**ORAL HISTORY OF**
**JOHN ALDOCK**
**Third Interview**
**May 5, 2010**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is John Aldock, and the interviewer is Judy Feigin. The interview is taking place in John's office in Washington, DC, on May 5, 2010. This is the third interview**.**

Ms. Feigin: Good afternoon.

Mr. Aldock: Good afternoon.

Ms. Feigin: When we left you last you were about to join the law firm. Any qualms leaving public service?

Mr. Aldock: No, I was ready to leave. I had been assigned to try a defendant I remembered convicting on another matter two years earlier. I thought that if I now was trying defendants a second time, that might be a reason to leave. [Laughter] I had a view in those days, a lot like the view of young people today, that I wasn't going to keep a job for more than 3 or 4 years anyway, so it was time to move on and do something else for a while. I really didn't have any qualms. Because of the Brawner experience and Bill Dempsey, Shea & Gardner had made the move easy; I didn't have to interview, I didn't have to worry about whether I would receive an offer, and I didn't have to do any due diligence. It was just too easy to pass up.

Ms. Feigin: Tell me what it was like to be a young associate. Before we get into cases, give me a sense of how big the office was and who was there.

Mr. Aldock: I think the office had about 20 lawyers. There was Shea and Gardner and Steve Pollak, who had been an Assistant Attorney General and had been in the White House. Most of the rest of the ten or so partners had been Supreme Court law clerks. That was pointed out to me as well as the fact that I was only on the Law Review and not Editor-in-Chief and that I didn't make the equivalent of Phi Beta until my third year. Frank Shea always would ask, "What year?"

Ms. Feigin: [Laughter]

Mr. Aldock: Shea was an academic snob, and I was not overqualified in the sense of academic background. On the other hand, I had tried probably a hundred cases, and many of those at Shea & Gardner had not. While one could have found it intimidating given the pedigrees of the partners, because of my AUSA experience I never lacked confidence as a lawyer.

Ms. Feigin: Tell me about the founders themselves since they were still at the firm when you were there.

Mr. Aldock: They were remarkable people. Frank Shea had been the Assistant Attorney General for what was the Claims Division but in the future would be called the Civil Division. He had been dean of the Buffalo Law School. Shea built up the faculty by bringing in some big names and highly credentialed young professors. Shea had gone with Justice Jackson as his principal assistant to Nuremberg to organize the war crimes trials. He was a formidable personality and a very successful trial lawyer. I think the Shea & Gardner clients in those days, with a few exceptions, came to Frank Shea. Shea was a leader of the trial bar and knew

the other major lawyers in town. One of his best friends was Hugh Cox at Covington & Burling, and they referred work to each other. It was a relatively small trial Bar.

Frank had a difficult family situation. He married his wife, Hilda, late in life. She was a very senior government lawyer in the 1940s when women weren't senior government lawyers, and I believe she was one of the first women graduates of the Harvard Law School. Late in life they had a child who was severely autistic. Hilda Shea gave up the practice of law and moved to Cambridge, Massachusetts, where they had around-the-clock caretakers in the home for the boy. Frank commuted every weekend to Cambridge.

Frank was a demanding man to work with. He had an unusual way of preparing for an oral argument. And, best as I could tell, he did a high percentage of the oral arguments in the office. Frank would invite everybody to his house, which was a mansion in Old Town Alexandria overlooking the Potomac River; Senator Mark Warner lives there now. It had a carriage house where the young, unmarried partners often lived; I know Bill Dempsey lived there for a while. In Virginia he had a housekeeper who came from the French Embassy and was a great cook. Most firm events were at Frank's house, but particularly the dinners around oral arguments. The rule was that the junior person in the room would make the argument, and then the next senior person would make the argument, etc. Everyone prepared an argument, so it obviously cost a fortune.

Ms. Feigin: Cost the client a fortune?

Mr. Aldock: I don't know what got billed, but it could never be done that way in today's commercial world. At the end, Frank would invite the group to retire for cigars and cognac to hear how he was going to do the argument, having listened to all the different renditions.

When clients came to town they were entertained at Frank's house with his marvelous French cook. Frank's wines were bought in the 1940s and 1950s and they were top French wines. In his cellar, there were $1,000 bottles of wine for which he paid less than $100.

Frank's practice of having the women retire upstairs while the men went to another room for cigars and cognac ran into trouble even before the first women lawyers joined the firm. I remember the time – I'm skipping ahead, so this is a few years later – when our partner Frank Kramer and his wife Noel were invited to Frank's for dinner. Noel, now a DC Court of Appeals judge, was a lawyer at then Wilmer, Cutler & Pickering (now Wilmer Hale). Frank Shea said, "We are going to retire for cigars and cognac, and the ladies can go powder their noses." Noel responded, "I'd be delighted to have a cigar." [Laughter] Frank didn't know what to do. As I recall, she came with the men, and that practice was over. It died firmly when the first women lawyers were invited.

Ms. Feigin: [Laughter]

Mr. Aldock: Working for Frank was difficult, not just because of this argument thing but also because there were too many lawyers on his cases. To be the junior person on one of Frank's cases struck me as a less than desirable position. I concluded that,

if this was how the private practice of law worked, I needed to do something else. So I conspired to avoid working on Frank's cases, and those were most of the cases. When the next associate showed up – a fellow who I think teaches at Columbia today – I handed off all my cases to the junior man before he knew what was happening. I had had a few cases of my own and a few cases with a partner named Al Scanlan (we'll talk about him later), who brought in some very interesting trials and actually let me do them. I knew I never would be happy in the practice of law unless I had my own clients, so thereafter I made a point of seeing to it that I had clients of my own and, fortunately, I always did. I do feel that it is a much more satisfying profession if the people come to you because they have heard of you and seek your advice and counsel as opposed to somebody who was assigned to you. I've been very lucky that it has worked out for me.

