CHARLES A. HORSKY, ESQUIRE

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

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The Historical Society of the
District of Columbia Circuit

United States Courts
District of Columbia Circuit

Charles A. Horsky, Esquire

Interviews conducted by:
Thomas S. Williamson, Jr., Esquire
and
Carol Elder Bruce, Esquire

April 23,1992
September 28, September 29, and October 6,1994

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NOTE

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

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

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PREFACE

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

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

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

November 1, 1994

Historical Society of the District of Columbia Circuit

Interviewee Oral History Asreement

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Charles A. Horsky, except as otherwise provided herein and in Schedule B attached hereto, do hereby grant and convey to the Society and its successors and assigns all of my right, title, and interest in the tape recordings and transcripts of interviews of me as described in Schedule A hereto, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions, herein provided.

2. The foregoing transfer is subject to any exceptions specified in Schedule B hereto.

3. I also reserve the right to use the tapes and transcripts and their content as a resource for any book, pamphlet, article or other writing of which I am an author or co-author.

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

Charles Horsky 9/18/95

[Name of Interviewee] Date

SWORN TO AND SUBSCRIBED before me this 18th day of September, 1995.

Maria Goloumbas

Notary Public

My Commission expires My Commission Expires July 14, 2000

ACCEPTED this 18th day of September, 1995, by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.

Daniel M. Gribbon

Daniel M. Gribbon

November 1, 1994

Schedule A

Tape recording(s) and transcript resulting from four **(number)**
interviews conducted by Thomas S. Williamson, Jr. and Carol Elder Bruce **(interviewer)**
on the following dates:[1/]

(TSW) April 23, 1992	no tape	22 pages
(CEB) Sept. 28, 1994	2 tapes*	31 pages
(CEB) Sept. 29, 1994	1 tape**	26 pages
(CEB) Oct. 06, 1994	2 tapes*	39 pages

*plus two back-up tapes. Ms. Bruce used two tape recorders for each interview. Sometimes the audio is bktter on the backup tape, so she has preserved both.

**the back-up tape is missing.

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

November 1, 1994

Schedule B

Exceptions to Oral History Aqreement

(Please initial only those provisions that you wish to apply, and only if you wish to limit the use of your interview.)

1. _____ The entire tape and transcript shall not be made available to anyone other than myself, the interviewer, and the Society without my express written permission until _____ [state date or event].

2. _____ The following page(s) _____ and the tape relating thereto shall be closed to all users until _____ [state date or event]: except with my express written permission.

3. _____ It is agreed that the Society shall not authorize publication of the transcript or any [substantial] part thereof during my lifetime without my express written permission, but that the Society may authorize scholars, researchers and others to make brief quotations therefrom without my written permission.

4. _____ It is agreed that the Society shall not authorize publication by others of the transcript or any part thereof, including brief quotations, during my lifetime without my express written permission.

5. _____ I retain all of my right, title, and interest in the tapes, transcripts and their content, including literary rights and copyrights, until _____ [state date or event], at which time these rights shall vest in the Historical Society of the District of Columbia Circuit.

6. _____ In the event of my incapacity, I designate _____ of _____
(name) (address)
to make decisions related to the use of my oral history interview. Upon the death or incapacity of this designee, I authorize the Society to make such decisions on my behalf.

7. _____ I impose the following additional conditions [describe]:

Interviewer Form

Historical Society of the District of Columbia circuit,

Interviewer Oral History Agreement

1. Having agreed to conduct an oral history interview with Charles A. Horsky for the Historical Society of the District of Columbia Circuit, Washington, D.C., I, Thomas S. Williamson, Jr., do hereby grant and convey to the society and its successors and assigns, all of my right, title, and interest in the tape recordings and transcripts of interviews, as described in Schedule A hereto, including literary rights and copyrights.

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

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

Thomas S. Williamson Jr. 11/22/95
Signature of Interviewer Date

SWORN TO AND SUBSCRIBED before me this 22nd day of November, 1995.

Susie D. Gantt
Notary Public

My commission expires June 30, 1998

ACCEPTED this 19th day of December, 1995, by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.

Daniel M. Gribbon
Daniel M. Gribbon

November 1, 1994

Schedule A

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November 1, 1994

Historical Society of the District of Columbia Circuit

Interviewer Oral History Aareement

1. Having agreed to conduct an oral history interview with Charles A- Horsky for the Historical Society of the District of Columbia Circuit, Washington, D.C., I, Carol Elder Bruce, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings and transcripts of interviews, as described in Schedule A hereto, including literary rights and copyrights.

