ORAL HISTORY OF
JOHN ALDOCK
Sixth Interview
May 26, 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 26, 2010. This is the sixth interview.

Ms. Feigin: Good afternoon.

Mr. Aldock: Good afternoon.

Ms. Feigin: When we left off you were doing litigation for law firms, which I know is something that is ongoing. But you also had an incredibly explosive case that made not only the newspapers but also Hollywood. Could you tell us please about the tobacco litigation?

Mr. Aldock: Yes. The setting starts out a little like this. Jeffrey Wigand was the former director of research at Brown & Williamson Tobacco Co. At some point in the mid-1990s, he began secretly cooperating with the Food and Drug Administration and a federal grand jury investigating tobacco. Wigand was persuaded to go on the television show "60 Minutes" and tell his story, but he insisted on indemnification. Wigand was confident Brown & Williamson would sue him for breach of confidentiality agreements if he went on "60 Minutes." The reporter for "60 Minutes" agreed that Wigand would be indemnified for counsel fees as well as damages from any lawsuits by his employer.

Ms. Feigin: This was Mike Wallace?

Mr. Aldock: It was Mike Wallace's show, but the reporter, Lowell Bergman, not Mike Wallace, made the commitment. It seemed clear later that the indemnity was never approved by CBS at higher levels. Wigand appeared on the show and told his story. Basically, Wigand said that the tobacco CEOs had lied to Congress, that the nicotine in the cigarettes was meant to addict people at young ages, and that everybody knew that was the purpose. Wigand also said that there were other harmful things in the cigarettes like arsenic and that the so-called "safe cigarette" was a marketing fiction. Wigand's narrative was explosive. It aired first on "60 Minutes" in November 1995 in an edited version and again unedited in February 1996. Brown & Williamson put out a 500-page dossier to try to smear Wigand. The effort backfired when *The Wall Street Journal* showed that the facts in the dossier did not stand up. Predictably, Wigand was sued by Brown & Williamson for breach of the confidentiality provisions of his employment agreements. At the same time, there were major lawsuits filed on behalf of states' attorneys general, led by Mike Moore, who was the Attorney General of Mississippi, against the major tobacco companies in courts all over the country.

Wigand came to be represented in the states' attorneys general litigation by Richard "Dickie" Scruggs of Mississippi. Scruggs was then a very prominent plaintiffs lawyer who since has had legal problems of his own. Lowell Bergman of CBS had introduced Wigand to Scruggs. According to Scruggs, CBS told him, "We hate this indemnity and never would have agreed to it, but our reporter did, so we are bound by it. However, we'll be damned if we are going to be represented by some plaintiffs' firm." Every time Scruggs gave CBS the name of

a proposed lawyer to represent Wigand, CBS said, "No." Basically, CBS and Scruggs had reached an impasse, while the litigation in Louisville state court against Dr. Wigand was moving ahead. Indeed, the judge had issued a bench warrant for Wigand's arrest, because he had not shown up for his deposition. Wigand hadn't appeared at his deposition, because he did not have a lawyer.

Wigand was teaching science in a local Louisville high school at that point, because he couldn't get another job. The high school principal took some heat for hiring Wigand, but she thought he was doing something important and was prepared to take the risk. Scruggs was therefore under pressure to find a lawyer whom CBS would accept. CBS likely was feeling some pressure, too. Scruggs then proposed to CBS that Wigand be represented by me. I had litigated against Scruggs for twenty years in the asbestos litigation. I knew him professionally, but I always had been on the other side. We had mutual respect for each other to the extent that adversaries do in contested litigation. Basically, Scruggs told CBS, "If I have to have a defense attorney, Aldock's a son of a bitch defense attorney, but he's one I get along with." [Laughter] CBS said, "Fine," [laughter] essentially instructing me to do what I had to do but not to spend too much money doing it.

Because Wigand was about to get arrested on a bench warrant, I immediately flew to Louisville. We had talked on the telephone, but I never had met him. In my view, Wigand had to agree to retain us, notwithstanding the CBS agreement on who was going to pay. Wigand had a right to retain his own lawyer and agreed to our representation. I was working with a colleague, Laura

Wertheimer, a terrific lawyer who these days is a securities lawyer at WilmerHale in DC. We flew down for a court hearing on Wigand's contempt. Since we were out-of-state counsel, the first issue was our admission *pro hac vice*. Generally, that is a motion that is hard to lose, but this one had potential. [Laughter] We were moved in, and immediately the lawyers for Brown & Williamson objected. The argument essentially was as follows: "Aldock is coming in at the last hour. Nothing good can come of it but delay. They will want to prepare. Wigand has been in contempt. We should dispense with this motion. Wigand doesn't need a lawyer. We should proceed." The arguments were being made by out-of-state law firms representing Brown & Williamson which was quite remarkable: [Laughter] Chadbourne from New York and King & Spalding from Georgia. A host of law firms in the courtroom were representing Brown & Williamson. However, we were not wholly unprepared. Since we had heard troubling things about the state judge, we had arranged to have with us the Justice Department attorney in charge of the federal grand jury before which Wigand was the main cooperating witness. The judge said, "The motion is denied for *pro hac vice*. Mr. Aldock will not be admitted."

There were prisoners in the courtroom wearing handcuffs and yellow and orange vests. It wasn't clear to me whether Wigand and/or I was going to be put in one of those vests, but it didn't look good. [Laughter] The Justice Department lawyer introduced herself and asked to see the judge in chambers. I wasn't invited, but the DOJ attorney told me she proceeded to tell the judge that Jeffrey Wigand was a significant witness in a major grand jury proceeding, that

he was very important to the Department of Justice, and that they would be most appreciative if Wigand was allowed to have a lawyer. The judge said, "Well, if you insist." [Laughter] He came out of chambers and reversed himself on the record.

This litigation was very contentious, so much so that the trial judge later said, "Since you guys can't agree on anything, I'm going to appoint a former judge to sit through every deposition and rule on objections, because otherwise you are going to bother me all the time." That was actually a terrific development for us, because the former trial judge was a good judge who was not influenced by the tobacco politics of Louisville. I wasn't going to win anything before the judge who had denied my *pro hac* motion. After a lot of briefing, a number of hearings, and written discovery, we proceeded to the main event, Dr. Wigand's deposition. It was going to be held in the Brown & Williamson building, and the logistics became contentious. It was being videotaped. There were ashtrays everywhere in the building. At the outset, the Chadbourne people started smoking in the deposition, and we said that we would not participate if they smoked. The judge at the hearing ruled that they could not smoke in the deposition.

Then we observed that there were extra wires going out of the room, and we requested designation on the record of anybody who was participating in the deposition but had not signed in. It turned out that there was a room full of people who hadn't signed in and a feed to another floor in the building that they had in mind giving to the press while serving drinks and hors d'oeuvres. The

judge agreed with us that that wasn't a good idea. He required everyone in the adjoining room with the video feed to sign in and ruled that a feed could not go live to the press; a tape could be given to the press in the building at the end of each day.

We continued with the deposition. It was very contentious and lasted for weeks. There was an objection and a ruling on nearly every question. Wigand was not the best witness for himself, notwithstanding substantial preparation. There are some witnesses who, no matter how much you prepare them, are not going to be great. And there are others who are great whether they are prepared or not. Wigand was the kind of witness who didn't like to answer, "I don't know" or "I don't remember"; that was not good because there were things he didn't know and he didn't remember. If a witness makes up the answer, he/she will get in trouble. As a result, the deposition was even more difficult because of Wigand.

At the conclusion of each day, Brown & Williamson held a press conference with the press members they had wined and dined in the building. I asked for equal time. The response was, "No, of course not, this is our building." So each day I would walk out of the building to talk to the press, because they wanted to hear both sides of the story. The press loves controversy, and this event was filled with controversy. Scruggs was in the deposition with us, because he was counsel for Wigand in the Mississippi tobacco case. Some of the other key lawyers were in town, although they did not come to the deposition. They included Ron Motley of the Ness Motley firm in Charleston, South Carolina, maybe at the time the most prominent of the national asbestos lawyers. Motley

and his partner, Joe Rice, were among the architects of the tobacco litigation, and they were involved in the state cases throughout the country. They also were leaders, along with Scruggs, of the group representing Mike Moore and the other states' attorneys general.

Motley was a showman and thus a favorite with the media. When I walked outside every day, the first thing that would happen as the cameras began to roll was that a cute little girl with an American Cancer Society banner would hand Dr. Wigand a flower. This was arranged by Motley. After the first couple of days, the press occasionally would say something to the effect that "we heard from Brown & Williamson that it didn't go well for Dr. Wigand in the deposition today" or "didn't Dr. Wigand equivocate when he answered the questions about X?" As I was about to respond, Ron Motley would appear and say, "John, I'll respond to that question." Motley then would proceed to tell the press that Brown & Williamson didn't lay a hand on Wigand, that Wigand blew them away, that Wigand couldn't have been better, and that Brown & Williamson had misinterpreted whatever colloquy they had inquired about. Of course, Motley had not been at the deposition and had not seen the tape, [laughter] but in the following day's papers, Motley would be quoted. It proceeded that way throughout the deposition which lasted several weeks.

Lots of odd things occurred while we were in Louisville, as a result of which we became quite paranoid. Papers and even brief cases disappeared. There was reason to believe that phone calls were being intercepted, etc. We

couldn't prove anything, but it all seemed like something out of a Grisham novel. It was pretty rough.

The hierarchy in Louisville and the editorial board of the newspapers seemed to be against us. However, as we walked from our hotel to the deposition, the people on the street and the waitresses in the restaurants where we ate at night all made encouraging remarks and patted Wigand on the back. He was a hero to many of the working people in town.

While our case was moving slowly, the states' attorneys general cases were proceeding at a fast pace. At some point, national settlement discussions began between the tobacco industry and the states' attorneys general. They were held in a Washington, DC, hotel. It was a mob scene. Half of the plaintiffs' bar attended, and the tobacco companies had dozens of lawyers running around the city. Laura and I were invited, because the issue of what was going to happen to Wigand and the Brown & Williamson lawsuit was on the negotiating table. We were asked to draft a provision of the settlement and, ultimately, a piece of legislation entitled the Whistleblower Protection Act.

At some point, Brown & Williamson announced that they were not giving up on their pursuit of Wigand, who to them had breached signed secrecy agreements. This part I know only secondhand because I wasn't in the room when it happened, but I was informed by Scruggs, Motley, and others: Apparently, Mike Moore responded to the Brown & Williamson position by saying, "If you are not going to dismiss the case against Wigand, we are walking

out of here. It is not our practice to 'end a war and leave our soldiers on the beach.'" All of the states' attorneys general then walked out of the negotiations. Subsequently, I was told that Philip Morris and others said to Brown & Williamson, "We're not going to lose this settlement, because you have a vendetta against Wigand. Get with the program." Negotiations resumed, the multibillion dollar settlement between the tobacco companies and the states' attorneys general was agreed to, and specific provisions provided that Wigand was basically free to speak. Ultimately, the plaintiffs' bar got Wigand a job as a professor at the University of South Carolina, and Wigand also became a consultant for the United Nations on tobacco policy. I have not seen Wigand in many years.

There was an interesting second act to the Wigand lawsuit. Michael Mann and Disney decided to make a movie, starring Russell Crowe as Wigand and Al Pacino as Bergman. Christopher Plummer played Mike Wallace. It is a great legal movie. Mike Moore and Dickie Scruggs played themselves. Ron Motley was upset that he didn't play himself and kept saying, "Everybody else got Russell Crowe and Al Pacino, and I got some fat guy." [Laughter] The amazing thing about Russell Crowe, then 33 playing Wigand then in his 50s, was that he went to every effort to look like Wigand. Crowe put on 35 pounds for the role, shaved back his hairline, bleached his hair seven times, and endured a daily application of wrinkles applied to his skin. Crowe adopted twitches and mannerisms that Wigand had. When I saw the movie, and indeed when Wigand saw it, we couldn't be sure Crowe wasn't him. It was a remarkable performance.

There was no reason for Crowe to go to this trouble. He was not playing John Kennedy or any other well-known person. Crowe was playing somebody the public never had seen. For Russell Crowe it was artistic integrity; he was going to be Wigand regardless.

We had negotiated a contract for Wigand with Disney. We didn't get as much money as Wigand wanted, but we got more than Disney wanted to pay. Disney's threat was that they did not have to call the character Jeffrey Wigand, because that was not central to the movie, but they preferred to use the Wigand name and paid something for it.

Ms. Feigin: Did anybody play you?

Mr. Aldock: No, because Laura, our team, and I came on the scene at the point when the movie ended. The movie did not take the story all the way to its conclusion.

We took all the law firm's summer associates to the DC movie opening in 1999, followed by hors d'oeuvres and drinks at DC Coast. It was great fun. This was a Hollywood opening and there aren't so many such openings in Washington. All the players came, including many of the actors. It was an unusual Washington event.

The movie had another interesting aspect. There was a part where Wigand had alleged that he had received death threats on his computer, and the implication of the movie was that they were probably from Brown & Williamson. Brown & Williamson's position was that Wigand sent the death threats to

himself. Brown & Williamson had had discussions with the FBI in Louisville and, in their view, the FBI local office suspected Wigand. As a result, Brown & Williamson threatened a libel suit against Disney over the movie.

We did our own investigation. We had a forensic expert in computers who purported to be able to tell – not the way fingerprints and certainly not the way handwriting work – based on an examination of the hard drive whether somebody was the likely author of a computer text. This expert had terrific credentials, including work for the FBI. Our expert was prepared to testify that the author of the death threats was not Wigand. While we did not believe the threats came from Brown & Williamson, we thought they came from persons whose allegiance was closer to Brown & Williamson than to Wigand. We were hoping that Brown & Williamson would sue Disney. Unfortunately, the libel suit never was filed.

The film was nominated in 2000 for seven Academy Awards, but won none. Nevertheless, it was and remains a great movie. Brown & Williamson did pay for a full-page in the *Wall Street Journal* to counter promotion of the film and had representatives at screenings in eight cities handing out cards asking patrons to call its toll-free number for "the real facts."

I would not have been in a position to represent Wigand without an indemnity from a company like CBS. We would not have funded a whistleblower action against a major corporation. As a result, the representation of Wigand was an anomaly in my practice. Subsequently, I got a couple of calls from other

whistleblowers, but this was generally not a practice a corporate law firm wanted to undertake.

Subsequent to the Wigand case, I did get a call from Mark Whittaker's representative. Mr. Whittaker was the Archer Daniels Midland informant who was the subject of a book and another movie called *The Informant* with an equally illustrious cast. Matt Damon played Whittaker. When I got the inquiry, I determined that I would have been the fourth or fifth lawyer for Whittaker, there was nobody to pay Whittaker's fees, Whittaker had several pending lawsuits against him, and Whittaker had a history of not telling his lawyers the truth. I turned down the representation, and that was the end of my career representing whistleblowers.

Ms. Feigin: Do you have any opinions about the whistleblower statutes as a result of this foray?

Mr. Aldock: I'm torn. I think whistleblowers on the one hand often divulge information that affects public policy in a positive way. On the other hand, whistleblowers almost always are violating their contractual agreements. Also, whistleblowers are often flawed people in some respects. Whistleblowers usually do not "blow the whistle" at the first opportunity. Often, whistleblowers like Wigand participate for years in the activity that they later challenge. Frequently, their motives are suspect. Are they speaking because they were fired or have a grudge against their employer? Are they coming out because their conscience bothered them? Are they emerging for the notoriety or money? After whistleblowers have had their

"day of fame," they often go into decline. They become persona non grata in the business world. For example, Daniel Ellsberg seems to have had a lot of money and was taken care of, but Jeffrey Wigand had no significant assets. Wigand's wife left him and made allegations about improper conduct with his children. He had all kinds of personal problems. To their credit, the plaintiffs' bar tried to help Wigand by getting him an endowed professorship. I believe that Wigand was resentful that the lawyers got rich and he did not.

Ms. Feigin: You did your one whistleblower case. Time to remake yourself yet again. Where did you go from there?

Mr. Aldock: I became a nuclear lawyer. We were retained by Rockwell International. Rockwell had contracts at the nuclear facilities at Rocky Flats, Colorado (1975-1989). It also had managed facilities at Hanford, Washington, since the atom bomb. These facilities over the years were managed for the Department of Energy by Rockwell, whose predecessors included GE, DuPont, and others. At the beginning, the contractors managed these facilities for $1 per year as a contribution to the WWII effort. In subsequent years, however, the contractors were paid under contracts with the Department of Energy and sometimes in connection with the Department of Defense.

The problem developed that Rocky Flats particularly was located too close to urban Denver, and landowners don't like nuclear work in their neighborhoods. At some point, the plaintiffs' bar organized the landowners, and several class actions were filed alleging leaking barrels, poor maintenance, offsite plumes, and

resulting deteriorating land values. Also, class actions were filed by former workers alleging breathing problems and progressive disease. There also was a parallel criminal investigation going on at the same time.

In the civil law suits, I argued in the 10th Circuit that the workers' compensation law precluded the workers from suing. That was a relatively straightforward case, and we won. But the property owners' cases were tougher. The criminal case also was rough.

At one point in 1989, the FBI was planning to raid the Rocky Flats facility in the middle of the night to collect evidence. This was a bizarre proposition since it was a government facility, and the USG could have ordered preservation of whatever evidence they wanted. But it was even worse than bizarre. It was a dangerous proposition, because these facilities had guards armed with machine guns hired by the Department of Energy (DOE). An unannounced FBI night raid had the potential to result in a blood bath. Fortunately, someone figured this out and asked, "What are we doing?" [Laughter] It was a classic coordination problem of the USG connecting the dots.

Ms. Feigin: Were you involved in all aspects of this litigation?

Mr. Aldock: Yes.

Ms. Feigin: Just to back up a little bit, how did that come to be?

Mr. Aldock: My partner, Jim Woolsey, who at this point had not been CIA Director but had been Under Secretary of the Navy and also held other defense positions, had a

relationship with Rockwell and was asked to recommend a lawyer to handle this problem. I had had no prior dealings with Rockwell. We first were asked to second-guess another law firm who had said that Rockwell wasn't entitled to indemnification as a government contractor. Rockwell wanted a second opinion, and we concluded that there was a good argument for indemnification. As a result, we were retained on the civil and criminal matters, although Rockwell also had Colorado criminal lawyers.

The criminal investigation was difficult particularly because it is a basis for civil liability if there is a plea to the wrong criminal count. We were prepared to consider a corporate criminal plea, notwithstanding that we believed Rockwell hadn't done anything wrong, to bring closure to the matter, but only if we could plead to things that did not lead to civil liability. The USG wanted pleas from Rockwell executives. These were difficult negotiations. We also did not want to plead to things that would lead to debarment, because Rockwell was a large government contractor. That was a risk with any felony. We thought Rockwell had a good defense because everything Rockwell did – these were alleged environmental crimes – was done at the behest and with the knowledge of the USG officials supervising the contractors.

Rockwell's defense was that the USG refused to approve the contractors' expenditure of money to do the things the USG now alleged were required by the environmental statutes. We proffered that the government employees would support our position. The DOJ responded that, if that was the case, they would allege a conspiracy and simply indict the USG officials, too. Eventually, the DOJ

was persuaded to take a corporate plea that we felt would not cause us to incur civil liability or result in debarment.

Having put the criminal case behind us, we then embarked on getting the USG to agree to indemnify Rockwell. We argued that each of the contractors, DuPont, GE, Rockwell and others, had expensive law firms defending the civil cases. The legal fees for all these law firms were going to be staggering. Unless the USG agreed that the contractors would be indemnified, the contractors needed their own separate lawyers. If, however, the DOE agreed to indemnity for the contractors, they all could be defended by a single law firm. If the DOE picked one law firm to defend all of the contractors, they would save a fortune in legal fees. The Department of Energy eventually agreed. Unfortunately, they did not pick our law firm to defend the three contractors. They chose Kirkland and Ellis. Kirkland had told the USG that they were going to win the class actions. We had told the DOE that they should settle, and settlement at a reasonable number, particularly at this early stage in the cases, was available. The DOE said, "No, we're going to fight it." The litigation, including the related Hanford facility case that we will discuss in a moment, ended only within the last couple of years. The legal fees, paid by the US taxpayers, were staggering.

As I just mentioned, Rockwell had similar class actions against them at Hanford, Washington. We litigated those cases for some time. They involved the Price-Anderson Act, which was new to me. It was very interesting litigation, and our role in it continued for seven or eight years, a long interval before the indemnification agreements were reached.

There was one other interesting aspect of these cases. We had approached the DOD on behalf of Rockwell and made our presentation as to why Rockwell should not be debarred by the USG, notwithstanding its criminal plea. The DOD agreed. The DOD needed Rockwell for what it did for them, and what Rockwell had pled to was not so culpable as to compromise the integrity of the contractor. There is a standard, but the USG has a fair amount of discretion as to when to debar a contractor. Within days, I was called by some staffers to a Committee of the House of Representatives. They wanted to know "what improper influence did I bring to bear to keep Rockwell from being debarred."

Ms. Feigin: Was there testimony before a committee?

Mr. Aldock: We were called by the staff of a committee and were interviewed preparatory to actual testimony. They asked about campaign contributions and whether the law firm had a PAC, which we never did. They asked, "What did Rockwell do?" In the end, the public hearing didn't happen. In time the staff accepted that we acted as lawyers under established procedures and obtained a good result for our client. In some ways the inquiry was flattering, since the staff thought it inconceivable we could have achieved properly a no-debarment result. [Laughter] We made a good argument. That's what lawyers do. [Laughter]

There was one other unrelated Rockwell matter that might be worth mentioning, since it also was a quintessential Washington matter. A special prosecutor named Whitney North Seymour was appointed to investigate Michael Deaver, who at the time was a senior White House official in the Reagan

administration. Rockwell had hired Deaver for some public relations matter, and Seymour was investigating Deaver about it. Without getting into the facts, this was an example of a special prosecutor who abused his power. In my opinion, Seymour threatened to indict people if they didn't say things that he thought were true, whether or not the witness had any knowledge of the matter. Seymour actually threatened one of my associates, who was at his office delivering documents, if he didn't do something Seymour wanted. It was outrageous, because the man was a messenger. Eventually, Seymour backed off, but it was pretty rough and abusive enough to convince me that special prosecutors or independent counsel who are not accountable to the DOJ are a bad idea.

Ms. Feigin: Correct me if I'm wrong, but Seymour had been a president of the New York Bar and a U.S. Attorney.

Mr. Aldock: Yes, a major-domo with an ego to match.

Ms. Feigin: The legal fields we are discussing are so disparate, and the body of knowledge you have to develop for these cases seems to me staggering. How do you go about doing this? How do you become an expert on all of these matters?

Mr. Aldock: Actually, I don't think it's so difficult. I do not understand the overspecialization of today's legal world. We are trained to read statutes and cases. We don't have to have litigated ten cases under a statute to get on top of the issues that we need for a particular case. At times somebody new reading a statute is going to come up with a novel creative interpretation that is lost on others who have lived with the statute all their lives. It costs a few more dollars to hire somebody who never

has done a particular kind of case than the lawyer who does it every day but, in matters of great magnitude, cost shouldn't be determinative. It makes little difference if it takes a law firm a few weeks to get up to speed if litigation is going to last several years, but today many general counsels only want to hire the lawyer who previously has tried several related cases, even if that lawyer lost all the cases. Fortunately, I have been retained to handle matters that were new to me, because the client thought I was a good trial lawyer and would do that job well. This has allowed me to avoid specializing in particular substantive areas of the law. If my whole career was handling cases under the Price-Anderson Act or any particular statute, that would be a reason to consider shooting myself. [Laughter] Price-Anderson was interesting, but not fascinating. I think it is another example of why, if a lawyer can be a procedural specialist but a substantive generalist, he or she will have a more interesting career.

Ms. Feigin: Do you think it is harder in today's world?

Mr. Aldock: Yes, much harder. On the corporate side, if a lawyer is going to do a deal, the client wants somebody who has done six of those deals. In litigation, we have more freedom of action. If an attorney is going to do a "stock drop" case, a type of securities case, he or she will be pressed as to how many such cases have been handled. Companies should hire trial lawyers who they think will give them the best chance to win and not focus so much on how many such cases the lawyer has had during his career.

Ms. Feigin: Indeed. The Rockwell matters must have taken a couple of years at least to handle.

Mr. Aldock: Yes, it was a multiyear representation, I think as many as 8 to 10 years. At some point after the criminal plea and before we were fully indemnified and out of the civil cases, I moved on to newer matters and left the then mature litigation in the hands of my more capable partners who had assisted me from the beginning. Frankly, it was no longer interesting, and others could take it from there better than I could. There were three law firms defending the case and they, too, had excellent people. To me there was nothing creative left to do. We prepared the best motions, discerned what those arguments were, and identified the experts we needed. We knew that there would be a lot of discovery. It was preferable for the client and for the law firm and a more effective use of my time for me to find another client with a new matter. Since the conscious avoidance of boredom is my career goal [laughter], I looked for something different.

During this period there were, of course, lots of cases by one company against another for money. While there can be interesting strategic issues in these cases, the issues do not tend to be memorable so I will not discuss them here. The next memorable case was for Arthur Andersen.

Ms. Feigin: And how did that come about?

Mr. Aldock: I have a good friend, Andre Fogarasi, who was head of the Washington office of Arthur Andersen. Andre now is retired.

Ms. Feigin: We should say for people down the road that Arthur Andersen was a huge accounting firm that no longer exists.

Mr. Aldock: Yes, Arthur Andersen no longer exists, and that was the result of a miscarriage of justice by the DOJ. Andersen was charged with criminal misconduct. The DOJ's allegation was that a woman lawyer very low in the chain of command at the general counsel's office was alleged to have issued spoliation orders in a criminal investigation that the USG argued called for the destruction of evidence. All the documents were not collected and some were destroyed, although they all were available electronically. No evidence actually was lost. Ultimately, Andersen was indicted. The firm, by virtue of the indictment alone, was out of business, because no public company can have an accounting firm under indictment vouching for its financial statements. Seventy-five thousand Andersen people were out of a job. Most were hired by the three other accounting firms so what was being accomplished? The nation now had three accounting firms instead of four; all of the audited public clients of Andersen had to hire one of the other three to get up to speed again. When these arguments were made to the Department of Justice, the DOJ's position at the time was that they were not relevant. Not that they were outweighed by other considerations, but that they were not relevant. Subsequently, the Supreme Court overruled the conviction by a unanimous 9-0 decision, but this was many years after the liquidation of the company. Not the US Government's finest hour.

At the time, Andersen was, in my view, the best of the accounting firms. The problem Andersen brought to me was that Andersen hired first-rate tax

lawyers, in addition to CPAs. For many years, Andersen had a practice representing its clients before the US Tax Court. At some point, somebody filed a complaint alleging that these were lawyers working for a corporation and that was improper under DC ethics rules and the rules of the Tax Court. The argument was that a lawyer could not be working for a corporate business and sharing confidences and fees with non-lawyers under the ethics rules. We represented Andersen before the Tax Court, and the court indicated it had no interest in disqualifying the Andersen lawyers. As a result, our opponents, the tax lawyers at private firms, made efforts to get the state bars to address the general issue of alleged unauthorized practice of law by lawyers working for accounting firms. Complaints were filed all over the country before state bar groups, which is a not very hospitable forum. The complaints clearly were generated by law firms with tax practices that didn't want the competition.

Ms. Feigin: Was Andersen the only accounting firm that did this, or did the others?

Mr. Aldock: No, the actions were brought against the other three major accounting firms, too. Andersen had the most successful tax controversies practice and, therefore, with our assistance took the lead for the industry.

One notable unauthorized practice complaint resulted in a trip to Midland, Texas, to appear before a Texas state unauthorized practice of law committee. My then partner, Laura Wertheimer, worked on this matter with me. We were accompanied to Midland by the head of Andersen in Texas. When we arrived, there was a large room full of people, two-thirds of whom I estimate were not

lawyers. Among other things, Andersen was charged in the Texas complaint with writing wills. The issue was not the Tax Court practice, it was the general practice of law.

Midland was not my favorite venue. The previous night I wore a tie and walked into a bar. The noisy bar immediately became quiet as everyone started to stare. I ordered my drink and walked out. It did not look like my kind of place. [Laughter]

The next day we appeared at the hearing and put on a presentation. Our presentation as scripted was through the Andersen executive from Texas, a nonlawyer. He basically said, "Look, you've got three allegations of somebody writing a will. Two of them were for relatives or friends. If Arthur Andersen decided to be in the will business, we would write ten thousand wills, not just three. We don't do these one-off things. That is not our business model. It is not credible. And all this other work we do is not any more the practice of law than it is the practice of accounting. What is at stake here is whether the public is going to have lower prices. If we accountants can compete in the things that we do as accountants and that lawyers would prefer to do all by themselves, the public will be better off."

The lawyers who were leading this interrogation were getting madder and madder. But I could see there was restlessness in the audience. At the end, the Texas Committee asked for a break to caucus. The Texas Committee lawyers then came to us and said, "We're prepared to take a disposition that Andersen will

agree that it did the following things wrong and won't do them again, and then we'll move on." I had an instinct and a client who was willing to take some risk, so I said, "Let's say no. I don't think they have the votes. We can get a dismissal here. We don't have to agree to anything. Let's take our chances." The client saw it the same way, and we said, "No." The Texas Committee dismissed all the unauthorized practice allegations against Andersen and its lawyers. We were told later that the lay people on the committee saw the charges as an attempt by lawyers to maintain a monopoly on services that accountants equally are qualified to render. It was a complete vindication of our position.

We subsequently had a dozen or so of these unauthorized practice charges in other states, and we won them all. At that point, Andersen and the other accounting firms were trying to devise a model whereby their lawyers could render certain advisory services previously provided under the monopoly of law firm lawyers. Of course, my tax lawyer friends in private practice thought I was working for the devil in representing accounting firms.

We were asked by Andersen to gear up for a major public relations and regulatory effort to expand the role of accounting firms and other professionals in rendering services to the public. In August 1998, the president of the American Bar Association (ABA) appointed a twelve-person Commission on Multidisciplinary Practice. The Commission was charged with reporting to the ABA House of Delegates in 1999. On behalf of the then big five accounting firms, we prepared white papers, worked with public relations professionals, and prepared witnesses to testify before the ABA Commission. The Commission had

some good people on it, including Judge Paul Friedman of the US District Court for DC and Carolyn Lamm of White & Case, DC, and subsequently the first woman president of the ABA. Those were the local people, but it was a national commission of prominent ABA people. We did very well before the Commission, and its January 1999 report was quite balanced. We also were successful with the PR effort, and I think that things would have moved in a very different direction than they ultimately did if the Andersen criminal case had not intervened. There also were proceedings before the SEC on difficult independence issues involving the provision of certain accounting services to businesses that also were audit clients. It was an interesting public policy debate that did not make us very popular with law firm tax lawyers. Unfortunately, after the indictment of Andersen, it was over. There was going to be no more thinking about this subject for years to come.

Andersen also wanted to set up an integrated worldwide legal network of services to their worldwide clients and had gone a long way to accomplish that goal when the criminal case brought everything to a halt. They were prepared to have some captive and some independent law firms in every significant commercial country in the world. I was asked to work with them on that effort, particularly to address regulatory barriers and foster network integration. I traveled to Barcelona, Spain, to appear at a meeting of all these worldwide law firms to talk about how they were going to cross-sell, market, do knowledge management, and address the issues necessary to provide seamless services to worldwide clients. It was an interesting effort, and I was thinking this would be

fun. I would be going to world capitals to meet with different law firms and to advise them on working within the single Andersen network. This was the proverbial lunch in Paris. [Laughter] But it came to an end with the indictment of Andersen.

During this period I also represented Andersen in two securities law cases. One involved the bankruptcy of Criimi Mae, and we won it on a motion to dismiss, which is unusual in a securities case. It was a motion without argument, so I can't say that I did anything except edit a good brief written by others with my name on it. There was a second case involving Dynegy where there was a criminal proceeding, and we convinced the other side that suing their accountant was inconsistent with the position they wanted to be in and that the government needed our people as witnesses. So we made that case go away. That was a foray post-2000 into private securities law litigation, a field to which I have rarely returned and don't particularly miss, but it paid the bills. The other part of it, the interdisciplinary practice issues and the foreign network issues, were much more interesting.

Ms. Feigin: I sense some frustration with the Justice Department when you talk about some of these cases.

Mr. Aldock: Well, everybody who was in the Justice Department many years ago has the view that the Department was "fairer" or better in their day. Part of this is that they now are on the other side and part of it is a product of age: Every father and grandfather has a story about why it was harder in their day, even though I think it

really is more difficult now for young professionals. And part of it is true in the sense that there is greater pressure on prosecutors today to get convictions as opposed to "doing justice."

Ms. Feigin: We probably have time for one more case if you would like. Prudential?

Mr. Aldock: Prudential had been a good advisory client of Shea & Gardner for many years, but we never had done any litigation for them until about ten years ago. At that point, I convinced the then general counsel to give us a try, and ever since they have been a good litigation client. Currently, I have three or four putative class actions for Prudential. The in-house lawyers at Prudential are smart and hands-on.

One of the more interesting cases I had for Prudential was a RICO class action challenging the practice of Prudential and the rest of the managed care industry. The cases were consolidated in the Southern District of Florida and were an effort by the American Medical Association (AMA) and other physician groups to impose their views as to how managed care should operate in the US healthcare system. Prudential previously had withdrawn from this business which complicated the case from our standpoint. We no longer had any employees to testify. We litigated for several years and then settled "cheaply." Because of the public policy issues in the case, it was interesting.

About the same time, we had a putative national class action brought by the Milberg Weiss firm solely against Prudential in the New York Supreme Court (which is the lowest, not the highest, trial court). Milberg Weiss in those days was a major plaintiffs' law firm.

Ms. Feigin: Who handled the case for Milberg Weiss? Didn't some of them go to jail?

Mr. Aldock: In New York, Mel Weiss was the lawyer and he did go to jail. On the West Coast, the lead lawyer was William Lerach, who also got into trouble and went to jail. I believe they were convicted of improperly paying the named plaintiffs in class action cases. This case also involved alleged abuses by the insurance carriers. In many ways, these cases were the precursors of the recent legislative battles over national healthcare.

The New York Supreme Court is exactly the kind of court to avoid when you have major litigation, a court that is too busy to pay any attention to your case. In that court, thirty cases are set every day for 10:00 a.m. and, when your case comes up, the judge has to look it up on his computer to remember which case it is. The judge has no personal law clerk. He then gives you four minutes at the bench to argue complicated motions. I think we argued the same class certification motion five times. There came a point when I thought this was going to continue the rest of my career, and the last man to speak would win. Eventually, the judge said, "Okay, I'm going to write something." Judge Cahn finally wrote a decision denying class certification. It went before the New York Court of Appeals, and we prevailed.

Ms. Feigin: This might be a good time to stop since we probably will be going on to the merging of the law firm and that is a big topic. Why don't we do that next week unless there is anything else you want to add today.

Mr. Aldock: No.

Ms. Feigin: Thank you very much.