Ms. Feigin: Well, there you are at twenty-something. How do you go about getting your own clients?

Mr. Aldock: Let me first cover Warner Gardner. Warner Gardner in many ways was even more interesting than Frank Shea. By the time he was thirty-something, Gardner had held many of the top legal positions in Washington. He was First Assistant to Solicitors General Jackson and Biddle. He was Solicitor of Labor (1941) under Frances Perkins, and Solicitor of Interior (1942) under Harold Ickes. Warner worked under all the New Deal giants that you would read about in history class. He had clerked for Justice Stone. He had served from 1943-1945 as an Army intelligence officer assigned first to the British codebreakers at Bletchley and then

by them to the 6th US Army Group in the European Theater. He became Assistant Secretary of Interior in 1946.

How he and Frank first got together I'm not quite sure. They had very little in common except that they were both brilliant lawyers: Frank was older; Warner was younger. Frank was ambitious in building the law firm; Warner had no interest in building anything. Warner was going to argue his cases in the Supreme Court, and everything else was secondary.

It was 1947 when Shea & Gardner formed the firm. There had been a partner in New York who left before I got there. I recall Frank telling a story about calling Herb Wechsler, a famous professor at Columbia, to ask, "Who's your very best student?" The person identified was Larry Latto, who became the first associate at Shea & Gardner. Either Larry Latto or Marvin Frankel, later a judge on the US District Court in New York, was first and the other one was second in their law class. They were best friends throughout Larry's life. Larry said, "I came to Shea & Gardner because I wanted to work in private practice and because in 1948 no New York firms were hiring Jewish lawyers," even if their name happened to be Latto, which hid it pretty well. Larry Latto was a great lawyer, and he eventually became the chair of Shea & Gardner.

Warner did all of his own work. We had to beg to work with Warner on one of his cases. He wrote all his own briefs in longhand and then had them typed. Warner had several arguments before the Supreme Court that I saw where he talked to the Justices in ways that nobody else would get away with.

Ms. Feigin: Like what?

Mr. Aldock: He was just so informal. He would tell the Justices that the right question was something different than what had been asked. [Laughter] I just can't picture myself pulling that off or even attempting to pull it off, but the Justices loved it. Warner was a legend at the time and he eventually developed a very successful maritime practice. Both Shea and Gardner practiced into their late 80s.

Ms. Feigin: At the firm until the end?

Mr. Aldock: At the firm until the end and their boots on. I remember that close to the end of Warner's career he was retained by Anita Hill, which was a big matter at that time. Warner was chosen, I think, because a professor in Arizona named Frank, who had been a Supreme Court clerk with Warner, told Anita Hill there was only one lawyer in Washington, and he was Warner Gardner. I believe they were both in their late 80s. Anita Hill had been a protégé of Professor Frank so she came to Washington and hired Warner Gardner.

Ms. Feigin: Are we talking about at the time of the hearings?

Mr. Aldock: At the Senate hearings in 1991.

Ms. Feigin: We should make clear for people down the road what hearings we are talking about and who she is.

Mr. Aldock: Anita Hill was testifying against Clarence Thomas at his confirmation hearings to become a Supreme Court Justice. Hill alleged that Thomas had done several

things that were inappropriate in terms of sexual comments and related abusive activities. I believe Anita Hill had been at the EEOC with Thomas. At the time of the hearings, Anita Hill was a professor at a California law school. In any event, the hearings were televised to hear Hill's incendiary accusations against a black nominee to the Supreme Court. It was a media frenzy. The immediate reaction of the other Shea & Gardner partners was that Warner was going to fall asleep on national television. So the firm assigned Wendy White, who in those days was one of our few woman partners, to assist Warner. Wendy's job was to kick Warner if he started to doze. We were all watching, and sure enough Warner started to fall asleep. When somebody on Capitol Hill is represented and the witness has been prepared, there isn't much to do, because congressmen really don't let the lawyer participate. Warner was nodding off, and I saw Wendy's kick [laughter]; it was wonderful. [Laughter]

I also remember a somewhat related case of Warner's. For many years, Warner had been a member of the Cosmos Club, a very important institution in Washington in terms of Nobel prizewinners and other important members. It was and still is several blocks from our old offices at Dupont Circle. Warner ate lunch there often, as did Frank. They wanted me to join as many of the partners had. I couldn't imagine what I was going to do in that dining room with all those old people, so I rarely went. One day Warner came to me and said, "I've got a case and I want your advice. This person has been thrown out of the Cosmos Club." I asked, "For what?" Warner said, "Because he suggested that they admit women." And I responded, "He was thrown out for suggesting that they admit women?

This wasn't a woman who had been denied admission?" Warner said, "No, no, no. He was thrown out for advocating that they change the policy." Warner said, "Maybe I'll get a TRO. We have a right to appear before the Cosmos Board." I said, "No. We don't have to do that, Warner. This is going to be very easy. You just go to the Club and say, 'Before we start a legal proceeding, I'm going to leave here and go to the *Washington Post*. If anybody has a problem with that, he should tell me now, because it seems to me this is a public issue.'" Warner's client was reinstated.

Ms. Feigin: [Laughter]

Mr. Aldock Both Frank and Warner were wonderful lawyers, and Warner especially was engaging. They were people anyone would find interesting to sit next to at dinner because they had great stories. They created the Shea & Gardner firm, and it was a premier litigation firm for many years in this city, one of the top two or three. Before my arrival, Frank tried the GE price-fixing case, the biggest case of its day. And he did it for several years with a firm that then only had a handful of lawyers. I was pleased that I had the opportunity to know them both and I've never looked back on having taken the job.