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

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

Interviewer Date

SWORN TO AND SUBSCRIBED before me this 22nd day of September, 1994.

Notary Public

My Commission Expires July 14, 2000

My commission expires

ACCEPTED this 22nd day of Sept, 1995 by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.

Daniel M. Gribbon

November 1, 1994

Schedule A

Tape recording(s) and transcript resulting from ~~four~~ (number)
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CHARLES A. HORSKY

Native of Helena, MT, son of Judge A. J. and Marguerite (Bowden) Horsky
A.B. (m.c.l.), University of Washington, **1931**
LL.B. (m.c.l.), Harvard University, **1934**
Ph.D. (hon.), Georgetown University, **1982**

Clerk to Judge A. N. Hand, **1934-1935**
Attorney in Solicitor General's Office, **1935-1937, 1938-1939**
Assistant Prosecutor, War Crimes Trial, **1948**
Advisor (to the President) for National Capital Affairs, **1962-1967**
Partner, Covington & Burling, **1939-1962, 1967-1981**; of counsel, **1982-**

ABA: Member, Standing Committee on Federal Judiciary, **1968-1974**
Member, Standing Committee on Judicial Selection, Tenure and Compensation, **1975-1982**
Member, House of Delegates, **1978-1982**
Member, Standing Committee on Legal Aid and Indigent Defendants, **1983-1988**
District of Columbia Bar:
Director, **1972-1978**; Vice President, **1978**
Chairman, Court Study Committee, **1978-1982**
National Bankruptcy Conference:
Chairman, **1954-1962, 1975-1984**
Member, **1945-1954, 1967-1974**
Honorary Chairman, **1984-**
Attorney General's Committee on Bankruptcy Administration, **1934-1940**
Advisory committee on Bankruptcy Rules, **1968-1976, 1978-1984**
Council for Court Excellence: Chairman, **1982-1988**
University of Virginia Law School: Lecturer, **1956-1962, 1970-**
D. C. Board of Higher Education: Chairman, **1967-1970**; member to **1972**
Salzburg Seminar:
Lecturer, **1969, 1973, 1980, 1984**
Member of the Board, **1980-1983**
Salzburg Seminar Alumni Association: President, **1979-1988**
Woodrow Wilson International Center for Scholars: Trustee, **1969-1972**
Eugene and Agnes E. Meyer Foundation:
Director, **1969-1981**
President, **1970-1973**
Chairman of the Board, **1973-1981**
National Building Museum: Trustee, **1980-** ; Secretary, **1982-1987**;
Treasurer, **1987-**
Federal City Council: Trustee, **1975-**
American Indian National Bank: Director, **1975-1987**
Citizens Housing Advisory Committee (of Montgomery County, MD):
Chairman, **1982-1988**
National Advisory Council, ACLU, **1983-**
Washington International Horse Show:
Director, **1960-1984**
President, **1963-1964**
Trustee, **1975-1987**

National Arbitration Panel: Member, **1982-1984**; Chairman, 1984-
Washington Planning and Housing Association: President, **1955-1962**
Commissioners' Planning Advisory Council (D.C.): Chairman, **1960-1962**
United Negro College Fund Campaigns for D. C.: Chairman, **1961, 1962**
National Capital Area Civil Liberties Union: Chairman, **1962**
D. C. Commissioners' Committee on Police Arrests for Investigation:
Chairman, **1962**

D. C. Lawyer of the Year, **1980** (D. C. Bar Association award)
Herbert Harley Award, **1984** (American Judicature Society)
Pro Bono Award, **1989** (NAACP Legal Defense and Educational Fund)
Author, The Washington Lawyer **(1952)**
Contributor to Conflict of Interest and Federal Service **(1960)**
Contributor to Congress and the Public Trust **(1970)**

Member: American Bar Association
D. C. Bar
D. C. Bar Association and other professional organizations
Cosmos Club
Metropolitan Club

Married to Barbara Egleston; one daughter, Mrs. Jesse (Margaret Ellen) Burns
Honorary Degree from the District of Columbia School of Law - May **1996**

THOMAS S. WILLIAMSON, JR.

Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044

(202) 662-5438 **(O)**
(202) 778-5438 (Office Fax)
(202) 726-5246 (H)

PERSONAL Born: July 14, 1946
Plainfield, NJ

Marital Status: Married

EDUCATION

Boalt Hall, University of California at Berkeley, Law School

Entered September 1971 and graduated June 1974
Note and Comment Editor, *California Law Review*

Oxford University, Oxford, England

Entered October 1968 as a Rhodes Scholar and withdrew December 1969
as a doctoral candidate in Ethiopian politics

Harvard College, Cambridge, Massachusetts

Entered September 1964 and graduated June 1968
B. A. degree in Social Studies - *magna cum laude* - Phi Beta Kappa
All Ivy Football (defensive back), All New England, All East (2nd team)
Allston Burr Prize (outstanding scholar athlete)

EMPLOYMENT EXPERIENCE

2/96 to present **Partner, Covington & Burling** (Washington, DC)

My practice principally focuses on litigation and employment-related law.

2/93 to 1/96 **Solicitor, U.S. Department of Labor** (Washington, DC)

I was the chief legal officer for the **U.S.** Department of Labor, overseeing a staff of 700, including 500 lawyers located in Washington, D.C. and 15 regional and sub-regional offices. The Office of Solicitor is responsible for enforcing approximately 180 federal statutes relating to wage protections, worker health and safety, pension benefits, employment discrimination and affirmative action, labor standards, job training, union democracy, unemployment insurance, and various other employee benefit programs. Also represented the Labor Department as a member of the Board of Directors of the Overseas Private Investment Corporation (OPIC).

2/81 to 1/93 **Partner, Covington & Burling** (Washington, DC)

My practice primarily involved representing states in matters relating to various federal health and welfare programs. My work also included advice on federal securities laws and related corporate matters. In addition, I served as a chairman of the firm's Public Service Committee. (During this period, I was an **Associate** from 2/81 through 9/82.)

1/78 to 1/81 **Deputy Inspector General of Department of Energy** (Washington, DC)

I assisted the Inspector General in overseeing and conducting investigations, audits and inspections of Department of Energy operations and programs. Were also responsible for submitting reports to Congress and appearing to testify upon request. As the end of my term, I was one of several recipients of the Department of Energy's Outstanding Service Medal.

9/74 to 10/78 **Associate, Covington** & **Burling** (Washington, DC)

My duties generally involved analyzing regulations, interpreting statutes, researching caselaw and drafting memoranda. During my first year at Covington, I principally worked on matters arising from FCC regulation of cable television. Subsequently, I spent eight months as a staff attorney at a local office of the Neighborhood Legal Services Program on loan from Covington & Burling. Following my return to the firm, I concentrated on representing state governments on issues relating to federal health and welfare programs under the Social Security Act. In addition, I was responsible for a variety of commercial and pro bono litigation tasks.

10/70 to **6/71** **Management Consultant to the Training Division of Alem Public Relations Consultants** (Addis Ababa, Ethiopia)

I supervised a division of a small, Ethiopian-owned company engaged in training U.S. Peace Corps volunteers for service in Ethiopia. In addition, I provided management consultant services to upgrade the capabilities of other supervisory staff.

COURT ADMISSIONS:

United States Supreme Court
United States Court of Appeals (10th Cir.)
United States District Court (D.C.)
United States District Court for the District of Maryland (Northern Division)
District of Columbia Court of Appeals
Supreme Court of California

PROFESSIONAL ACTIVITIES:

Member, American Bar Association
Member, National Bar Association
Former Member, Board of Governors of the D.C. Bar
Former Co-Chair, Washington Lawyers' Committee for Civil Rights Under Law and Urban Affairs
Former Member, Board of Directors, D.C. Neighborhood Legal Services Program

OTHER AFFILIATIONS:

Member, Council on Foreign Relations
Former Member, Board of Directors, Harvard Associated Alumni
Former Member, Visiting Committee for the Department of Athletics at Harvard University
Former Member, Board of Directors, National Capital Area American Civil Liberties Union

CAROL ELDER BRUCE

900 Lynton Place
McLean, Virginia 22102

(H) (703) 356-6762
(O) (202) 4086433

PROFESSIONAL EXPERIENCE:

Sonnenschein Nath & Rosenthal, Partner (December 1995 to date). My practice focuses on white collar criminal defense. My clients are both corporate and individual. Currently, I am representing corporations in criminal antitrust and criminal environmental grand jury investigations. I also represent corporations and individuals in connection with different grand jury and governmental investigations involving allegations of criminal and civil false claims violations in government contracting. I also represent individuals in connection with public corruption grand jury investigations and Congressional Ethics Committee hearings.

Covington & Burling, Associate (October 1988 to December 1995). My practice focused on white collar criminal defense and general civil litigation. My general litigation experience at the firm spanned the practice fields of white collar fraud and public corruption, antitrust, environmental, bank fraud, toxic torts, and insurance. I represented both corporate and individual clients in trials and U.S. Senate Ethics hearings and in grand jury and internal corporate investigations. I also organized and managed a pro bono law firm program to provide free representation at both the trial and appellate levels to indigent persons charged with crimes in Washington, D.C. I oversaw over 70 attorneys in this program and organized periodic training programs for these attorneys.

Deputy Independent Counsel to Independent Counsel James C. McKay *(February* 1988 to February 1990), in the investigation of matters concerning Attorney General Edwin Meese III. (Associate Independent Counsel, May 1987 - February 1988).

Assistant United States Attorney for the District of Columbia (1975-1985). In my first four years with the office, I prosecuted over 100 felonies and misdemeanors, briefed and argued nine appeals in federal and local courts of appeals, and managed the grand jury investigations of over 100 additional felony matters.

From 1979 to 1981, I was assigned to the Major Crimes Division and investigated and prosecuted public corruption and international terrorism cases, including the investigation and prosecution of former CIA employee Edwin Wilson, the prosecution of Congressman Robert Bauman, and the bribery and racketeering prosecution of D.C. Superior Court Judge Robert Campbell.

From 1981 until resignation in 1985, I was assigned to the Fraud Division of the U.S. Attorney's Office which became the Special Prosecutions Sections. While there, I investigated and prosecuted, among other matters, securities fraud cases (including insider trading cases, a complex tax shelter fraud, several tax evasion cases and other bribery, public corruption and white collar fraud cases).

I resigned from the U.S. Attorney's Office in December 1985, to take a leave of absence from law practice to be a full-time mother to my two (now three) children.

Law Clerk to the Honorable Harold H. Greene, when he was Chief Judge of the Superior Court of the District of Columbia (1974-1975), before he was appointed to the U.S. District Court bench in Washington, D.C.

EDUCATION AND PROFESSIONAL ACTIVITIES:

George Washington University -
B.A., Political Science (1971); J.D., (1974)
President, Student Bar Association (1973-1974)

Admitted, D.C. Court of Appeals, 1975

Member, American Bar Association, 1975 to date;

Governor, D.C. Bar Board of Governors, elected in 1994 for a three year term;
Member, D.C. Bar Ethics Committee, appointed for July 1992 to July 1995 term;
Member, Steering Committee of the Courts, Lawyers and Administration of Justice Section, D.C. Bar, elected to two terms 1988 to 1992; Co-Chairman, 1990 to 1992;
Charter Member, Edward Bennett Williams Inn of Court, January 1989 to date; Secretary-Treasurer, June 1990 to June 1992;
Member, ABA Working Group on Lawyers' Representation of Regulated Clients (President's Committee formed in response to the OTS Kaye, Scholer matter), Spring 1992;
Member, ABA Central and East European Law Initiative Russian Criminal Jury Trial Initiative Working Group, July 1993 to June 1994;
Member, D.C. Superior Court Media Committee, March 1993 to date.
Member, D.C. Public Defender Service, Steering Committee on Appellate Advocacy Institute, November 1993 to date.
President, D.C. Chapter, George Washington Law Alumni Association, 1979 to 1980;
Director, Board of Directors, George Washington Law Alumni Association, 1989 to 1993;

RECENT PUBLICATIONS

Co-authored with Theodore L. Garrett, a chapter on *Environmental Crimes Under the New Sentencing Guidelines*, Practice Under the New Federal Sentencing Guidelines, American Bar Association Section of Criminal Justice, Editor Phyllis Skloot Bamberger, Prentice Hall Law & Business, 3rd Edition (1993 supplement).

Co-authored with Jeffrey O. Cooper, *Auditing the Auditors: An Overview of Civil Liability Issues for Accountants*, for publication in an Ohio CLE Institute publication, June 1993.

Charles A. Horsky, Esq.
Covington & Burling
Washington, D.C.

April 23, 1992

First Session of the Interview of
Charles A. Horsky, Esq.,
for the Oral History Project,
District of Columbia Circuit Historical Society

QUESTION: Charlie, I would like to start out with just a little personal background information for this interview. You were born in Montana, is that right?

ANSWER: That's right.

QUESTION: And where did you grow up there?

ANSWER: I grew up in Helena, the capital city in Montana. I was born in 1910, and I lived there until 1927.

QUESTION: Did that take you all the way through high school?

ANSWER: That took me through high school.

QUESTION: If you grew up in Helena, Montana, are you viewed as a city boy or a country boy in Montana?

ANSWER: A city boy in Montana. That's a big city. It had 12,000 people.

QUESTION: Did it stay pretty much that size all the time you were growing up?

ANSWER: Yeah, just about.

QUESTION: With a town of 12,000 did that actually mean you lived in a city setting or did a lot of people actually live on farms or ranches in Helena?

ANSWER: Nope -- I lived in a city setting. We had a house right in the middle of town, and I considered myself a city boy. There were people that came in, particularly to high school from farms around, but I was not one of them.

QUESTION: What did your father do?

ANSWER: My father was a lawyer. From 1920 until he retired **32** years later, he was a state district judge in Helena. He was an elected judge -- you had to be elected every four years -- and he was elected eight times and finally decided to retire at the end of eight terms.

QUESTION: How many state district judges did you have in Helena?

ANSWER: Just two.

QUESTION: And you said you spent your first 17 years growing up in Helena? Did you go to high school there?

ANSWER: Yeah -- Helena High School.

QUESTION: Did you have any plans or thoughts about becoming a lawyer while you were still in high school?

ANSWER: I don't know whether I can honestly answer that question or not -- I suppose that I did simply because my father was a lawyer. I had the impression that was a good career and I probably would follow it, although I certainly didn't have any firm plans about being a lawyer.

QUESTION: How many lawyers were there in a town like Helena at that time?

ANSWER: Oh -- I don't know. I suppose maybe 20 -- something like that. Not very many. Not as many as there are in Covington & Burling by any means. Probably aren't that many now. Helena now has gone up to 25,000. It has more lawyers per population than most places because it's the capital city as Washington has a lot of lawyers.

QUESTION: Can you recall honestly how you did decide to become a lawyer?

ANSWER: I certainly can't put a precise date on it. When I went to college I majored in political science, and political science required doing quite a lot of reading of Supreme Court cases and things of that sort; and I suppose that solidified my intention to become a lawyer. But when I actually made up my mind -- I don't know. At one time when I was in college, I got very much interested in geology, particularly historic archeology. I damned near turned into a geologist, but my geology professor said, "Look, you don't want to be a geologist -- forget it!" So I forgot it.

QUESTION: Why did he tell you that?

ANSWER: Huh!

QUESTION: Do you know why the geology professor told you that?

ANSWER: I don't know. He said that, "You're not built to be a geologist."

QUESTION: What college did you go to?

ANSWER: University of Washington in Seattle.

QUESTION: How did you decide you wanted to go there?

ANSWER: Well, that I was -- I didn't decide really. When I graduated from high school, like everybody else I suppose, I expected to go to the University of Montana which was in Missoula not very far away. It was inexpensive and it was there. But shortly after I graduated my father received a letter from a cousin of his in Seattle who said that if his son, Charlie, me, wanted to come to the University of Washington, he could offer me a job parking cars in the garage that he owned there, and he would be happy to

get me settled and take care of me to get me oriented to Seattle. Well that sounded like a pretty good idea because that was a job, and I didn't have a job in Missoula. So I accepted and I went to the University of Washington. That was the first time that I had been outside of Montana, but I had a roommate who came from Helena who went to the University of Washington to study aeronautical engineering. We went together and we roomed together most of the time we were in college. So I had somebody to help me get oriented -- it wasn't too bad.

QUESTION: Did you actually park cars?

ANSWER: I actually parked cars for four years for 50 cents an hour straight time. I was a night mechanic and cashier, and I worked from 6 o'clock until midnight every day and a little longer on weekends and made enough to support myself. College wasn't very expensive in those days. My tuition I think was $27.50 a quarter or something like that and my father helped me a little bit although I didn't impose on him too much; and toward the end of my career there I began to give teaching sessions.

QUESTION: What were you teaching?

ANSWER: Teaching political science -- we had a big course. You get a lot of people who would like a refresher course before an exam, and for $1.00 a head I gave them a summary of what they ought to know for the exam coming up. And I made quite a lot of money doing that. But I supported myself through school.

QUESTION: You actually - you worked everyday of the week and weekends?

ANSWER: I worked almost everyday of the week - yeah!

QUESTION: When did you have time to study?

ANSWER: Oh -- I didn't have to study very much, really. The courses weren't that difficult. I had no difficulty in getting A's in everything with minimum study, and I could study a little bit at the garage. I sat in the cashier's cage and I had a book, and we weren't that busy except when the movie was out and we had to get rid of all the cars.

QUESTION: Were those silent movies then or were there talking movies by then?

ANSWER: Oh no! I think talking movies came in the late 20s or 30s. I remembered Al Jolson was one of the first ones that I remembered seeing in Seattle. So they were beginning in any event.

QUESTION: Were there any extracurricular activities that you were involved in that were useful for your later legal career?

ANSWER: No, I don't think so. Most of my non-garage and nonschool activities were minimal. I went to a dance once in awhile on weekends, and I got mixed up a little in university politics like electing president of the student body and things of that sort, but not very much so. I lived in a dormitory, I was not a member of a fraternity. My job was to organize a dormitory in support of a particular candidate.

QUESTION: Did your candidate win?

ANSWER: My candidate won and he happened to be a man, a curious guy, a fellow named Marion Zioncheck. He became president of the student body and

later after I got back to Washington he became a Congressman from Washington. And he was the greatest nut that ever was a Congressman -- he really was, I think almost insane. He finally committed suicide here, but he was the talk of the town for a while --just absolutely crazy. He wasn't quite as bad as that during school, but he turned out badly.

QUESTION: Well then you --- ?

ANSWER: I went to Harvard.

QUESTION: You went to Harvard for law school. How did you settle on Harvard -- that's a pretty big leap from Seattle to Cambridge?

ANSWER: Well, as I said it was, again, pretty accidental the same way I got to Seattle.

QUESTION: Did you park cars, there?

ANSWER: I didn't park cars at Harvard, no. But during the latter part of my senior year, I was having a chat with my favorite political science professor. I don't remember his name at the moment, and he asked me what I was going to do, and I said that I was going to law school. He said, "That's fine, I think that's the right thing to do." He said, "Where are you going to go?" I said I'm going to go here, I guess, I'm here and I've a job, why shouldn't I go here? He said, "Well, there are better law schools than this -- why don't you go to Harvard?" I said, Well, I don't know, how do you get to Harvard anyway? He said, "I'm a graduate, I'll get you the papers, and you can fill them out and see whether you make it." So I said, fine. So he got me the application blanks. I don't remember what

they looked like, but they were sheets of paper. And I filled them out, sent them in and got a letter back saying you're accepted -- come to Harvard in the fall. That's how I got to Harvard. I didn't even know how far Harvard was when he told me, but I drove back with a friend of mine.

QUESTION: You drove across the country?

ANSWER: Drove across the country.

QUESTION: How long did that take you?

ANSWER: Oh, we had an old Ford. A man that graduated from Stanford had some connections in Helena with a banker there. In some fashion or other he got acquainted with the fact that we were both going back to Harvard. We got together and left from Helena in a Model-A Ford with no real idea where we were going to go to Harvard in Cambridge, but we were going to go to Cambridge. So we cruised across the country with no great trouble. It took about a week. I roomed with that man during all of the time that I was in law school - a fellow named Ray Lindman, who finally wound up as a municipal bond lawyer in O'Melveny-Myers in Los Angeles. He's dead now. We had a good trip. We got to Cambridge and finally found ourselves a room in the boarding house where we lived. For the first year we lived in the boarding house, and then we got into a dormitory my second and third years.

QUESTION: What were your expectations about what you would get out of a legal education?

ANSWER: Well, you make it sound as if I had some, and I didn't. What I expected was that I would get a legal education and become a lawyer, but I didn't know anything more about it than that. I had really, I don't want to over emphasize it, but most all of this was so fortuitous. If I had had a plan to do something, I would have expectations of what the plan would result in but I never had any plans - these things just happened. I expected to get a good legal education. I expected Harvard was a good law school.

QUESTION: Let me rephrase the question differently, what were your impressions during that first year about the kind of legal education that you were getting at Harvard, the sort of students you were meeting and associating with and the faculty members?

ANSWER: I can't honestly answer that. I don't think I had any impressions. I enjoyed law school -- I know that. I didn't find it terribly difficult. My roommate, Lindman, happened to be in a different section than I was. He took contracts from Williston and I took contracts from Gardner, and we argued to beat hell about which professor was right about which cases which made it very easy to remember the cases later. It was a good way to sort of fix it in your **mind** because you'd argued the hell out of it at night with your roommate.

QUESTION: Did you have any sort of, I don't know if I should say, "chip on your shoulder" because you had come all the way from the far west and gone to the University of Washington that somehow people wouldn't be respectful

of your intellectual ability and training as they might if you had gone to Princeton or some place like that?

ANSWER: I never got that impression, no. Whether it was true or not, I don't know, but it never came through to me in that sense. I got along with everybody very nicely and as I said, I enjoyed it very much.

QUESTION: Do you remember what year you graduated from Harvard Law School?

ANSWER: **1934.**

QUESTION: Did you come to Washington, D.C. after that?

ANSWER: No, after law school I was one of the people that Felix Frankfurter assigned around to various judges. I was assigned to Augustus Hand in New York. Another man that I knew -- I was the president of the Law Review -- the Treasurer of the Law Review by the name Art Dougan was assigned to Learned Hand, and so we came down to New York together.

QUESTION: **Augustus** Hand and Learned Hand?

ANSWER: Augustus Hand and Learned Hand were cousins. They both were on the 2d Circuit, along with Tom Swan, Harry Chase and Judge Manton, I can't remember his first name. Anyway, that's how I got to New York. New York turned out to be a rather difficult place to find a place to live.

QUESTION: Why was that?

ANSWER: Well -- we weren't making very much money.

QUESTION: Was it in the middle of the Depression?

ANSWER: It was 1934 and the depression was still pretty much with us. The salary of the law clerks then was **$2100** a year, but Roosevelt had gone on a

binge of cutting the budget for everything; and he cut the budget for law clerks. So I actually got $1800 a year. So we cruised around New York looking at apartment rooms. My sister, who had just graduated from the University of Montana, was coming to New York with a friend of hers for the experience so the four of us living in the East for a year were looking for a place to live. And we finally found a house owned by another law school classmate a man named Jack Dooling, who later became a district judge in the Eastern District. His family rented us the top floor of their house out in Brooklyn. So the four of us lived out in Brooklyn. My sister worked for W.T. Grant & Co., and the other girl worked as a secretary for some law firm. Dougan and I worked on the 2d Circuit -- we came to work together.

QUESTION: You said Frankfurter had assigned you?

ANSWER: Frankfurter, at that time, had the assignment rights for a number of judges, particularly the Hands and some of the people on the Supreme court.

QUESTION: Was Frankfurter teaching then?

ANSWER: He was teaching then, yeah! I thought it was a good thing to do, and I enjoyed the clerkship very much. Gus was a wonderful man to work for, and actually Gus Hand and Learned Hand and Tom Swan sort of clubbed together. Harry Chase was another one of the judges, but he lived up in Vermont somewhere and only came down for argument so we almost never saw him. And Manton, who later was kicked out for bribery, was a

sort of a loner anyway, and we never even associated with his law clerk very much. The judges didn't like Manton so Hand, Hand and Swan were a team and their law clerks were sort of a team. ***So*** I was really a law clerk for basically Gus, but I worked for Learned and I worked for Swan. It was a great year. The court wasn't too busy, and when we got a patent case assigned to Gus, he would put it on the table and say we'll work on that this summer, there is no hurry about that one. In the summertime, he asked me to go live with him for the summer -- so I went up to Elizabethtswn where he lived in northern New York. And I lived with Gus Hand and his wife and their two grandchildren whom they were babysitting for most of the summer. I stayed until the first of August -- and we worked on the patent cases.

QUESTION: I forgot to ask you. What did you do during your summers when you were at the University of Washington?

ANSWER: Worked in the garage. I did take one quick trip back to Montana. I got a ride back and I went back for about two weeks, but I spent most of the time in Seattle.

QUESTION: What about at Harvard? What did you do during the summer there?

ANSWER: At Harvard, I worked for Warren Seavey on restatements. **I** read cases for him and abstracted cases for him. I worked for Joe Beal getting up a bibliography for his conflict of laws treatise --just general work around the law school.

QUESTION: Did you intend to stay in Cambridge?

ANSWER: I intended to stay in Cambridge -- it was just too far to go back to Montana. However, at the end of my first year, Lindman and I drove back again, and I did spend the summer in Montana at the end of my first year. At the end of the second year, I had about two weeks when I went to Europe. I got an advance from Seavey on my work that I would do when I got back and bought a ship ticket to Europe. Ken Davis, the great administrative law guy, and I went on a shoestring to Europe and cruised around England and France and Germany and had a ball, I came back and worked like hell to pay off my debt to Seavey at $1.00 an hour - that was a little bit easier. But anyway, other than that, I worked in the summertimes.

QUESTION: What kind of things did you do while you were in Europe?

ANSWER: Just wandered around.

QUESTION: That's the best thing to do in your twenties, isn't it?

ANSWER: Yeah! Just looking at things. We didn't have any money **to** buy anything.

QUESTION: I know the feeling well. Were the clerkships then just for one year?

ANSWER: Yeah! Yeah!

QUESTION: You spent a year in New York, made your $1800 and what next?

ANSWER: Well, another one **of** these purely fortuitous operations. **Gus** called me in one day toward the end of the term and said, "What are you going to do now?" And I said "I've got several offers here in New York -- I guess I'll take a job either with Cravath or Sullivan & Cromwell -- I've got

offers from both of them, which one would you suggest?" He said "Well, I have another idea. I got a call from Stanley Reed who has just been appointed Solicitor General, and he's got several vacancies in his office and you might find that an interesting job." I said, "Well, what's the Solicitor General? What does he do?" Gus sort of sighed and said, "Well, he's the man that takes care of the Supreme Court work of the Government. He writes the briefs and makes the arguments and so on." I said, "Well, that's sounds interesting." *So* Gus called up Stanley Reed and made me an appointment. *So* I got in my Model-A Ford and I drove down to Washington and saw Stanley Reed. He said, "Fine, I'll be glad to have you aboard. When can you start?" I said, "I've got to work for Gus until August, but as soon as that's over, I can come down." He said, "Alright, August the 1st." *So* on August 1, 1935 I arrived in Washington in the SG's office. Again, it was just as fortuitous as that. Gus just happened to have a chat with Stanley Reed.

QUESTION: You mentioned before that you had found reading Supreme Court cases interesting when you were studying political science. Had you developed some career plan where you thought you wanted to be a Supreme Court litigator?

ANSWER: No. I had no idea of that. Obviously working as a clerk on the Court of Appeals you have to deal with Supreme Court cases, and I learned quite a bit about Supreme Court law just in the course of a year's work. But I had no -- no I didn't have any idea about working for the Supreme Court at

all. I literally didn't know what the Solicitor General did. That particular term had not come to my attention, and I was very lucky.

QUESTION: Seems like the Solicitor General's office may have been lucky too. What sort of town was Washington in the mid-1930s when you came?

ANSWER: Well, it was still segregated. I knew a girl out in Bowie before Bowie became a redevelopment district. She was from an old line family. I was asked to come out to visit, and I got on a train but I got on the wrong car. I got on the car with black people, and I got frowned at. I didn't get kicked out, but I felt very uncomfortable. I didn't realize there was such a thing. I lived in a place out on Wisconsin Avenue in a rooming house, and segregation just didn't happen to hit me. I really didn't become aware of it for some time, I guess. I have been reading Alsop's autobiography, and he was describing the Washington that he visited about that same time in the middle thirties. And it is apparent that there were several Washingtons -- his Washington was a diplomatic "hoytie-toytie" Washington -- big names, big money, big houses which he describes in great detail. I didn't even know they existed. By the same token, I've been rereading a book called the "Secret City" written by Constance McLaughlin Green who was the sister of Jim McLaughlin, the professor at Harvard Law School. She was a historian, and she wrote this book after she had written a history of Washington, D.C. as a sort of a supplement describing the black community which existed here with its own elite and its own weddings and social events and big parties and big houses and

everything else -- again, which I didn't know existed. I suppose, unless you were forced to face up to some of these things, they just didn't impinge on your consciousness. Besides which I worked like a dog in the SG's office. It was a busy place. It was the time when the "New Deal" was being litigated. I worked on the briefs on the National Labor Relations Act cases. I worked on the briefs on the TVA. I worked on the briefs on the Social Security cases, and the office was relatively small. It was much smaller than it is now, and I thought nothing of working 14 hours a day - seven days a week.

QUESTION: Do you remember just how about how many lawyers were in the office?

ANSWER: Yeah! They were Paul Freund, Alger Hiss, