.

Yeah. She was in college there and they, this was before it became co-ed, just ladies. And they had a father's day in the spring.

Happy Pappy's Day it used to be called.

Yeah. Yeah. And I went up there with a couple of other people who were driving and they offered to take me along and so it was a convenient way. But one of the people who was going was that lawyer, well-known lawyer here in town. He knew me, of course, and he began, somehow or other, telling me about the Legal Aid Society here. Well I knew there was a Legal Aid Society but I'd been too busy, I'd never paid any particular attention to it. But, by the time that weekend was over, I had talked to this fellow enough about the Legal Aid Society to get real curious about it. The net of it all was that I got myself involved in the Legal Aid Society and I was soon on the Board, well, matter of fact, a lawyer of some prominence from Covington & Burling, hell he got on the Board at Legal Aid Society just by looking at 'em. And the Legal Aid Society in those days had no money to speak of.

What was it about what he had discussed with you that caused you to become interested?

Well, he was telling me about the Legal Aid Society and the kind of work they did and the need for more support than they had, the way that it was, had to be very conventionally operated, there was a full-time guy who was the Director of the Legal Aid Society staff, such as it was, who did it at a salary that was practically nil and they just didn't, had never had the support and attention in the community that they merited. And that just stirred my interest.

I see.

And it touched on the sort of thing that I'd always kind of intended to get involved in, but had been, just been too damn busy to do it and it made me feel guilty. So when I, I began right away to look into it. And one thing quickly led to another as soon, I mean, a partner of some prominence by that time, I was of some prominence locally, and a partner in any event of Covington & Burling, my God, if, indicates some interest in the Legal Aid Society, boy they, they really grabbed you. And, literally, at that time, I've forgotten now, it's, God, I don't know, there's a story about it all somewhere or other that I wrote up, I think the Legal Aid Society's total income at that time was something like, oh maybe \$10,000 a year or something of that sort.

I think that's right.

Yeah. It was ridiculous. And so I, I got, got moving on that and . . .

Actually, you had written an article for the ABA Journal in April of 1965 and you noted that, by 1954 the Legal Aid Society had an income of \$14,000 annually.

Yeah. It was ridiculous. Really, it was ridiculous. I was horrified. So, I then began the screaming and yelling at Legal Aid. And we soon were able to stir up interest on the part of the Bar Association. The Bar Association theoretically had always supported the Legal Aid Society, but they, hell they hadn't done anything to speak of and, fortunately, in the year 19__, I guess it was 1955, yeah, yeah, I wrote him a letter yesterday, Charlie Rhyne, was president of the Bar Association and there was a vacancy on the Board of the Bar Association, some guy had been elected and died or something. Well, I never could have been elected to anything, but Charlie Rhyne and I had, knew each other well and had exchanged ideas on lots of things and Charlie got a hold of me and appointed me to fill this vacancy. So here I was, all of a sudden on the Board of the Bar Association.

As well as the Legal Aid Society?

Yeah. I was just getting started. So what I did, one of the first things I did on the Board of the Bar

Association, Charlie's regime began, as I remember it, in maybe the late spring or early summer. I guess nothing much was done during the summer, but in the early fall, we would have regular meetings and what I did right away was to propose what amounted to a study of the Legal Aid Society and the need for expanding and supporting and so on of the Legal Aid Society. And that was done. And, as a matter of fact, we, under Charlie's leadership, we set up a committee that made a really vigorous study of legal aid and what was needed here in the District of Columbia. The committee staff was headed by David Acheson. There was part-time . . .

You mean David Acheson?

Yeah. One of our people here in the firm. And we got, we got some money from the Meyer Foundation and there was some money from some other outfit that may have been, it may be in that article. In any event, we got money and the result was that there could be, actually be hired a staff to work under David Acheson, of young lawyers, some of them later became of some prominence, digging into the Legal Aid what went on here and what was needed and so on and there was ultimately, oh, I don't know, a couple of years later, there was actually published a big Legal Aid report, it's one of the most important documents in the history of Legal Aid in the United States. It's about

that thick and maybe, probably there's a copy of it up there.

Legal Aid, at the time, was involved with both civil and criminal cases, is that right?

No. Legal Aid was just civil. The Legal Aid Society. Well, in the meantime, I was on the Board of the Legal Aid Society and what we got going was actually raising some money with the support of the Bar Association. And we were also hoping to, I said the support of the Bar Association, we found rather quickly we could get more support from the Judicial Conference than from the Bar Association. Once Charlie Rhyne had ceased being President, he went on, you know he ultimately became President of the American Bar Association.

Right.

I think he was the youngest person ever to be President of the American Bar Association. But what we soon found was, it was very difficult to get any kind of really aggressive, vigorous support from the Bar Association but we could from the Judicial Conference. Prettyman was then the Chief, Justice of our Court of Appeals and was, and ran the Judicial Conference and I knew Prettyman well. We were both golfers at Burning Tree and he knew me from my activities down at the court and so on. And Prettyman was a person with a real sense of

public obligation and public service and, the net of it was, that we very quickly were able, through the Judicial Conference, to get, drum up support in the Bar generally. And started fund raising. And we got, we were able to get the income of the Bar Association, of the Legal Aid Society, raised to well over \$100,000 a year, which to me seemed a fortune compared to what it had been.

Right.

Of course, of course, it . . .

And in fact it was a fortune compared to what it had been.

Well, yeah. But it was, it seemed to me to need a lot more to enable the doing of much more than in fact \$100,000 would permit. In the meantime, there was this effort at legislation, at setting up legislation of some sort or another to . . .

This would be under the Kennedy Administration?

Well, yeah, yeah. But there was, but we actually, we actually had, we actually had the Legal Aid Society here going on a significantly expanded basis and, and there was, under the Kennedy Administration, there had been the United Planning Organization that had been set up locally that some money from the Federal Government, I've forgotten what the appropriation was. And all of a sudden one day, I'd, we were getting some, we were getting some support from that direction and I, my, I was getting the

office, my firm very much interested in the Legal Aid Society; we were, I think by that time we actually had assigned to the staff of the Legal Aid Society for three-month stretches, a young lawyer from our firm that, that was very unusual to do anything like that.

It was. It still is.

Yeah. And I think, I think a lot of this is told in that article. Well, the point of the matter is that one day, one June day, there called on me in my office a lawyer from Philadelphia who said that they were having a, he was very actively involved in the ABA, this was Forhees(?) and he said they were having a meeting at the United Planning Organization, at the, one of the agencies that had been set up under Kennedy. In any event, the whole matter of legal aid was up and they were talking about having some, getting some kind of legislation for federal appropriations for legal aid and . . .

How did that idea strike you?

Well, I thought that was fine. We, hell, we were doing it here already. But I didn't have any idea what was going on nationally. I'd paid no attention whatever and this guy, other people nationally didn't know much about what was going on in the District of Columbia. We were just quietly going ahead and we got some money and we were pushing ahead with our support of our Judicial

Conference. The net of it all was that I got curious and got involved with what this meeting was all about and it turned out that the Federal agency that had been headed by Kennedy and, of course, ultimately the agency that was set up by Lyndon Johnson was a very, very active, aggressive crusading outfit and I got mixed up in it.

What do you mean you got mixed up in it? Were you opposed to the kinds of cases that they were taking in?

No, no, no, no, no. They were, what they finally decided to do was to set up a national organization to promote legal aid and, but not legal aid in the conventional, old-fashioned sense but aggressive legal aid that would be law reform and, really, a two-fisted, hard-fighting movement to improve the law for poor people.

How did you feel about that?

Well it was fine. It seemed to me perfectly fine. Great. About time somebody began to get aggressive. And, well, one thing led to another and finally money was provided through, it was on a temporary basis from the, from the Economic... I've forgotten.

Office of Economic Opportunity?

Something. And money went to the District of Columbia and we had what was called a United Planning Organization here, UPO, and they actually created a neighborhood legal services project. So that here was the

Legal Aid Society, we were getting money from the Bar and getting more increasing support and here was an NLSP, Neighborhood Legal Services Project, with neighborhood offices around, the Legal Aid Society had never had any neighborhood offices.

Was that because you just couldn't afford it?

No. They couldn't afford it. I had been able, we had one branch office; finally we're able to get one branch office which we set up out at Howard, at Howard Law School, or Howard University, but that was sort of nominal. But in any event, when, my thought had been when this NLSP was set up, and I think in these articles I tell about how all that came about, my thought had been that we would get the Legal Aid Society and the Neighborhood Legal Services Project in one merger, into one organization. It was silly to have it two separate organizations. Well, I worked toward that objective for a while and then all of a sudden, and here I was on, had been brought onto the Board of the NLSP, as well as being on the Board of the Legal Aid Society and all of a sudden I was told by people very much involved in NLSP that it was thought that there was a conflict of interest between the Legal Aid Society and these neighborhood legal services.

You were saying that there was a conflict of interest between your being a member of the Board of both the Neighborhood

Legal Services Project and the Legal Aid Society. How did that strike you?

Well, I thought that was silly but, but I, instead of arguing about it, I figured well, all right, accept it. But as between the two, I wanted to stay on the Neighborhood Legal Services because it was a much more aggressive movement than the Legal Aid Society and also there was the obvious advantage of having available federal money so that although the Legal Aid Society had been better off financially than it had been initially, it still was dependent on raising contributions, locally, and it wasn't anywhere. It was becoming evident to me that that wasn't anywhere near enough money and the only way, really, to get Legal Aid established properly was to get the benefit of significant amounts of federal money. So I resigned from the Legal Aid Society Board and became very actively involved in the Neighborhood Legal Services Project.