Ms. Feigin: Of the 20 or so people who were there, were there women or minorities?

Mr. Aldock: No.

Ms. Feigin: How long until that happened?

Mr. Aldock: The minorities story was a sad one. We hired several minority associates, but they always had lots of opportunities and thus never stayed long. We did not succeed at the partner level until we persuaded Michele Roberts, who was a big-name criminal defense attorney at the Public Defender Service, to join us around 2000. She subsequently was persuaded by Vernon Jordan to move to Akin Gump, and we parted amicably. Michele was impatient because she wanted to try cases outside DC, so she wanted a larger firm with other offices. We eventually did merge but not without a lot of analysis. We waited for the merger we wanted and rejected the opportunities brought to us by headhunters.

Ms. Feigin: And what about women?

Mr. Aldock: With women we had a better story, although not a particularly great story. In 1975, we hired two women, Wendy White and Mary Fitch. Mary left because her husband became a law professor at the University of Chicago.

At the time, it was almost unheard of to come to Shea & Gardner without a federal clerkship. It was OK that I only clerked for a District Court judge when everybody else had clerked for the Court of Appeals or the Supreme Court, but not to have clerked at all took you off the firm's radar. Wendy had applied but she had not clerked. We finally convinced the firm that these applicants did not have clerkships because the judges were not taking women. Wendy was the first of the women who stayed and became a partner. She subsequently worked for a while in the Clinton White House and is now the general counsel of the University of Pennsylvania.

Ms. Feigin: The other thing you were going to tell us about from that early time was how you went about acting upon this resolve that you wanted to have your own clients and here you are a young pup. How did you go about doing that?

Mr. Aldock: It takes a lot of luck, but it's not all luck. My view is that over a career everybody gets roughly the same number of opportunities; they just happen. The difference between people who appear to be very successful and lucky and those who don't is that the people who appear to be successful and lucky always are alert and attuned and waiting for the opportunity and, when it comes, they do not miss it. Persons who are deemed unlucky either don't see the opportunities or don't seize them. There could be an opportunity to have a dinner with the assistant general counsel of "X" Company. You could conclude that you would rather watch a ballgame, or you could go. That's a decision. You could decide whether to stay in touch with some of your college and law school classmates or you could decide that you've lost interest. When offered the opportunity, you could give a speech or say, "Why bother?" Those things, over a career, make a difference.

Ms. Feigin: With that general proposition can you be a little more specific about what happened to you in your twenties that got you started on this, how you went about it, what opportunities you seized.

Mr. Aldock: It wasn't that I was particularly ambitious and systematic; it was just that that's my personality not to turn down opportunities that seem interesting and new. It's my personality to stay in touch with people I like. Until I went to Shea &

Gardner, I did not know anything about clients. I was going to have a political career.

I got lucky because, early in my career, my colleagues in the US Attorneys' Office were successful, and we referred business to each other. My AUSA group of about 50 lawyers has stayed together to this day. Indeed, we are having a third "Flannery Assistants" reunion this year. Judge Flannery was the US Attorney who spanned the years 1967-1975 when this particular group were AUSAs. The judge died a few years ago, and there is now an annual lecture in his honor. Justice Scalia is going to speak in the ceremonial courtroom of the US District Court for DC. There will be at least 300 people in attendance, and a reception will follow. Judy has a monthly luncheon group with the wives of Earl Silbert, Dick Hibey, Bob Bennett, and Don Bucklin. Once in a while the men are invited to a dinner. We are a very close-knit group, and many have become very successful lawyers. Bob Higgins is head of litigation at Dickstein; Bob Bennett, who represented President Clinton, had a legendary career at Skadden Arps and is now at Hogan. Tom Green at Sidley Austin is another leading DC trial lawyer. If the leading lawyers in litigation are your friends and they respect you, it is good for your career, too. Some of my early cases came from this group, and later cases came from a successful reputation in the early cases. I did not have the luxury of knowing corporate general counsels or significant business people; I only knew lawyers.

Ms. Feigin: Did we mention, by the way, the bar exam? When did you take the bar exam?

Mr. Aldock: I took the bar exam when I returned to DC for the summer before my clerkship in 1967. There were no major course programs at that time, only one taught by a Mr. Kramer, who probably couldn't have gotten into any of the law schools whose students he was instructing to pass the DC bar.

Ms. Feigin: [Laughter]

Mr. Aldock: We all took this course because it was the only one. Kramer would get up and say, "This is a domestic relations case. You all know that Jones v. Smith is the correct response to the question, but you cannot use that answer. Bar Examiner Oscar Whoopdeeboop thinks the answer is different, so you must give the wrong answer when you get that question." [Laughter] There were several of those wrong answer questions. The idea that we should give the wrong answer, trusting this guy who talked like a used car salesman, was scary. That we should give the wrong answer rather than the right one was a leap of faith. Fortunately, of the wrong answer/right answer questions there only was one on the exam. I couldn't do it; I gave the right answer and yet passed the exam.

Ms. Feigin: [Laughter] So here you are starting at the law firm. Tell us a little bit about some early cases.

Mr. Aldock: Just before I arrived at the law firm, there was one question from one of my close friends that we still laugh about today. I remember Bob Higgins said to me, "You know that I'm an Irishman, and you are going to this Irish law firm. Have you investigated if that's a good move for you?" Subsequently, I suggested that he was going to Dickstein Shapiro and asked if he had investigated whether that was

a good move for him! [Laughter] But, of course, there never was a problem. Although Shea & Gardner had several Irish partners, including Dempsey, Shea, Flynn, etc., Steve Pollak was Jewish and Warner Gardner was a Quaker. Nobody cared about religion or political persuasion, but we must have been on the Law Review. The firm had its biases, but at least they were benign. My first assigned case in the office was a big antitrust case that came to Frank Shea. In time I reassigned that case to a new associate, Stanley Langbein. Stanley was very bright, but he didn't know that it was a new Frank Shea case and that he could and should have declined it. He subsequently became a professor.

Ms. Feigin: Let me just back up for one second. You had the luxury of deciding that you were just going to pass it on?

Mr. Aldock: No. [Laughter] I just did. To my knowledge, nobody had ever passed on a case. But if you were the youngest lawyer on the case and told the others, "This new lawyer got much better grades than I and was first in his class. You are upgrading here." [Laughter] "There is this other matter I could do, so let him do this case. He'll be terrific!" [Laughter]

Working for a partner named Al Scanlan was more to my liking. Al was a rough-and-tumble-type trial lawyer. A gregarious Irishman who was active in Maryland politics, Scanlan had argued the Maryland reapportionment cases in the US Supreme Court. But, basically, Al was a District Court trial lawyer. Al could tell Irish stories to a jury and have them laughing and eating out of his hand. I always envied him because I couldn't be humorous with a jury; it never worked

for me. I was very good as a prosecutor when moral righteousness was called for. However, it gets harder to figure out exactly what the posture is if it's not humor and it's not moral righteousness, and I am a corporate defense attorney. I am stuck with logic and common sense.

One of Scanlan's clients was the Catholic Church. The US Catholic Conference was the governing body which relied on Al for big cases. The Catholic Church, through its Widows and Orphans Fund, had bought Penn Central bonds. Goldman Sachs had been the underwriter when Penn Central went bankrupt. All the bond holders sued Goldman Sachs for breach of fiduciary duty and fraud for failing to disclose its full knowledge about Penn Central. Chicago's Cardinal Cody had made the purchase for the Church. The Cardinal was a legend in the Catholic Church. I'd never met a Cardinal, but Al asked if I'd take the case. I found Cardinal Cody to be a very engaging and really wonderful man.

Cardinal Cody had to give a deposition in the case. The lawyer for Goldman Sachs was a devout Catholic from Sullivan & Cromwell. I sensed that taking Cardinal Cody's deposition was unnerving him. I thought, "This will be great fun." [Laughter] The Cardinal said he would like to give the deposition at his residence. Just before the deposition I asked my opponent, "How are you going to handle the oath?" [Laughter] You could see the blood drain out of his face, [Laughter] and he said, "I don't know." I continued, "Are you actually going to swear the Cardinal?" He exclaimed, "Oh, my God, I don't know!" I said, "I just wanted to give you a head's up." [Laughter] Subsequently I learned

that my opponent called everybody to get advice. I related the story to Cardinal Cody, and he laughed. [Laughter]

We arrived at the residence, and the fellow started stuttering about the oath. He was a very articulate man, but he lost it. Cardinal Cody put his hands on the man's shoulders and said, "My son, can I help you? What kind of an oath would you like? I can give an ecclesiastical oath or a civil oath, whichever you'd like." The Cardinal was sworn as the law requires, but the experience unnerved my opponent.

The Cardinal was in a room with all of his advisors. The first question was, "Cardinal Cody, when did you buy the bonds?" And Cardinal Cody asked, "Joe, when did we buy the bonds?" And then, "What did you pay for the bonds, Cardinal Cody?" "Sam, what did we pay for the bonds?" The Cardinal, who was the sworn deponent, answered hardly any questions by the end of this deposition. [Laughter] We had a room full of respondents who had not been sworn or been identified on the record, but who had answered all the questions. It was remarkable. [Laughter] At the end, the questioner thanked the Cardinal, kissed his ring and adjourned the deposition.

It would have been a great jury case in a New York court representing the Widows and Orphans Fund on the grounds that it had been defrauded by Goldman Sachs. And it would have been a slam-dunk. However, Al Scanlan and I could not persuade the Cardinal to try the case. Cardinal Cody said, "I know we would win, and the settlement would not be everything we could get, but we did

buy it for the Widows and Orphans Fund, and I'm as embarrassed as they are to go before the jury. So I'd rather settle, even though I know you are telling me that we could get more money if we would go before a jury." Goldman Sachs pulled out all the stops. They had every major donor to the Catholic Church they knew call the Cardinal and tell him he should settle. It was well-lobbied. They pulled it off, and we settled the case. That was unfortunate because it would have been a great case to try.

I had another case during my first years at the firm that Al Scanlan brought to the office. Al was retained by a man named James Kmetz, who worked for the United Mine Workers. The case was brought as an indictment of Tony Boyle, who was then the president of the Mine Workers and whom the newspapers had "convicted" for the 1969 murder of his union adversary, Joseph Yablonski. Nobody had proven anything and nobody had charged Boyle with the murder at this point, but the Labor Section at Justice was looking for a way to get him. This became the first case alleging that union money – dues money – was being unlawfully used as a campaign contribution. Until that time, such a case had never been brought.

James Kmetz was the union's Washington representative. His crime was taking a check on the order of President Boyle, signed by the union's Secretary-Treasurer Lewis, and handing it to Bob Strauss, chairman of the Democratic National Committee. Kmetz had no knowledge of whether the check was dues money or PAC money. The Justice Department lawyers wanted a conspiracy charge, because they wanted to get in more evidence. They indicted Boyle,

Lewis, and Kmetz. The case was brought before Judge Richey in the US District Court for DC, and the prosecutor was Chuck Ruff, a formidable lawyer, who later became a special prosecutor in Watergate and subsequently counsel for President Clinton in his impeachment hearings.

Ruff was in the Justice Department's Labor Section. Chuck Ruff had lost the ability to walk early in his life due to a disease that he contracted in the Peace Corps in Africa or South America. He was confined to a wheelchair which made it even harder for the lawyers on the other side of his cases, and this was a tough case. The statute, at least the misdemeanor part, stated that there was no intent necessary if Kmetz contributed union dues illegally to a political party; he was guilty. For the felony he had to have knowledge but for the misdemeanor arguably he did not. The government offered Kmetz a misdemeanor plea, but Tony Boyle told Kmetz that he would lose his pension if he pled to the misdemeanor.

When we started trial I had not made up my mind whether our client would take the stand, although I thought probably not. Kmetz had some grand jury testimony that wasn't terrific. I wanted to avoid the misdemeanor conviction which was going to be hard. Judge Richey was a very impatient man, a good judge at times but not the best judge at others. The judge in open court with the jury in the box said, "Mr. Aldock, are you putting your man on the stand or aren't you?" That, of course, was clear error and gave me a veto over any verdict. No matter what happened, as long as I did not put Kmetz on the stand, I could not lose an appeal. That became a very relaxing moment for me. [Laughter] I did

put a priest on the stand as a character witness, and Kmetz's six children and his wife sat in the front row at trial.

The other lawyer in the courtroom was Plato Cacheris, now a famous Washington lawyer who has represented most of the spies charged in recent memory.

Ms. Feigin: Was he not also involved with the Monica Lewinsky matter?

Mr. Aldock: Yes, Plato Cacheris and Jake Stein represented Monica Lewinsky. Plato and Jake are terrific lawyers who have had many great cases. Plato is older than I am, so he was a more seasoned lawyer in the courtroom than I was in my first year of private practice out of the US Attorney's Office. Plato's client was Secretary-Treasurer Lewis. Seeing the result I got, Plato said, "My client is not taking the stand either." In open court, Lewis said, "I don't care if you are my lawyer, I am taking the stand." We tried to convince Lewis not to take the stand, but he maintained that he knew what he was doing.

Lewis had lost one leg in a mine accident. Lewis took the stand and no matter what the question was, his answer was, "I lost my leg in the mine. Do you think I'm going to commit some stupid campaign finance crime? You're out of your mind." Lewis never would answer the questions, so Judge Richey finally said, "I order you to answer the question." Lewis turned to Richey and challenged, "What are you going to do? Put me in jail? I'm 88 years old. I lost my leg in the mine. I'm not answering the question. Hold me in contempt." The jury loved it. At the end of the trial in 1972, Kmetz was acquitted by the jury, so

we didn't have to deal with the appeal issue. Lewis also was acquitted. Boyle was convicted, which is all the government wanted anyway.

We had a good time. When you know you are going to win, a trial is a lot more fun. That was my second trial at the firm. I thought that if all my trials were going to be like that one, this would be a terrific career. Of course, they are not always like that. Usually, lawyers don't get such interesting cases. Many are cases that are company X versus company Y, and the question is who is going to pay what to whom. Those cases are less exciting.

The cases I will talk about here are not those kinds of cases; I will describe only the interesting ones.

Ms. Feigin: Before we talk about some of your other cases, I want to get a sense of what it was like. How hard did people work in those days? What was it like to be a young associate? Were there billable hours and were there bonuses? How was it structured in terms of your work life?

Mr. Aldock: There was no billable hours problem. That was created much later by Steven Brill who, at the time, was the editor of one of the national legal publications. Brill figured out that among the articles that could sell was talk about profits per partner at law firms. No one ever had calculated or talked about the subject. As a young partner at Shea & Gardner, I did not know what the profits per partner were at the firm. In the early days, Frank Shea said, "You're making X," and I thanked him and consented, "OK, I'm making X." [Laughter]

But X was not a lot of money. For an associate it was $15,000 - $20,000 over the first few years, and the senior partners weren't making more than a few hundred thousand dollars. But the profits-per-partner focus caused law firms to worry about how they were doing relative to other firms. Also, Frank Shea used to send many of the bills "for services rendered." The client was in touch with us every day, cognizant of what we were doing, and aware of who was doing what. At the beginning, we did not fill out time sheets; we didn't keep track of our hours. We knew what we had to do and worked very hard when we were approaching trial or had two summary judgment motions due at the same time. Keeping billable hours up and being seen in the office weren't issues, but they became unfortunate trends in the law during the 1990s.

The focus on the billable hours became an issue when New York firms upped the starting salaries for associates to over $100,000. That caused the law firms to ask, "What are we getting for this?" The result was a requirement that associates bill a certain number of hours per year. The associate pay jump resulted when a New York firm which worked its associates around the clock was unable to get quality new hires. They could have said "no," but Washington firms with New York offices yielded, one DC office of a California-based firm proceeded, then Covington & Burling caved, and Shea & Gardner was forced to follow. Shea & Gardner was not setting pay scales, but we thought we had to pay the market rate in order to compete for the best graduates. All of a sudden, there was a huge jump. The associates figured out that the pay raise was going to come

with pressure to work harder. Some lawyers would have made the trade for more leisure time, but most firms felt they had to meet the market.

I worked hardest as an AUSA, more so than in private practice because, in the US Attorney's Office, I tried one case a week with long hours and no staff. As soon as I walked out of the courtroom, I had to begin preparations for my next trial. I always was working but I loved it. In my spare time, I was comparing notes, sharing war stories, and enjoying beers with the other AUSAs. I was excited to learn a new craft. An advantage of private practice was the ability to better manage my time, particularly if I did not take up golf.

As a business matter I knew taking up golf was the right decision but, after observing friends, it seemed with a five-day work week and golf on the weekends there wasn't a lot of family time. For that reason, and the fact that I probably wouldn't have been any good at golf, I did not pursue it. I generally succeeded in spending every Saturday and Sunday with my family. I coached my younger daughter's softball teams for years, and she eventually played on the varsity in college; my older daughter was a member of her high school debate team. If one of the girls' events was held in the middle of the day, I did my best to attend. I don't think my children felt short-changed by lack of family time, or their father's absence during their formative years, and I am pleased with that. Many people look back and say, "I should have spent more time with my wife and children or taken more family vacations." I don't have any regrets on that score.

Ms. Feigin: One other thing about how life was in that era before billable hours were instituted, were there bonuses? Is that something that was involved in the beginning or was that later?

Mr. Aldock: That came later. I don't think we got bonuses as associates. I remember at one point saying, "Frank, I thought the deal was that I would make partner in two years, and it's time." He responded, "Thanks for reminding me. I guess I have to think about that." [Laughter] Around that time I had prevailed in a case that was of no consequence, except that it was for General Electric, and GE was a favored client. I was trying the case with a young associate. Frank Shea was nervous that I was going to wreck the relationship with the client, particularly since GE thought it was going to lose. I tried it in the Eastern District of Virginia, and we won. As a result, Frank was prepared to make me a partner and give me a bonus.

To finish the Scanlan story, eventually the governor appointed him to the Court of Special Appeals in Maryland. I recall Al calling me one month into the job saying, "John, I want your advice. How bad would it look to resign only one month into the judgeship?" I responded, "Al, you can't do that. It's a big deal. At least finish the year." Al said, "I'll have to jump out a window. There's nobody to talk to; it's just me and my law clerk. I don't think it's going to work, but I will think about it." He waited four months and resigned.

Ms. Feigin: Did he come back to the firm?

Mr. Aldock: He did. We called him judge after that. So the experience had a perk. [Laughter] Al hated being an appellate judge. I think I probably would have had the same

reaction. I was probably more of an academic and scholar of the law than Al but not enough to cloister myself and do nothing else.

Ms. Feigin: Do you want to talk about some of your other cases in those early years? You became a partner in 1974 I guess? Would that be the timeframe? Or maybe 1975?

Mr. Aldock: 1975.

Ms. Feigin: Soon after your first child was born.

Mr. Aldock: Yes. I will say one other thing with hindsight. We did not go into the law to make money. The idea that we'd ever make much more than $100,000 was considered unrealistic. It was the doctors and, of course, the investment bankers that made that kind of money. And the notion that a lawyer could make several million a year was not conceivable. The fact that many DC lawyers in private practice make over a million dollars is a very recent phenomenon, starting after 2001. By those of my generation, such paychecks were neither anticipated nor sought. They just happened. Now, I'm not so sure what people's expectations are when they go into law practice.

Ms. Feigin: You were at Shea & Gardner three years when you became a partner. But when you entered you thought you'd be at the firm only three or four years.

Mr. Aldock: Yes, it never occurred to me that I would stay.

Ms. Feigin: Was there a pivotal moment, an "aha" moment when you realized you were going to be staying at the firm? How did that come to be?

Mr. Aldock: There was a period a little later when Stuart Eizenstat, whom I had worked with in the Humphrey campaign, called me from Georgia and said, "I've got a presidential candidate and we could win. Why don't we do this again?"

Ms. Feigin: This is 1976?

Mr. Aldock: Yes, in 1976. I said, "You work for an Atlanta law firm, Stuart, but I'm not going to waste my time. That guy from Georgia couldn't possibly get elected."

Ms. Feigin: We should just make this clear on the record that he's talking about Jimmy Carter.

Mr. Aldock: Jimmy Carter. [Laughter] I think when I bought my second house I probably was addicted to law practice income. Judy and I bought a house in her old neighborhood in Mohican Hills in 1972. Then in 1978, when my second daughter, Stephanie, was born, we moved to another house in Glen Echo Heights. Washington, DC, is a colonial city, and we always had wanted to live in a modern house. We found the perfect house, but it was an excruciatingly difficult search. The architect was Hugh Newell Jacobson. I remember walking through the house with the prior owners, and Judy was gushing. The price was rising with every favorable remark. [Laughter] I said, "I don't know. The flat roof probably leaks. It doesn't look good to me." [Laughter] When we walked out, Judy asked,

"What were you talking about? You didn't like it?" I said, "I loved it, but you just doubled the price." We paid over $300,000 for this glass house in the woods.

Ms. Feigin: Let's make clear that that was a huge amount of money in those days.

Mr. Aldock: I was making something like $50,000, certainly not $100,000. I recall my father saying, "Buying this house is the most irresponsible decision you've ever made in your life. You can't afford that mortgage. It's going to cost you every cent you have. You shouldn't do it." But we did. We had a house warming party, and I remember one of my partners, Bob Basseches, remarking, "This is a very nice house. I hope we can help you pay for it." [Laughter] Since I had a large mortgage, public service would have been an adjustment. Still, I was prepared to leave for the right opportunity. But eventually I got to a point in the profession, which I probably achieved in the Clinton years, that the Assistant Attorneys General were people I'd worked with and known. Was I going to work for them? Certainly, I would have taken the position as US Attorney for District of Columbia at any time, even today. And nobody turns down the position of Attorney General of the United States. But I wasn't given those jobs. The jobs that were proposed were not tempting. It also happened that my party was out of power in my younger years when I would have been offered interesting government positions that I would have considered. When the Democratic Party finally came back into power (having missed the Carter years), it was the Clinton presidency. By then I thought it was too late.

Ms. Feigin: Were you active in politics?

Mr. Aldock: Not in the way that I had been in the Humphrey campaign, although I am very interested in politics. I never again worked for a presidential candidate. I contributed money to Obama, but I wasn't in a position to raise money in the early years. The people I knew were in a similar income bracket, and we didn't have a lot of money to spare. I thought about being an advance man for Clinton, but decided I'd be away from home too much at a pivotal time. An advance man was a great job, one of the best in a political campaign. I'm not sure how it is today, but in those days you'd meet with the local elected officials and check what the local issues were and who was going to be in the audience, so the candidate could say, "Hi." It was a very heady experience for a young lawyer, but it was full-time. With hindsight, I probably would have enjoyed a five-year stint in government, but it didn't happen.

Ms. Feigin: You had some peripheral semi-government involvement with independent counsel. Do you want to tell us a little about that?

Mr. Aldock: There always are public issue matters an attorney can do in Washington while in private practice. That makes the private practice of law in Washington more interesting than in other cities. In New York, they are fighting about money. In Washington a lawyer can get involved in public issues that go to the courts. I've been involved with several events that were covered on the front page of the newspaper and then made into movies. In that respect, Washington law practice is unique.

One example was serving as independent counsel. The independent counsel law, that fortunately has been eliminated, allowed a president to appoint a lawyer to investigate persons when the perception was that the Department of Justice had a conflict of interest. In 1984, Jake Stein was appointed to investigate Reagan's Attorney General Edwin Meese. Jake was one of the first people appointed under that Act. Meese had given jobs to his friends who had loaned him money. The question was whether it was a quid pro quo. Jake called me just after the investigation started and said, "I have these young guys working for me, and they are ambitious. They're doing a great job, but I'm afraid they're not going to end it. My view is this is not a lifetime appointment. It is an appointment to make a prosecutorial decision, up or down. Meese either did it or he didn't. I want you to end it and get out our report."

Jake made the decision that, while Meese was insensitive about the blatant conflict in having these officeholders loan him money, there was no payoff. I agreed as did the rest of the staff. Under the then law, we had to write a report, which was a bad idea. Jake was convinced that it had to be done in six months. We all did this work while still at our law firms. I recall that one grand juror asked why we couldn't indict, because Meese was a bad Attorney General. We reviewed all the prior Attorneys General, and Meese turned out to be average. Since 1920, a significant number of prior Attorneys General had been indicted. There weren't many whom you could say, "There's a great Attorney General." It was actually a pretty mediocre group of lawyers, by and large, and Meese was no worse than average.

I did other such things during my law practice. Late in the Clinton administration, a big case against the tobacco industry was brought before Judge Gladys Kessler of the US District Court for DC. I was offered the opportunity to stay at the firm and try it. I was tempted but quickly determined that I would be involved in years of discovery against 16 government agencies, and that was not going to be fun. When I asked how many people I could bring from the law firm to help me, the answer was none. I would be required to use the DOJ team. That didn't sound good to me, so I turned down the case. With hindsight, even though the case was tried, I was happy not to be involved. I also think it is a bad practice to bring in outside lawyers to try high-profile government cases – it must be demoralizing to the career lawyers and will discourage the best lawyers from staying in government.

Ms. Feigin: Let me go back to one thing you said about independent counsel, or maybe it was special prosecutor in those days. You said you thought one of the bad things about the Act was that you had to write a report. Do you want to explain?

Mr. Aldock: The prosecutor should not be able to not indict and then write a report saying the man is a miserable person and he is guilty, but we could not find sufficient evidence to prove it. That is an outrage, but several reports of independent counsel have come close to doing that. I also have appeared before independent counsel representing one of the targets and felt that the independent counsel abused his power. In those situations, there was no accountability. And some independent counsel stayed in office for years. They would investigate one issue, then they'd investigate something else that would lead to something else . It was

like a roving ombudsman. Jake's view, which I share, is that, if we thought we saw another crime, we would refer it to the Department of Justice. We weren't supposed to investigate beyond our original charter. I think that the law was bad, so I was pleased to see it go. We have a Department of Justice. People who have conflicts usually recuse themselves and, if they don't, there is political accountability for that.

Ms. Feigin: Back to some big cases that you tried. I think we have time to discuss one more. I know you had a series in the Carter years.

Mr. Aldock: My first big case involved a case that the SEC brought against Colonel E.C. Harwood, a West Point graduate who saw himself as an economist, although his formal training was as an engineer. Harwood bought an old mansion at a foreclosure sale in Great Barrington, Massachusetts. It was a huge place on many acres. The Colonel started an organization called the American Institute for Economic Research (AIER), which still exists today in Great Barrington. In those days, AIER held some non-mainstream economic views. Today, it might be considered mainstream conservative economics. It was free-enterprise focused and emphasized gold-backed investments as reliable and inflation-proof. AIER believed that the government shouldn't be allowed to create money. The Institute published lots of materials, and Harwood began creating vehicles for investment. Starting in the 1970s, Colonel Harwood ended up with hundreds of millions under investments.

Ms. Feigin: In gold?

Mr. Aldock: The investors invested in gold bullion, gold coins, gold-backed annuities, and South African gold stocks. Some of the investments in gold may have preceded 1973 when gold was pegged at $35 an ounce and US citizens couldn't buy it, so Harwood bought gold through trusts. He started a Swiss corporation called the Progress Foundation, which eventually was to become a university. AIER and Progress Foundation had endowments. Colonel Harwood drafted all the contracts himself without involving lawyers.

Ms. Feigin: And he wasn't a lawyer?

Mr. Aldock: The Colonel wasn't a lawyer. The SEC thought it was a Ponzi scheme, saw Harwood as the Madoff of his day, and brought the case before Judge Gerhard Gesell in the US District Court for DC. Gesell was a legend, terrific judge, and former chair of Covington & Burling. The judge ordered all the Harwood-related assets to be brought back to the United States from Switzerland. The Swiss Credit Bank argued bank secrecy, but Gesell ignored them and even threatened to seize the bank if they did not cooperate. Although I thought the bank should have appealed, it caved. That was the beginning of the end of Swiss bank secrecy. What we are seeing now in the UBS cases is the last gasp. The SEC breached the wall of bank secrecy in the Swiss Credit case. The SEC was riding high and insisted on the power to appoint a whole new board of trustees for AIER, which was a charitable foundation. The SEC interviewed prospective trustees who were largely free-market-oriented academics. The new Board needed a lawyer, and Colonel Harwood's lawyer recommended me. The Colonel left the United States for Bermuda.

His lawyers, Judd Best and Bob Higgins, convinced the new Board it ought to have a lawyer. The Board came to the view that they didn't like what they had agreed to do: liquidate all the funds. The investors had not lost any money, so the new Board came to me and asked if I would represent them. Initially, my reaction was, "It's a little late. You signed this Consent Decree. You are liquidating all the assets. What can I do for you?" After I looked into it further, I thought we might prevail and limit the liquidation. AIER litigated against the SEC for four years. There was an international audit that showed nobody had lost any money. The investors, who were not Wall Street types but small investors who believed in Harwood, had profits of 500% to 5,000%. They all were old at this point, many in their eighties.

At the culminating court hearing, I brought a group of the investors into the courtroom. They each told their story and then stated, "If you liquidate my investment, I will have a tax problem and will not be able to pay." The judge held that these investments were unregistered securities. Harwood had violated the law, but nobody had lost anything. The Colonel had not taken any money. The SEC lawyer said, "These people have been brainwashed. It's outrageous. This is a charade that Mr. Aldock has put on." Judge Gesell said, "Well, so have I." [Laughter] "And you'd better settle with Mr. Aldock right now, or you've lost your case." So the SEC and AIER agreed that there would be a withdrawal offer to the investors but not a forced liquidation. The investors could take their money out or leave it in the funds. The fund purported to be a "pooled income fund," but for a pooled income fund you needed to have IRS approval, and the

Colonel didn't have that approval. We agreed with the SEC that the AIER funds would not seek further contributions unless and until they received IRS approval. Maybe 15% of the investors took their money out; the rest stayed in the funds. We litigated with the IRS and won. The American Institute for Economic Research has a research staff and is publishing today. It is a significant institution in the free-enterprise, hard-money world. AIER is more mainstream these days than it was in the 1970s, but its views have not changed. I continue to represent AIER, although it has no significant legal issues today and is a small client.

The Progress Foundation on the Swiss side was a smaller version of AIER. The Swiss Banking Commission (Switzerland's SEC) had appointed a Swiss fiduciary company/banker, Marcel Studer, to head the Progress Foundation. I met him with one of the investors, Sidney Rose, and we told him, "You don't need to liquidate this group." Studer agreed and said, "Let's fight." So the settlement with the SEC was that Progress Foundation would be a closed-end fund. The Foundation could keep all the investments, subject to a withdrawal offer like AIER had done in the United States. That closed-end fund became the endowment for the Progress Foundation. Today, the Foundation holds two economic conferences annually at a Zurich hotel which are open to the public at no cost. The conference format usually involves one US speaker and one European speaker – sometimes Nobel laureates – on a public issue, often an economic-related issue, although not necessarily. Progress Foundation also runs workshops which are attended by academics and public figures, and it publishes books.

As far as the Board was concerned, I was the lawyer for life even if we didn't have any further legal problems. It was determined that I should attend every meeting, and they would pay for business-class tickets for my wife and me to go to Switzerland twice a year. The Board later decided it would be cheaper for the Foundation to put me on the Board. The Trustees have become good friends. At the time of 9/11 Marcel Studer, the Chairman of the Board, and his wife telephoned because they had heard Washington was being evacuated and invited us to stay with them. That is the kind of loyalty and relationship with a client that is probably not possible today. It is an exception because it's a private, nonpublic, foreign corporation. This is as rewarding a legal relationship as one can have. I represented them thirty years ago and I represent them today, yet I do virtually nothing for them except to help them find appropriate speakers for economic conferences. Progress Foundation is my all-time favorite client.

Ms. Feigin: Was Colonel Harwood a military colonel or was that an honorary title?

Mr. Aldock: Harwood was a West Point graduate. He corresponded at length with John Maynard Keynes. The letters that they exchanged are very interesting. The Colonel was much closer to the Hayek or Milton Friedman school of economics than to the Keynesians, probably the two major schools of economic thought today.

Ms. Feigin: You were obviously thoroughly immersed in the economic issues. Is that because of your earlier training or is that something that you learned with this client?

Mr. Aldock: I learned a lot about economic theory and investing in gold with this client. My interest in economics and business is part of my interest in public affairs which I've always had. My father told me, "You ought to pay attention to what's going on out there, son," and I did.

Ms. Feigin: [Laughter] Well, that's perhaps a good stopping point for today, unless there is anything you want to add about what we have discussed? No? Thank you very much.

Mr. Aldock: Thank you.