Now was that the Neighborhood Legal Services Project locally, or on the, on a national level through . . .

First locally. Locally. And we, well, it's a long story; some of the Court of Appeals judges had been involved in helping getting this thing under way. Various community agencies were, their support and interest were elicited and, fortunately, there was a group, mainly of

black lawyers, who were very actively interested and I think one reason for their very active interest was that whereas Legal Aid Society had always been a kind of a white man's activity, this Neighborhood Legal Services Project, I'm talking about the running of the thing, this Neighborhood Legal Services Project, it was, it looked as though blacks could really get involved and play a big part in the running and guidance of the thing. I think they just, they just had more confidence in it. And, there's something to be said for that point of view, the Legal Aid Society had been a much more conventional kind of old-fashioned legal aid operation with particularly bringing to the fore such ideas as law reform whereas what a number of people felt, and this was very true of some of the black lawyers, what a number of people felt was that more was needed than simply to defend, or some particular interest of some poor person, in a particular piece of litigation, that there should be efforts to improve the law and improve the decision of cases and improve the direction of the precedents we're taking and so on and so-called law reform.

You know, that's a debate that has been going on forever as far as legal services is concerned and one of the obvious questions is, to me, is at the time that you were on the Board of the Legal Aid Society and then you got off the Board of that to

stay on the Board of the more aggressive Neighborhood Legal Services Project, you are becoming an ever more prominent partner at Covington & Burling. Certainly some of the law reform efforts that Neighborhood Legal Services was advocating, were at least arguably contrary to the position that one or several of your firm's clients might have taken. How did that, how did you reconcile that? Was that a conflict in your mind and if so . . . how did you reconcile that?

No. We never worried about clients' attitudes and, to our doing, our do-gooding, it never bothered us a bit. Did any clients come to you and say, look I . . .

I don't remember any.

Or did any other lawyers in the firm?

Not that I know of. It may, there may have occurred but I never heard of any, anything of the sort. I think, I can't help but believe that a lot of lawyers, and this may be a reason incidentally that the Legal Aid Society never really had amounted to a great deal, it may well be that lawyers feared that if they got too aggressive that they would lose clients.

I think that's true.

Yeah, yeah. But that never, I think it's fair to say, and I was close to the running of the firm mind you, I was right in the middle of things here for many, many years, I wasn't just out on the periphery. I was very

much involved in the firm administration and so on, and I don't remember anything to indicate that our very aggressive interest in legal aid and providing legal help to the indigent and seeking to reform the law in the interest of the indigent, I don't remember anything, ever, of any consequence in the way of adverse client reaction or losing clients on that account or anything of that nature.

A hypothetical question -- and I think I know the answer to it -- but if it had caused problems with clients, what do you think you would have done?

I'd have said the hell with the client. And I mean that. And I think that point of view would have had a great deal of support from within the firm. I may say that in all the things that I did over the years, from the time, from the very beginning, and I did a lot of things, I always had complete, utter sympathy and support from my brethren in the law firm.

That speaks very highly, not only of you, but of course of your firm.

Oh yeah. Yeah. God it was true. Judge Covington, now mind you, a conservative like Judge Covington, I called him comrade and he'd never bat an eyelash. [Laughter] I thought about it in later years, I just couldn't help but laugh to myself. [More laughter] Oh, they were, the

Judge and Mr. Burling were wonderful. And they created a set of ideas and attitudes and so on at the firm, at least up until recent times, I don't know what it is now, but attitudes and values that the firm was faithful to, been faithful to all these years.

How long did you stay on the Board of the Neighborhood Legal Services?

Oh Lord. I've forgotten. I can't remember. I was on the Board for a long, long time.

When we first discussed this, I think that you had mentioned that it was after the OEO legislation under Johnson came into being that you began to kind of phase out, at least on the national level, of legal services. Is that right?

You see, I got, I got drawn into what once, once I got beyond just the local Legal Aid Society, I immediately began having contacts with the National Legal Aid Association and ultimately I was brought onto that Board and ultimately I was made, in effect, their lobbyist here in Washington to work on government problems that they had and seeking to strengthen the support for the National Legal Aid Association, NLADA it was called, and I just got spread all over the place. Now, what all this ultimately led up to was an absolutely fascinating experience under the Nixon Administration. It became apparent ultimately, LBJ had not, was not going to run for

re-election and the Republicans won the presidency and Nixon became President and the problem of all of the social services and so forth that had been set up in the days of Lyndon Johnson became very severe and very tough. We saw, we interested in legal aid had seen all along that legal aid should be regarded as something different from emergency government aid, government aid to meet an emergency situation. It had nothing to do with the kind of social reform and the meeting of the sort of temporary emergencies that the Johnson Administration social services groups had been so much involved in. Legal aid shouldn't be thought of in those terms. Legal aid should be thought of as a permanent thing. In days of prosperity there was still need for the legal aid operation. Because there always would be some poor people who needed legal help. And this was very fundamental and we began with the National Legal Aid Association, we began to cultivate that idea. And instead of being upset at the elimination of the Lyndon Johnson kind of United Planning Organizations . . . Office of Economic Opportunity.

All that. We didn't much care provided we could get legal aid separate and independent and indeed that would be an improvement. And I was actually made a lobbyist for the National Legal Aid and Defender Association. Their

lobbyist here in Washington to work to that end. Get somehow or other a separate and independent recognition of legal aid on a federal basis, with federal support. And I got into it and I very vigorously, fortunately, mainly through Burning Tree, there were some fairly important Republican politicians that I knew, and knew well and I respected them. Not because I necessarily agreed with their ideas, but they were decent people and I could, I could get access to them. And, as I say, I became a lobbyist for the National Legal Aid and Defender Association and despite the fact that here was Nixon in the White House, and despite the fact that there were a number of elements in the Nixon Administration who were working to eliminate anything in the nature of federal support for legal aid, I was able, quietly, to maneuver and get introduced to the right kind of people and get on the staff, the White House staff and I found some people who really would listen.

Who were those people on the White House staff?

God, I've forgotten their names now. I remember one guy, I can't for the life of me, I can't remember his name. He was tremendously effective. He did a lot of the drafting with me and I drafted measures. Isn't that awful, I can't think of his name?

Well, that's on the edit.

And then we, I also had effective access to . . .
Nixon had two main guys on his staff. Who the hell were
they?

Haldeman and Ehrlichman?

Yeah.

Who later became famous for other things.

I've forgotten now which was which. But in any
event, I had access to one of these two top guys and he
would listen. And we made a lot of headway. And this
was, this was not as a result of pulling strings or
anything of that nature. It was simply that I had been
able to get behind closed doors and although some of these
people knew I was a left-wing communist, we respected each
other, we knew each other and over long periods of time had
seen things happen. And I found myself able to, on an
independent basis, and I finally told the National Legal
Aid and Defender Association, literally, I finally told
them now, look, I'm no longer representing you. I'm not
your lobbyist anymore. I am solely Howard Westwood and
what I found was that on that basis I could get farther
with, in accomplishing the things that I wanted to
accomplish and really, it worked like a charm.

And the end result was the Legal Services Corporation?

And the end result was that. Now it took a lot of
doing, and ultimately, you see we got things through, I

was trying to think, we got the statute, see it wasn't until the Nixon Administration that we really started working on getting the federal legislation on legal aid. And we got the statute adopted in the House. Isn't that funny, I can't remember now whether it was the House first or the Senate first. But, well, I don't know.

But that's a matter of record.

Oh yeah. But the point of the matter is that it was all spread over a period of pretty close, about a year, and maybe even a little more than a year, and then at the critical time, right at the end, after we'd finally gotten things through both Houses, here was the imminence of Nixon's departure. But fortunately, in the White, then in the White House was the ex-Secretary of War, he's now President of Burning Tree.

Well, that's another name that's easy to get because I don't know that one.

He'd been very prominent in Congress and then Nixon made him Secretary of Defense.

McNamara? No, that was Kennedy.

Secretary of Defense.

Laird?

Laird. Mel Laird.

Right.

And Mel Laird quit at the end of Nixon's first administration but then before he got settled into, oh, the Reader's Digest and the later things that he was doing, he was on a kind of a special basis helping the White House as though, virtually as though he were on the White House staff and some, and, of course, Mel Laird was at Burning Tree. And I knew Mel Laird. And it turned out that he got, that he was very interested in legal aid when what was going on was explained to him, what this was all about. And he knew damn well that there were right-wing, dangerous people who would seek to sabotage anything of that sort. And Mel Laird, God bless him, gave me real help. And if it hadn't been for Mel Laird, there never would have been a, there would have been a veto by Nixon, I'm convinced, of the federal legislation that set up the National, the . . .

Legal Services Corporation?

The Legal Services Corporation. I'm sure that he would have been persuaded to veto it. Mel Laird took care of that. Nixon signed it and in about two days he was on an airplane, he had resigned from the presidency.

[Laughter] Mind you, we did, we pulled this off in that last critical period of the Nixon Administration.

Well, that was quite a victory.

It was really, and it never could have been done unless I had been, divorced myself completely from all

these left-wing organizations and all the formal organizations on legal aid and so on and had presented the matter simply on its own merit, individually, to these guys on and in connection with the White House with whom I was able to get access.

That really was quite a victory. Why don't we stop for today.

Mr. Westwood, it's April 17, 1992. We're back together after a two-month or so hiatus and, again, I appreciate your taking the time to spend with me and this project. We left off when we last broke off at the point where you had described your involvement in Legal Aid. That was in the period roughly in the early to mid-1970s and, what I would like to focus on a little bit this morning, if we could, is your practice after that period of time.

Okay. It's a little difficult because I find that my memory has really gone to pieces and we're talking now about a time, it was about 20 years ago.

I must say that your comments that I've taped so far don't reflect a memory that has gone to pieces.

[Laughter] Well, maybe that's because I was always more interested in the things I was talking about than the practice of law. [Laughter] After I got through the

crisis of Nixon having approved the measure instead of vetoing it, I just gave up on legal aid. I'd been at it, as I've probably said before, I'd been at it for, I don't know, 20 years or more and I'd been in it up to my ears in all sorts of different ways and I just was kind of fed up. Furthermore, I have been wanting to spend spare time on writing about the Civil War, something I'd wanted for a long time to do. I'd done some but I was terribly, terribly interested in it and I wanted to do a lot more. As I recall from our earlier sessions, you first came to have your interest in that, was it in Boston?

Oh, it was way, way back. Oh yeah. Way back in very early days and over the years of my law practice, it built up gradually and as of 1974, it had gotten to the point where it was just bursting. Well, in any case, I did then, although I felt a little guilty, in effect, made up my mind that I had had enough of legal aid and I was going to spend what I could devote other than to the practice of law to the Civil War. But there was still some law practice. And one thing that I was very fortunate about in this law firm is that I was in a position here where I was consulted a good deal by other lawyers, younger ones, and I'd had a great deal of involvement in firm management and carrying out basic plans for, oh, organization of the firm, organization even of the physical facilities and so

on. And that I found not only of some interest, but also it was a sort of rewarding thing, or aspect, of being here because it made me feel as though the firm I was working for was in part my own creation and I don't want to exaggerate that. There were others who were, obviously Mr. Ellison was far more important than I. But I had always been given an opportunity here to, in a quiet way, to involve myself in basic decisions as to the way the firm should be organized and run and so on. That doesn't mean I was deciding, but I was participating in the deciding in a way which, to me, was very satisfying.

What were some of the more significant decisions that you can recall?

Well the, of course there was one absolutely basic. When Mr. Ellison died, I mean when he got old, and he wasn't old until about 90, up to that point the firm had been run virtually as a dictatorship; not on the face of things but practically speaking. Whatever Mr. Burling wanted to do was done because we knew the man was wise and absolutely completely unselfish and knew a lot more about how to do things than any of the rest of us. But when, as he grew older, on into his 80s, right after the War, he began shifting responsibility to Newell Ellison. I don't know whether I'm repeating what I've said before or not, but it was peculiar because, you see, in 1950, Paul Shorb

died in early July, Spencer Gordon died in early September; Dean Acheson was soon, well let's see, I've forgotten now whether Dean was here at the time or, but Dean had almost ended his real practice of law, you see, before World War II, when he went on just before World War II, he went into the State Department and he was back after the State Department sojourn for only a year before he was made Secretary of State and by the time he ceased being Secretary of State, he was getting pretty far along. So that Newell Ellison was in a peculiar position; he was just, he was the one man from that generation that succeeded Judge Covington and Mr. Burling who had been practicing right along and who knew the firm and so on. And furthermore, he had great tact, or a knack, of being able to give people the impression they were participating in decisions, but at the same time decide things by himself in the right way. [Laughter] The guy was, he was very good.

That is a great knack.

And, ultimately, the firm governing went through, oh various forms, there was to be, we had, at one time we actually had some partners' meetings and it was ridiculous. You know, you get more than four or five people in a room and everybody starts making speeches to each other. It was absurd. And what we, the first thing we

did was to, instead of having full partner meetings on occasion, we had what was called an Executive Committee. And it wasn't supposed to be very big but it was too big. It was about, oh I think about a dozen or more. And that, that actually functioned during Mr. Ellison's regime as the head of the firm. But, its functioning was kind of funny because, literally, even with cutting down the number of people who would be, we'd meet about once a month or maybe sometimes once a week for lunch on a Monday. Even 12 people sitting around a luncheon table, nobody can speak without making a speech.

That's a particular problem with lawyers.

Oh sure. But with great skill, Mr. Ellison would be able to maneuver around and ultimately do the thing that he'd thought was right. And I was very close to him and I helped him a lot on some of the firm problems. And that took, it not only took a certain amount of time, but it took, as far as I was concerned, a lot of interest. But, ultimately, as I say, Mr. Ellison began to decline and he got old and we never, it was apparent, to me at least and I think probably to some of my brethren, that anything like having a ten- or a dozen- or 15-men Executive Committee running the firm was absurd. And with Mr. Ellison having been unique in that he was the only one really of his generation who was involved in things. He could get away

with what amounted to a dictatorship in the form of democracy and everybody got along fine. But if, once Mr. Ellison passed out of the picture, then we get down to people who ain't by themselves and there's several of them. And the possibility of a dictatorship such as we'd had with Mr. Burling and then a democratic dictatorship such as we had with Mr. Ellison, that was disappearing. The danger was that in the running of the firm, we'd have a bunch of people sitting around every week or every month making speeches at each other and nothing would ever get done. So I got the idea that maybe what we ought to have is a new kind of setup and I began talking about. The net of it all was that there evolved a five-man management committee that had absolute dictatorial power and it, each member of the committee has a five-year term and they're staggered so that there's a new, a term ends each year. In fact, over the years, there's been a kind of tradition that once on the committee, one does not succeed himself. Now that's not been adhered to absolutely but generally. The result is that we have had, let's see, the firm agreement setting up the Management Committee, well it was a long time ago, must have been about 1975, around there. The result is that over these years, a lot of the partners have had a good deal of experience in connection with the management problems.

How were people selected for the Management Committee, by vote?

By vote of all the partners.

By vote of all the partners?

Yeah. And it had just really worked out very, very, very well and then the Management Committee themselves, the five of them, they choose their Chairman and the result is that the Chairman of the Committee is, in effect, the head of the firm.

Is that a position that rotates every year or it just depends?

Well, I've kind of forgotten. I think theoretically they have an annual election. Well, for example, after Mr. Ellison, Mr. Ellison was on this Management Committee for one year and then off he went and lived out his life. Tommy Austern became the head of the five-man Management Committee. Tommy, who is a very prominent lawyer and had been very much involved in the firm from about, he came about 1931 and was a superb person. Completely unselfish in firm decisions and so on and he just automatically became Chairman and the other four members of the Committee would meet with him regularly and they would exchange ideas and instead of making speeches, there was real, genuine consultation and the thing just worked like a charm and has continued to work perfectly, wonderfully. I've always figured that one of my, perhaps my biggest contribution to this firm, was, well I don't know that I dreamed it up

completely, but I'm the guy who really gave the push and it went through, to my amazement. I thought there would be a lot of opposition but there wasn't. I really wonder if there is another law firm in the world that is run as smoothly as this one. And the smoothness has been a consequence of this five-man Management Committee. We have full meetings of partners, oh, maybe once a year and we have Monday lunches, every Monday. And frequently, the Chairman of the Management Committee, about once a month, on such occasions, he'll make a report to the partners telling them what's been decided and what's going on. But we don't, we don't do the kind of partners' meetings that other law firms do.

Nor do we and I'm glad because I was a partner at a firm that did have those kinds of meetings and they're endless and basically useless.

Oh, absolutely.

You, of course, did serve on the Management Committee?

Yeah, I was on it for, I can't remember now whether it was two or three years. Of course, the original members, although the terms were five years, the original members, one had to be for just one year, one for two years, and so on. This must have been done around 1971 or 1972. I'd have to check it. But the point is that I was getting, I felt, old and I was opposed to the older people

hanging on and, although there was a lot of pressure to have me hang on to the Management Committee position longer, I just refused to do it. And I think that helped, maybe, establish a kind of tradition in the firm that it isn't the old men who are going to run the place, it's the guys who really count. And it's worked out real well. Well, I got off on

Well, that certainly is a significant decision that you were involved in

Well, in the meantime, as I said, having put legal aid behind me, there were a number of things in the law practice. We were doing some very important work for Westinghouse which required a lot of attention and this was government contract work of one kind or another and very, very important; and there were other things that I was involved in that were of importance that had to be carried on. But I just very deliberately aimed at knocking off the law practice and cutting way back and I would say that from about the age of 65, I was 65 you see in the year 1975. From about that age, I was really stepping down kind of rapidly in the law practice and spending more of my time on other things. Notably on the Civil War. In the new firm agreement that we had set up, it was provided that there would be, in a partner's take from the firm, there would be a step-down from the year in

which he was 65 down to the year in which he was 70, a step-down in his compensation. And then there would be a floor at the age of 70 which would be, in effect, continual and so I figured with that step-down I could sort of justify maybe . . .

A comparable step-down [laughter].

A step-down a little in the practice of law.

Did you have, obviously you had planned to do this and had you planned to pass off your clients to people you had worked with closely and others in the firm?

Oh sure. Let's see, that happened very naturally.

What you always did was to build up younger guys and kind of push them to the floor and then recede into the background so that the matter of transition was never any particular problem. But I had a lot of fun.

When you began to work, presumably almost full-time on the Civil War, did you still, was that at a point where you had stepped down to the point of having stepped virtually out of practice or were you still, for a while, overlapping?

Well, for a while it would be back and forth. But by the time I was 69 or 70, there was, I was really finding good excuses for spending minimal time on any actual law practice. And by that time, any time I would be spending would be essentially consultation with one of my brethren trying to give him the benefit of some background that I

knew about or something of that sort. I very deliberately tried to avoid getting into situations where I would have to do travel out of town on client's work or appearances in court or anything of that nature. And it worked. So that by 1979 or 1980, you were really a full-time Civil War historian?

Yeah.

Why don't you tell me a little bit about how that works?

Well, this evolved, as I say, way, way back there at the beginning. I stumbled on to Stonewall Jackson and I became a Confederate and then later I stumbled on to U.S. Grant and that unedged me. But I'd always found it pretty fascinating and by . . .

Did you find it fascinating as a matter of military history or social history or political history?

Both, the whole expanse. Because it was a unique war. There's really never been another war anything like it anywhere in the world and it has such tremendous social involvements and implications. Tremendous economic aspects and the military aspects, of course, particularly for that day were damn near completely unique. The idea of having a warfare going on over such a vast expanse. You look at Napoleon for goodness sake, he wasn't fighting over any such vast expanse. He was going from here to there. But here, the north/south conflict and the

Prussian War coming right, just a few years after our Civil War wasn't anywhere near as extensive as our Civil War. It was a very important military event. So from every aspect, I found it absolutely fascinating. And it happened that my interest got particularly sparked by my hearing about the Civil War Roundtable. I just stumbled onto that. I hadn't heard anything about that.

What is the Civil War Roundtable?

This is an organization. I joined it in 1955. It was started locally here along about 1953, I'd say. It's a group of people who are interested in the Civil War and who meet once a month. They have a dinner together. And then one of them, or some outsider, will give a paper. The first meeting will be in September and then each month after that through May. And then they'll suspend during the summer. Here in the District of Columbia there is such a Roundtable. The original Civil War Roundtable was in Chicago and it had been formed I think around maybe the mid-40s. Washington was one of the early ones though. By now, there must be a couple of hundred roundtables all around the country, from coast to coast; big cities and little cities. They are not connected with each other. They all have the same name, but there's no affiliation. But they all do the same thing -- meet once a month and talk about the Civil War or things related to the Civil

War, maybe reconstruction or what was leading up to the Civil War or what not. And I just stumbled onto this thing. Someone told me about it and asked me to come to a meeting and after having gone to a meeting, I figured "Geez, I'd like to join this place." From there on, I was really stimulated because it gave me a forum. Here it was possible to deliver a paper and if it is possible to deliver a paper, that kind of gives incentive to the researching and so on. In a sense, even more than simply seeking to have an article. After all, articles, you can't turn them out necessarily quite as you will. But giving a paper to a bunch of people who have no choice but to sit and listen, you can do just exactly what you please. [Laughter]

Well, in any case, when I originally joined the Roundtable, it was a very, very small group and it was delightful and they were good people. I don't think we, in those days, I don't think we had more than about 15 who would attend each meeting and the result was that there was an intimacy and a seriousness. This was no showoff.

Do you still participate?

Oh, yeah. Yeah.

How big a group is it now?

Oh, well, of course, it peaked during the Centennial, the Civil War Centennial. I think the peak was, I think we had something like 600 or 800 members.

Oh, really.

And there would be as many as 300 who would come to a particular meeting. Today, it's slacked off. The same thing happened all around the country. It slacked off right after the War and today the Roundtable here has, I think about 150 members and there will be 60 people, sometimes a little more, sometimes a little less.

Was there any peak in interest after the PBS series that was so widely acclaimed and several books . . .

Not particularly. No.

Did you happen to see that series on PBS?

I watched a little of it.

What did you think of what you saw?

It was alright.

Just alright?

Yeah, it was alright. It wasn't, I mean, after all, if you know a hell of a lot about it [laughter], there's no particular reason to sit there staring at the tube.

Right, and you're not so easily impressed as some of the rest of us were by the way it was put together.

But in any event, I began having, of course, the beginning years, when I first began going to the Roundtable, I was still damn busy practicing law and so on, didn't have too much time. But pretty soon, I began getting to the point where I'd cook up papers and, in the

meantime, I was also trying to write articles and I was beginning to have some success.

Articles on the war?

Yeah. And the, I guess along about, I'd have to check dates, I just don't remember. Along about, I think my first paper must have, to the local group, must have been given about 1960 or '61 or '62, somewhere around there. But in a relatively short time, just a few years, I was doing one a year and then it turned out that I could be most certain that I wouldn't be interfering with any engagement out-of-town or whatnot that I might have, if I would give the opening paper each year at the September meeting. I could pretty well count on always being here in September. So, I've forgotten the year now, it was 17 or 18 years ago, I began giving the opening paper and continued that through last year. I'm not quitting that. I'm just too old, decrepit and run down to maintain.

As I keep telling you, that's not the way you strike me.

It's been a lot of fun and the people, my brethren in the Roundtable, they're now "sisteren" too, we finally ceased being for men only a few years ago, now there's some women around. But they've been awfully good to me and they have responded very, very well to a lot of the things that I've dished out. Well, not only was there the local Roundtable, but I began also to be invited to give

papers to other roundtables, in Chicago, in Milwaukee, in St. Louis, in Cincinnati, no not Cincinnati, in Cleveland and Fredericksburg, Harpers Ferry, Carlisle. I never could, around quite a bit.

You said you were interested in the whole expanse of the Civil War, did your papers cover the whole expanse as well, political, social, military?

Yeah. Oh, yeah. I never . . .

You never got pigeonholed?

No. Now most of it, obviously, does involve military because that, to the average audience, that's the fact that is the most interesting. But I didn't confine myself to that.

I know one of your recent collections has to do with the black soldier in the Civil War. How did you happen to develop your interest in that?

Well, you can't get much involved in the Civil War without getting god damn interested in blacks. That's what the War almost became all about. In a very short time, the north was fighting for the Union for three months and then began to figure, well, we better end slavery. [Laughter] But I don't know that there's any particular thing that elicited my special interest in blacks. But if you get, if you begin digging into the Civil War, you're hitting blacks real soon. And it was a terribly important aspect.

How about the black soldier?

Yeah.

Equally?

Oh, sure. See, the blacks, actually it was a Confederate, free blacks in Louisiana were in the Louisiana State Militia under the Confederates and when they . . .

One of the many things I didn't know about the Civil War.

This was the original, the first blacks in the Union Army were blacks who had been in the Confederate State Militia in Louisiana.

That's interesting. That wasn't the famous Massachusetts regiment that was . . . ?

No, the Massachusetts regiment was by no means the first. The first blacks authorized by the Union were in South Carolina, at Beaufort. They, however, they did not begin to be organized until October. In the meantime, in New Orleans, in August of 1862, Ben Butler was in command, couldn't get any reinforcements from the North. He was isolated there; he had to have more men and he had been turning down one of his officers who wanted to make blacks, slaves and so on, make them Union soldiers and he'd been turning them down because the North wasn't doing it at the time. But then you saw that there were a lot of free blacks around and that they'd been in the Confederate militia. So he began organizing. They actually called

them the Louisiana Native Guard. The first black unit that was in the Union Army was with the first Louisiana Native Guard which was organized and Butler brought them into the service in September of 1862.

And when was the Massachusetts regiment?

Not until oh, about February or March, 1863.

And so it was quite a bit after that?

Oh, yeah. But it, I really have had a lot of fun and in the meantime, not only was I giving these papers around, but I was really trying to turn out articles and, with some success. I've had 30, yeah, at least 30 and maybe 31, I've kind of lost track, articles published and these are not popular, crappy things. These are the, all these articles are really, really good pieces of research and writing and they're in the Civil War History which is one of the leading history journals in the country; it's done out of Kent State, South Carolina Magazine which is done in the University down there, Mississippi, Louisiana, Texas, oh, I don't know, some others. And then there's the popular magazine called Civil War Times which is not annotated, but the stuff is very good and I've had several articles there; in Illinois, the State Journal of Illinois and it's given me a big kick.

I'll bet.

And, see my, those are my papers and articles up there.

Yeah, it really is an amazing body of work that you've been able to put together.

Yeah. It's been a lot of fun. Right now, I'm in a state of crisis because my health, something went bad last fall and I've been having a lot of trouble and I just have not had the drive and the strength to keep at it. And it may be that I've reached an end. I don't know.

Well, hopefully, it'll return and you can keep adding to that body of work that you've put together. Let me ask you this, with all of the time that you've spent, as you put it once before, fighting the Civil War since you began the step down from practice at Covington & Burling, have you had any time to reflect on the current state of the practice of law as you see it?

Well, actually, not very much. I wrote a history of the firm which was published in 1986, I guess, yeah. And it essentially was the history of the firm from the beginning up through 1985. In working on that history, I got in touch with people and got sort of a feel for the way things were going.

How did you feel about the way things were going then?

I was sort of surprised at the extent to which, seemingly, in other law firms, there was a preoccupation with making them kind of business enterprises, it seemed to me. Now I, I think one of the things that makes me

rather proud of this firm is that that sort of thing has been minimal here. We are not as different today from what we were 50 years ago in the nature of the activities, except for having too damn many people around. We're not as different as a lot of other law firms are. And when I was working on the firm manual, I talked to a lot of people, a lot of lawyers, friends, people that I knew and I could talk to them confidentially and they became very, very candid telling me about what was going on in their own firms and knowing that I would respect the confidence and I was amazed at the extent to which, in many firms that I'd always regarded as fine firms and maybe nearly as good as Covington & Burling, not quite, but nearly. I was surprised at the extent to which, in recent years, there's been a preoccupation to making them sort of business enterprises and, I don't know, trying to make a lot of money or something. And it, to me, is just disturbing because, and I will say this, that one of the great things about this law firm is from way back at the beginning, making money was not the thing that was driving and the thing that was driving was the desire to have an interesting kind of activity and sure, we'd be rewarded, but there was just, we were never making decisions on the basis of how much money would be involved. And, look for example, at the way we alone have maintained lawyers, full-time, in the legal services office.

That's true and one of the few firms that has. After so many years in practice, is there anything that you look back on, any one thing that you look back on and say this was my crowning achievement or this is something that if I had it to do all over again, I would do it very differently? Is there anything that you can point to that fits into one or both of those categories?

Well, I suppose that I regard as my greatest achievement the extradition of Perez Jimenez. That was so unusual and remains so.

And that was a great story.

It took a lot of doing. There were other things that I did in the way of law practice that I enjoyed tremendously. I just had an awful good time from the very beginning. It was just great fun as far as I was concerned to practice law. And I was so fortunate in being exposed to interesting stuff. After all, that aviation stuff in those early days, that was damn interesting and it continued that way, right up to the end. I don't know that there's anything in the way of a particular achievement or anything of that sort that I, that in my memory I become occupied with. It was, I just feel an enormous obligation to Judge Covington and Mr. Burling and Newell Ellison and the others who set this thing afloat and then to all the people who have come

along in more recent times and have kept it, kept that
paddle wheel just turning to beat the devil.

Well, I'm certain a lot of those people owe a considerable
obligation to you and . . .

Not much.

Well, I think so and I think also that the D.C. Circuit
Historical Society owes a debt of gratitude to you for being
willing to take the time to spend with me in these interviews.
They've turned out to be, from what I initially thought would
be a couple of hours, to probably seven or eight or nine hours
and it is a lot of time and I appreciate your giving it up and
thank you very much.

Well, thank you.

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APPENDIX

The following pages consist of a portion of an interview with Howard Westwood conducted by his partner, Theodore Garrett, on May 31, 1979. The purpose of the interview was to prepare materials for use in a history of Covington & Burling which Howard later wrote in 1984.

This portion of the interview provides an active participant's recollection of the Steel Seizure case, one of the most important cases decided by the courts of the D.C. Circuit. Accordingly, it should be included in Westwood's contribution to the Oral History Project.

The Steel Seizure Case^{*}

During the Korean War (this was in 1952) there had been a significant amount of inflation which created wage demands by labor unions and there was a particularly dramatic situation in the steel industry. The steel industry's contracts with the labor unions came to an end at the end of 1951. Negotiations for new contracts had begun quite late in 1951, maybe not until around the 1st of December, they went on beyond the termination date, and ultimately there was a wage stabilization board recommendation as to how the dispute ought to be resolved. This wage stabilization board had been created as a part of the governmental activity in the field designed to help curb the inflationary trends. Its recommendation was made on the 20th of March of 1952 but the steel companies rejected it. Apparently, labor was willing to go along on it. Early in April, I think the date was April 3rd, after the rejection by the steel companies, the steel union announced that there would be a strike to begin at 12:01 a.m. on April 9. I have forgotten what day of the week April 9 was.

The Taft-Hartley Act, of course, had been adopted sometime before. It gave the President the power to declare an emergency if there were a threatened strike, and then for a so-called cooling off period there was to be no strike. The

government could enforce the no-strike provision during that period by bringing suit against the labor unions to enjoin a strike. During that cooling off period the idea was that the President would designate a fact-finding commission, etc. It would make a report before **the** end of **the** cooling **off** period. It was the theory that public opinion then would require the parties to the dispute to abide by the report or if **it** were a situation which involved a great national emergency, then presumably Congress would have an opportunity to step in and legislate.

The Taft-Hartley Act had created a great deal of opposition on the part of the unions. Anything that curbed their right to strike was, of course, regarded by the unions as very bad. President **Truman** was very much opposed to the Taft-Hartley Act. It was fairly evident from the beginning of the steel dispute that he was not going to resort to the procedures set up under the Taft-Hartley Act. **So** here was a threatened strike, one that was very critical to the economy and to the nation **and** theoretically, at least, or at least allegedly, would have an impact on our national military posture **in** connection with the Korean War. The steel companies, probably thinking that because of the impact on our military strength of a strike, felt that their bargaining position would be strengthened if there were a threatened strike, that that would result in public opinion being marshalled against the position of the **labor** unions. Obviously, from **the**

very beginning **and** then all **through** the **litigation**, the thing that was uppermost in the minds of the steel companies, and no **doubt** in **the** minds of the labor unions, was sheer tactics in their wage dispute -- what would most conduce to strengthening **the** position of one side **or** the other in the eyes of the general public.

When **the** strike was called, **the** steel companies decided that they would seek somehow **or** another to protect themselves by litigation. There had been a feeling all along, **and** some indication all along, that the President would actually **seize** the steel companies, take them over in the event there were a strike, and would not follow the Taft-Hartley Act. He would just resort to some kind of alleged inherent power on the part of the President **as** Commander-in-Chief of the Armed Forces to take over **an** industry and then forbid a strike if our national defense posture were seriously threatened. It was also reasonably clear that if the President seized the steel companies, the labor unions would not strike - not necessarily that they agreed that the President had the power to take over, but rather because they felt reasonably sure that, if the President did take over the steel companies, he or his agents then would make a wage deal with the steel unions **that** would be rather to their liking. That then would improve their bargaining position in the future because whatever the President had done would be a floor **from** which they **could** further bargain with the steel companies. The threat that

that sort of thing might occur was, of course, from the steel companies' standpoint, very serious because it meant that their bargaining position for the future would be correspondingly weakened if the President took over and raised wages. So the steel companies had their lawyers begin getting ready for litigation.

We were not in on the matter. We were not the lawyers for any of the steel companies and we had heard nothing about this whole controversy except that any member of the public reading the newspapers would know something about it.

Davis Polk represented U.S. Steel. U.S. Steel, of course, was the lead steel company. Our firm had had very happy relationships with Davis Polk for many, many years. This was the result to a considerable extent of Judge Covington. We would use Davis Polk in New York, and Davis Polk would use us in Washington. In those days New York firms didn't have branches down here by and large. For Davis Polk to conduct a litigation in the District of Columbia, they had to have local counsel. They came to us without any real advance warning. Obviously it was their thought that we would be local counsel, and that they would be doing all the briefing and arguing and all the work. I am not sure whom they originally approached. I think maybe the top management in U.S. Steel may have called Tommy Austern. What they had in mind was getting Mr. O'Brian on the papers as local counsel. Mr. O'Brian's reputation was, of course, glittering. He was unquestionably the dean of the

American Bar, and to have him on the papers as local counsel would be **very** good. I **think** they called **Austsrn** to see if **Mr. O'Brian** might be available and Austern indicated that he probably would be.

The end of **it** was that a meeting was set up for, I think, the **8th** of April, the day before the strike was actually to begin. **That's** my best recollection, although **it** is possible **it** was a little earlier than that. **Mr. O'Brian**, of course, would need some help, and I was asked to help him. **Mr. O'Brian** and I met **with** the Davis **Polk** lawyers on that first day. I **am** pretty sure that I had already decided that **it** would be necessary to have a lot of help and I had Paul Warnke and Stan Temko and another one of our then associates, a chap named Chuck Barber, sit in on the meeting.

We never did in our firm take to the idea of being local counsel in a matter and although **it** was reasonably apparent **that** the Davis Polk people thought we would just be putting our names on papers, we made **it** clear to them that, if we were going to be on the case, we were really going to **be** in **it**. That didn't mean that we would supersede Davis Polk but we were going to be actively involved in working out the strategy, the theory of the case, the papers, and **so** forth. I must say that the Davis Polk people were very good **about** **it**. There was no effort to put us on the shelf and keep **us** in a subordinate position at **all**.

What we did at that first meeting **was** to recognize that a hell of a lot of work had to be done **in a very** great **hurry**, because **with** the strike about to occur the **President's** seizure was imminent. So **it** was quite apparent that litigation would be essential. **And** of course there was a seizure by the President. **As soon** as he entered his executive order taking over the steel plants, the **labor** unions let **it** be known that they wouldn't strike.

In his order taking over the plants, the President designated his Secretary of **Commerce**, Mr. Sawyer, **as the** person who would be running the show. The take over was to all intents and purposes nominal. The management of the steel companies was not superseded. In fact, the take over merely amounted to **an** order **saying** that they were taken over by **the** United States but provided that all of the people **in the** steel companies' staff, management and labor, would stay on the **job** subject to such orders as Mr. Sawyer, on behalf of the President, might issue. At the beginning, there was no order at all affecting wages **and** hours. **As** a matter of fact, there were statements by Sawyer that indicated that he had no **immediate** intention of affecting wages and hours, and **it** was the idea that there would continue to be negotiations between management and union on the **wage/hour** issues with Sawyer sitting on the sidelines hoping that somehow everything would work out.

However, the taking over by the President made **it** unrealistic to expect that there would be any voluntary agreement.

On the one hand; the labor unions wanted to get the benefit of Sawyer's intervention and to force his hand so that he would have to take some wage and hour action which would be to their benefit. So the labor unions did not want to enter into an agreement. On the other hand, the steel companies weren't about to enter into an agreement with the compulsion of the President of the United States. So the steel companies from the beginning figured that what they really faced was not only a take over -- which didn't do anyone any particular damage -- but in the very near future a very damaging action by Sawyer, that is increasing the wages and in effect acceding to various of the Union demands.

It was obvious that I would have to take the lead in the work that we did at Covington & Burling. Mr. O'Brian was well along in years and couldn't be expected to devote the time and energy to the basic work of research and drafting of the papers and so on. What I did was to divide the work that would have to be done among the three guys I mentioned. Warnke was to proceed with the necessary research and brainwork and legwork and muscle work on the procedural aspects of the problem; Temko was assigned the substantive aspects; and Chuck Barber was given quite a number of missions having to do with liaison with the Davis Polk lawyers and so forth.

We didn't start our work from a clean slate by any means because the Davis Polk people had done some very excellent research work and had some drafts of papers. But an awful lot of further work had to be done very, very promptly.

In **the** meantime, other of the steel companies had been busy **and** as soon as the seizure occurred a couple of them went into action - but not U.S. Steel. ~~We~~ didn't have our papers ready **and** we didn't want to be out **in** front. Moreover we wanted to ~~try~~ to be sure of how the case ought to be presented before we filed anything. But a couple of the companies very immediately went at night to Judge **Bastian** of the District Court to seek a restraining order against the seizure. One was Youngstown, represented by John Wilson of our Bar here. The other was Republic, represented by Bruce Bromley of the New York Bar. They went to Judge Bastian, but he refused to act that night. They were told to go to Judge Holtzoff the next day - Holtzoff was sitting **in** Motions Court.

They did go to Holtzoff and sought a temporary restraining order. After quite a lot of argument, Holtzoff denied the temporary restraining order. He didn't write a memorandum opinion or make any findings in his order of denial but there was significant colloquy in the argument before him. What he said was, "**Look** here, the mere seizure of the plants is not immediately injurious because nothing is happening. You are operating just the way you always have -- the same wages, hours and everything else -- and I don't see that there is any occasion for a temporary restraining order unless **some** kind of injury is threatened, **so** no temporary restraining order."

Nonetheless, of course, bills of complaint were filed seeking preliminary injunctions and we had our complaint ready to file fairly soon after Holtzoff's order. I have forgotten now how many complaints were filed, but every steel company was involved. It was an enormous bundle of papers that began to be filed in the District Court. The case got assigned to Judge Pine. You might remember that in my talking about the old PWA cases I referred both to Holtzoff, who was then in the Department of Justice, and to Pine, who was then in the Office of United States Attorney. That is not significant to the Steel Case; it is just interesting that I had had rather intimate contacts with both those gentlemen early on.

The case was assigned to Judge Pine. There was still real uncertainty about how to present the matter with any hope of getting immediate injunctive relief as long as Sawyer was not taking any action. As I have said, Sawyer was saying things that indicated that he didn't contemplate taking any action, that he was going to rely on a continuation of the bargaining between management and labor. And we here in the shop were very worried that in that posture there was not a prayer of getting a preliminary injunction.

I must say that at that point nobody among the steel companies' lawyers had any remote idea that anything would be faced up to by Pine except the matter of preliminary injunction. Nobody had any idea that there would be any final action in the District Court either at that stage or in the

near future. The whole question was -- are we going to get a preliminary injunction or not? We wanted a preliminary injunction pending a trial on the merits, in order to protect ourselves. We figured that a trial on the merits, while it would be expedited, certainly would not occur for a number of weeks.

But the government committed a tactical blunder. They could have waited for a substantial period under the rules before filing any responsive pleading. Instead they almost immediately filed a motion to dismiss. So whereas we and the other steel companies were assuming that the only real issue would be that of a preliminary injunction, the filing of this motion to dismiss at least set the stage -- although we couldn't believe that this would really happen -- for ruling on the motion to dismiss and in effect finally deciding the case. Well, I think it was on Sunday, which would be about April 20, Sawyer finally began making statements that indicated that he was going to make a change of some kind in wages. At that point, the matter of an injunction became of critical importance and we figured, as did the other lawyers, that the point made by Holtzoff could be got around because now there was threatened (on the basis of Sawyer's statement) an immediate injury, that is an increase in wages and otherwise taking action injurious to the management. well, argument was set for Thursday, April 24th. Actually the argument ran both on Thursday, April 24th, and Friday, April 25th.

I haven't double checked this, and my memory is fuzzy, but I think that technically the only thing before Pine, even though a Motion to Dismiss had been filed, the only thing technically before him was the Motion for Preliminary Injunction. The government, however, made a mistake; they filed a great long brief. They filed it several days before the argument. The Department of Justice lawyers - they were taking over the case; it wasn't left to the local U.S. attorney - had dug out papers that had been used during World War II in connection with the Montgomery Ward seizure, which was a very dramatic event and at that time there had been a lot of briefing of the power of the President to take over a plant. They had all that learning and all those papers in their files and I guess they couldn't resist the temptation to file a deathless document that would assert the unlimited inherent power of the Executive as the Commander-in-Chief to do whatever he wanted to do. So the paper they filed, although it was addressed to the preliminary injunction issue fairly thoroughly in one part, its burden was on the merits of the case, that is, is there or is there not inherent power in the Executive to take over?

Thus we had the benefit of the government having filed their brief and we got busy. Of course we had been working like hell on this thing all along. We got busy with their brief in hand and were able to put our brief on behalf of U.S. Steel in final shape with the benefit of the government's

document. All the steel companies filed briefs but ours was by all odds the **most** thorough, both on the preliminary injunction issue and on the **merits** responsive to **the** government's argument. It was a pretty doggone good job for having to be prepared in **so** short a time. The credit for **it is** due very largely to the extraordinary ability of Stan Temko and Paul Warnke. They aren't entitled to all of the credit because, as I said, Davis Polk had done **some** excellent work. **We** worked closely with the Davis Polk people in putting this brief together, but **it** was a **Temko-Warnke** job in the main that produced our document. The other lawyers in the case from Bruce Bromley on down -- Bruce Bromley was a **very** distinguished lawyer -- recognized the merit of our document and, in **the** argument that did occur before Pine, **it** was our document that was referred to not only **by** us but **by** other lawyers as **the** definitive statement of the position of the steel companies.

Before the argument we had a strategy session. **We** in Covington were not to participate in the argument for U.S. Steel. The person arguing would be Ted Kiendl, who was one of the important Davis Polk partners and very much involved in the work on the case. **We** had a strategy session with the lawyers for all the steel companies. Somebody has to assume the chairmanship of such a meeting, and gradually I sort of assumed that position. I had very good relationships with John Wilson, who represented Youngstown and who is a very able lawyer and **was** highly regarded and respected by the other

lawyers. The lawyers **from New York, Pittsburgh and** elsewhere would sort of defer to **the** local lawyer **anyway**. **So, it was** kind of a natural thing that in sessions **among** the lawyers to discuss how things would **be** worked out, a local lawyer would become a **de facto** chairman of *the* meeting and I was **it**. I don't want to exaggerate that. That **doesn't** mean that I **was** deciding things at all; **it** was simply to have things done in an orderly way.

It was decided that the lead-off argument would be **by** Ted Kiendl **for U.S. Steel and** then the other lawyers would **follow** along with Bruce **Bromley**, obviously, taking an important part, and John Wilson taking an important part. **John Wilson's** important position in the matter was recognized because Wilson **and** Pine knew each other well. **Wilson** at one **time** had been in the **U.S.** Attorney's Office and we all knew that there **was** a high mutual regard between **those** two people.

I think every single one of the steel companies that had filed suit appeared at the argument before Pine. **Of** course, there was a desire on the part of everybody to get into the act but Ted Kiendl **it** was agreed would lead-off.

Pine was a very diligent judge; and **it** was quite apparent, when the argument began, that he had read the papers that had been filed, despite their voluminous nature, and had read them rather carefully -- even including the **U.S. Steel** paper, which had been filed at the last minute.

One point in the strategy session ahead of time that had been agreed to **by** all the lawyers was that what ~~we~~ were really after was a preliminary injunction not enjoining the seizure but enjoining any alteration in labor conditions. ~~Holtzoff's~~ position had influenced us and in any event **it** seemed as a matter of solid legal analysis that, for the extraordinary remedy of a preliminary injunction, the best we could hope for would be a hold up on a change in labor conditions. ~~We~~ couldn't get a preliminary injunction against the seizure itself because that was the whole case. It never occurred to any of us at the strategy session **that** Judge Pine on such short notice would walk up to ruling on the Motion to Dismiss or in any event would entertain an argument in support of a preliminary injunction of **the** seizure itself. **So** Kiendl's argument, when he took off, was couched in terms of seeking only an injunction against a change in labor conditions. Although our papers had sought a preliminary injunction against the seizure, Kiendl went **so** far, on being questioned by Pine, as ~~in~~ effect to amend our papers **so** that our prayer would be limited to a preliminary injunction only against a change in labor conditions.

Almost immediately Judge Pine reacted very negatively to that position. He said, in effect, "~~Do~~ I understand that you are not seeking a preliminary injunction against **the** seizure, that you are perfectly content to let the government hold on to the steel companies because you **know** that there

will be no strike? The labor unions won't strike against the government. You want to get the benefit of the government's holding the steel companies because then you know that there will be no strike. All you want to do is to prevent the government from giving **any** benefits to the **labor** unions by making a change in labor conditions. **Is that what you are saying?"** And Kiendl, of course, said, "**Yes.**" Well, **it** was very apparent that Pine didn't like that one bit.

It was also apparent that Pine was not very happy about the argument of the government that there was **some** kind of inherent power in the Executive to seize property -- particularly in view of the fact that in the Taft-Hartley Act Congress had sought to make provision for dealing with a labor dispute that involved a national emergency.

Even though early on, the judge during Kiendl's own argument had telegraphed the **fact** that he was disposed to walk right up to the basic merits of the case, he, Kiendl, **didn't** retreat from his position. **He was** very firm. However, when Kiendl finished and the other lawyers began arguing -- and particularly this was true in the case of John Wilson -- they got the point. They really began leaping to the merits of the case and working hard on what they sensed to **be** Judge Pine's disposition not only to go to the merits but to go to the merits in a way **favorable** to the position of the steel **companies.** That doesn't mean that they repudiated Kiendl's position **but** none of them would take **the** position that they, were amending

their **papers so** as to pray only for the **kind** of injunction that Kiendl **prayed** for in his oral amendment.

It was particularly **clear** during John Wilson's argument what the bent of Pine's mind **was**. **Wilson** knew Pine like his own brother. I don't **mean** that Pine favored Wilson in any sense, but when Wilson was before him, there obviously **was** a rapprochement and an understanding on **both** sides of the **bar** as to what **it** was all about. **So** by the time the government's turn arrived **it** was pretty clear to everybody in the courtroom that Pine was disposed to go to the basic merits of the case and to rule on the motion to dismiss. The government then **came** along and walked right up to the merits. They were obviously very confident. I don't know why because everything that had happened up to **that** point did not such suggest that the government was going to win before Pine.

The argument was concluded on Friday **and** Pine took **the** matter under advisement. He indicated that he was going to decide very promptly but he didn't decide **it from** the bench. In the meantime, **we** were **nervous as** could be, of course, **as** to what Sawyer might do. **We** thought any minute **that** Sawyer would be hauling off with **some** kind of order changing **the** labor conditions. But he didn't. I don't **know** exactly why he didn't. The book written **a** year or **so ago** **about the Steel Case --** a superb book **--** really **does** not explain why Sawyer didn't immediately take action. I can only **guess, that** Sawyer **was** never really happy about **this seizure**.

I think he felt that **it** was **not** particularly good government **for** the President to be seizing **plants** without regard **to any** statutory authority and in defiance of the procedure set up in **the** Taft-Hartley Act. I think he was dragging his feet and the White House was reluctant to give him peremptory orders. In any event, there was no change in the labor conditions **over** that weekend.

On Tuesday, Pine issued his decision. A memorandum opinion was passed out. ~~We~~ read **it** quickly. It overruled the government's motion to dismiss and issued a preliminary injunction **as** I recall **it**. I'd have to go back and check the papers for just exactly what **it** was, but I think he overruled the motion to dismiss and issued a preliminary injunction against the seizure. ~~He~~ said that since U.S. Steel had amended its papers orally, they weren't going to get any injunction because **it** would be stultifying to let U.S. Steel have the benefit of a government seizure which meant no strike, practically speaking, and at the same time, keep the government from taking any action benefiting the employees. But Pine said, "If you want to amend your papers, I'll issue an injunction for you, also." **By** that time, of course, I was the guy representing U.S. Steel, because Kiendl and company were in New York and all of this had happened on very short notice. **So** with one of our sweet secretaries, Ann Steel, with **the** typewriter in **the** Courthouse corridor down there, I did an amendment of our papers, withdrawing the oral amendment which Kiendl had made during his argument. **So** we got an injunction, also.

Then the government made its next blunder. They decided that they would go directly to **the** Supreme Court **and** skip the Court of Appeals. That was a blunder of the first order. As you **know**, once the record is filed in the Court of Appeals, you can petition directly to the Supreme Court, if you want. They don't have to grant **it**, but they have the power to grant **it**. **So** on Wednesday morning, the government first asked Pine for a stay of **the** injunction pending their appeal to the Court of Appeals, and indicated that, as soon as they filed their appeal, they would petition for certiorari. Pine, of course, denied the stay. By that afternoon, we were in the Court of Appeals. **Argument** occurred that afternoon in the Court of Appeals on the government's motion for a stay pending a petition for certiorari. Of course, we had worked all night and had papers filed, as did the other steel companies, opposing a stay. In the argument that afternoon on the matter of **a** stay, the government was still overconfident. I have forgotten now whether the Solicitor General, **Mr.** Perlman, was present at that argument. I think he was. Yes, I think the argument that afternoon, the principal argument, was made by **Mr.** Baldrige of the Department of Justice, and I think Perlman made a reply argument after the argument by the steel company lawyers.

Things were happening **so** fast **Mr.** O'Brian couldn't possibly have kept up with **it**. **So** I was the guy. But we had had another strategy session of the lawyers on Tuesday night,

knowing that this is what the government was going to do. First I should say that before Pine the only local lawyer who had been really involved significantly in the actual argument was John Wilson. There were all of these New York lawyers, and I think some lawyers from other cities. At the strategy session that Tuesday night when we were deciding how things were to be handled on Wednesday in the Court of Appeals, which we knew would be coming, I moved in very firmly and I just laid down the law to such New York lawyers as then were there, and Bruce Bromley was there, and, God bless him, he was great. I laid down the law and said, the guy who **is** to take the lead and make the principal argument in our Court of Appeals should be John Wilson. John Wilson is highly regarded; he is a local lawyer, and we don't want you foreigners in here screwing things up.

Everybody took that in good spirit and **it** was agreed that John Wilson would lead-off. I didn't mean that Bruce Bromley would not be involved. **He** was importantly involved in the argument in the Court of Appeals, and some of the other lawyers were, too. But John Wilson took the lead and the argument went pretty well. I participated in the argument only in some of the colloquy. I just **got** in the act **a** little bit on some of the questions and answers back and forth between the bench and the lawyers.

The argument went pretty well and **it** really looked good. Chief Judge Stevens, **it** seemed, was with us. Judge

Edgerton, everyone knew, would be against us. But it looked as though we were going to get a majority. What we were doing, of course, was to argue against a stay; and the burden of the argument was if there were a stay, then immediately Sawyer would change labor conditions, the fat would be in the fire, and we would be irreparably injured and we couldn't possibly ever cure that injury.

The Court took the matter under advisement and was out for some little time. I think the argument went on until about 6:00 and then, I think, the court came back around 7:00, or something of the sort. I have forgotten the exact times of day. In the course of the argument, the point had been made that if there were a stay issued, it should be on condition that there be no change in the labor conditions. John Wilson made that point all the way through, but the burden of argument was against issuing any stay as had been agreed among all the lawyers. I may say, one of the lawyers then prominently involved in the argument was another highly respected local lawyer; that was Nubbie Jones, of Hogan & Hartson. We were getting a local flavor in the Court of Appeals, except for Bruce Bromley. There was very little in the way of alien lawyers being involved. It was John Wilson and Nubbie Jones, both of whom were very highly regarded; their prestige much greater than mine. But while the Court was out, we had another strategy session, and it was agreed that, if the unthinkable happened and a stay were issued with no condition, I was to

speaking **up** immediately **and press** hard **the** question of having a condition attached to the stay.

The Court let **it** be known that **they** were ready to announce their **decision**, and **so** the Court came in, all nine of them. The lawyers were sitting at the desks in front of the Court. I think **it** was 7:00 or 7:30 by this time. Very **pre-emptorily** Stevens said that Judge Edgerton would announce the decision of the Court since he, Stevens, was in the minority. **And** Judge Edgerton simply announced that a stay would issue, and right away Stevens adjourned the session. Of course, on adjournment, the lawyers stand. I will never forget. I was standing next to **Nubbie** Jones, and **Nubbie** Jones, out of the corner of his mouth, growled, "**Why** don't you speak **up**?" I was paralyzed. **All** I could do was sort of gurgle. It was **stage-fright**; **it** was something; **it** was paralysis; and I didn't do what I was supposed to do. However, fortunately Stevens, the Chief Judge, didn't leave the bench immediately, as all the other judges did. The other judges literally ran out. It was as though someone had a **gun** at their heads. The decision had been **5** to **4** against **us**. **We** had lost Prettyman. Prettyman was the swing **guy**. Stevens didn't go quite **so** fast and in a moment I was able to recover from the paralysis. So then I began to say to Stevens, now, wait a minute, there **is** another point here which apparently the Court has not addressed, and that **is** the matter of attaching a condition to the stay. What about that? Stevens then sent for Judge Edgerton and Judge

Edgerton came back, and here were Stevens and Edgerton on the bench and all the lawyers.

Then we had quite a little discussion. I was saying, then in effect, ~~damn it~~, we had asked ~~that~~, if there were a stay, there be a condition, and the Court ~~hadn't~~ addressed that. It was apparent that the Court had not addressed that question. They said nothing about ~~it~~ in Edgerton's announcement ~~from~~ the bench. It was quite obvious they had forgotten all about ~~it~~ in their in camera discussions. They just ignored ~~it~~. There was considerable discussion. Perlman, of course, was eager to get away, he was all ready to run right out of the courtroom, because if you win, you don't hang around. But he couldn't quite get away.

The net of ~~it~~ was that Stevens finally said, with Edgerton agreeing, that, if ~~we~~ wanted to, we could, at 9:00 in the morning or 9:30, I have forgotten, file an application for a condition to be attached to the stay. ~~So~~ off ~~we~~ went and worked all night on the papers ~~for~~ a condition to the stay. By that time we at ~~C&B~~ were really in the saddle; you couldn't fool around with other lawyers. There wasn't time. ~~So it~~ was Temko, Warnke, and ~~Westwood~~ working right through the night on ~~an~~ application for a condition to be attached to the stay. ~~We~~ filed the papers then by 9:30 in the morning.

The Court, however, did not convene at 9:30. I don't think they came in until about 10:30. Obviously they had been studying the papers that were filed. I have forgotten

whether the government filed papers in opposition. They **may** have, because they were working hard, too. The court came in and the session began at 10:30. **We** had a **full scala argument** on the condition **for** a stay. By this time I was taking the lead in the argument, because I was the only one, obviously, thoroughly prepared on this thing. In the course of that argument Prettyman pressed Perlman **for an** agreement that there would be no change in the **labor** conditions until the Supreme Court had an opportunity to really pass on the question. Perlman resisted. That led us to think that, by golly, on this point we will get Prettyman and **it** will be **5 to 4** in our favor.

Of course, in the beginning all that we had wanted was to prevent a change in labor conditions, the position that Kiendl initially had taken. **So if** we could get that, hell, we would have won the case. And we were pretty confident; the argument on this matter of **a** condition went pretty well. Finally, right at the tail end, Perlman grudgingly agreed that there would be no change in labor conditions until his petition for certiorari **was** filed. The court's stay had been-issued on condition that **a** petition for certiorari be filed by Friday, which by then was **the** next day. But Perlman's agreement meant that he could file a petition **for** cert. the next morning at **9:00** and change **labor** conditions at **9:30**, **so** we were **still** mighty scared. **We** didn't feel that met Prettyman's point, and **it** didn't. **So** we still felt pretty confident when **the** Court,

at the end of that argument, took the matter under advisement. We figured we would get Prettyman. However, the Court came back in due course, 5 to 4 against us on the matter of attaching the condition we requested.

So we had another night's work. We had decided the steel companies would get on file immediately their petitions for certiorari, and we figured we would beat the government to it even though we were the prevailing party in the District Court. We could, of course, petition the Supreme Court for certiorari. So we worked like the devil. I don't remember whether there was just a single set of papers filed on the petition for cert. just for U.S. Steel, and other companies filed their own, or whether several companies joined in the single paper. I would have to go back and look at the files on that.

Anyway first thing Friday morning our petition for certiorari was filed. The government was surprised. They never dreamed we would do that. The reason we did that was to dramatize our interest, and we wanted to get this matter of a condition before the Supreme Court in a hurry so that the Justices would begin thinking about this point, which was the key point as far as we were concerned. Very strongly emphasized in our papers was the need for the attachment of some kind of a condition that would prevent a change in labor conditions until the Supreme Court had time to review Pine's decision.

The **rules** of the Supreme Court at that time, incidentally, provided that if both parties petitioned for cert. the plaintiff in the lower court would have the opening argument. I mention that as kind of amusing, because Perlman was very **much** upset about that. Ultimately, when cert. was granted he wrote to the Chief Justice urging that the real moving party was the government. **We** were defending the action below, he said, and the government ought to have the opening and closing. But the Court's rules were clear. Actually, there had been another case in the fairly recent past where the situation had been reversed, where the government had won below, had been a petitioner, and **it** had had the lead-off argument. That case was referred to by the Chief Justice in refusing **Perlman's** request. The rule in the Supreme Court, by the way, since then has been changed.

In any event, our petition for cert. was filed. The government's petition for cert. was filed quite a bit later. On Friday we again worked all night on a reply to the government's petition and had **our** reply on file first thing Saturday morning. In those days, the Court heard argument on Friday and had conference on Saturday.

When Pine issued the injunction, the labor union called a strike. The injunction, of course, was **an** injunction against the seizure itself. When the Court of Appeals issued its stay, the labor union called off the strike. Someone approached them; I don't know who; the White House, somebody;

they called off the strike. Then on Saturday the White House called together the steel companies management and the labor union and really put the heat on them to try to come to an agreement on labor conditions. It looked as though an agreement was just about to be made. Truman was really putting the heat on them. But that afternoon, the Supreme Court announced its decision to grant cert. and issued an order that there should be no change in labor conditions pending its review. Immediately, negotiations at the white House came to an end, because all of a sudden the steel companies proved not to be willing to resolve the matter by agreement.

The Supreme Court specified that the case would be argued a week from the following Monday. This was Saturday. That meant that the case had to be briefed, the record had to be filed, everything, in real short order. It had been agreed that in the Supreme Court John W. Davis would argue on behalf of all the steel companies, except that Charles Tuttle (who was the father of my first wife) insisted on participating in the argument, also. I have forgotten now which steel company he represented. And Tuttle separately briefed the case. I don't now remember whether the brief on behalf of U.S. Steel was joined in by the other companies or not. I'm sorry my memory is so vague. But certainly U.S. Steel's brief was to be the most important one, particularly since Mr. Davis was to have the principal argument. The question was how to get all this done. The record had to be printed, and briefs had to be prepared and printed, all this in a week.

Obviously, we had to be involved, although the Davis Polk people had done a lot of work. We had been very close to this thing. The net of it was that I, with Stan Temko and Paul Warnke, went to New York right away to work with Mr. Davis and with one of the other partners in Davis Polk, Porter Chandler, a very, very able *guy*. We just moved up to the Davis Polk *shop* in New York to work with Mr. Davis and to prepare the brief with Porter Chandler. Chuck Barber, in the meantime, would stay down here. He was *an* enormous help in all the mechanics, because all kinds of mechanics had to be worked out during that week.

That was, for me, a very interesting experience. I regarded *Mr.* Davis as the minion of the capitalist class. He had been the presidential nominee of the Democratic Party in 1924 after the famous Madison Square Convention, which was the longest convention in all history. The great struggle that had occurred between McAdoo and Al Smith at that Convention was finally terminated with the nomination of John W. Davis as a dark horse. Davis had been a lawyer at that time in West Virginia. His nomination had meant the triumph of the conservative forces in the Democratic Party and, in my view in later years, the nomination of Mr. Davis had represented the ascendancy in our society of the forces of reaction. Here the Democrats had nominated Davis, Republicans had nominated Coolidge, and it had been left to insurgents to form the Progressive Party, the nominees of which were, for President, Bob LaFollette and

for Vice President, Burt Wheeler. Up to that week in New York I had thought of Mr. Davis as kind of a stuffed animal, simply the puppet of the capitalist class.

I came to have a very different feeling about Mr. Davis during that week. He was absolutely magnificent. He was quite **old** by that time. We, Stan Temko and Paul Warnke and I, would work like the devil there in the Davis Polk library. Their library wasn't as good as ours, but we worked like the devil in their library. And each day, and maybe more than once each day, we would meet with Mr. Davis to talk out how best to frame the arguments, and **so** on. Davis couldn't have been more magnificent. Here were the three of us from Covington who were relatively kids, but he treated us as equals. His entire manner and approach were absolutely magnificent. It was, for me, a very stimulating experience, and I may say, a very enlightening experience, to find that the person I had regarded as the minion of the capitalist class was really quite a guy. This was a great experience for me, and I came to have enormous admiration for the man, which was confirmed later when I heard him argue this case in the Supreme Court.

Somehow or another, we got **it** all done, and the brief was filed, and the case was argued on the following Monday. **As** you **know**, the case was decided on the second of June, which was exactly one month after the petitions for cert. had been filed, and was less than eight weeks after the litigation began. The case was decided by the Supreme Court

in favor of the steel companies, holding that - well, it is not quite clear what the holding was. Every Justice wrote an opinion. There was not a real agreement in the reasoning; I don't know what the case stands for as a precedent today. Although even scholars tend to cite the case in support of the broad proposition that the Commander-in-Chief has no inherent power of the sort asserted, I am not sure that that was what was decided by the majority of the Justices. It may be that most of them decided simply that, in view of the Taft-Hartley Act, such inherent power as the Chief Executive had had been superseded.

A couple of years ago there was a superb book on the Steel Case that was written by a gal named Marcus, I think the name was. I did a review of that book, which is in the University of Chicago Law Review, in which I brought out quite a number of things which I have just touched on here today, and also corrected two or three omissions or mistakes in that book. But a couple of things were brought out in that book that I did not know about, because Mrs. Marcus had access to a lot of papers such as diaries of Justices and judges, and so on. As I remember that book it indicated that when certiorari was granted Mr. Justice Burton, in his diary, said that he thought that what should have been done by Pine was not to decide the matter on the merits but to do exactly what Kiendl had asked, and that is, simply issue a preliminary injunction against change in labor conditions. A very interesting obser-

vation, I don't think that there is **any** question but that, as a legal matter, our instincts at the beginning had been right. But, as a matter of human psychology with Pine, we were wrong. In **any** event **Burton's** reaction when this whole matter came before the Supreme Court is a confirmation of our original decision, and in a way of **Kiendl's** stubbornly adhering to that position.

The government made a fatal mistake in seeking cert. immediately, rather than going to the Court of Appeals. **Look** at what happened. The Court of Appeals refused the condition. I have very little doubt but that our Court of Appeals at that time would have decided that the President had inherent power to do what he did, and in any event, they would not have decided that **for** some time. **They** wouldn't have done what the Supreme Court did. It would have been expedited, no doubt, but I'll bet they would have **sat** on that case. Two, three, four months would have gone **by** before they finally disposed of **it**. In the meantime, with the government having changed the **labor** conditions, **it is** my judgment that the steel companies would have had to give way; they weren't going to sit around forever and let the government run the plants. They would have had to come to terms, and I don't think the case would have ever reached the Supreme Court. The case would have become mooted, I think, in the end.

Mr. Baldrige, who was the lawyer for the Department of Justice and **running** the show for the government until they

got into **the** Court of Appeals with **Perlman**, **was** severely criticized by a 1st **cf** people for his tactics before **Pine and** for having a motion to dismiss and emphasizing **the** merits, and **so on**; but I think **the** criticism of **Baldrige himself** is unwarranted. I think that there was a naive overconfidence in the White House. I think they were calling **the** shots, and **that's** rather confirmed in **Mrs. Marcus'** book. I **think that**, without really comprehending the matter **as** a legal **problem**, the White House **was** just overconfident and took the view, "**Damn** it, we are going to assert **the moon**," and gave **Baldrige** to understand **from the** beginning that **that's** the way **it** was to be.

So much for **the** steel case.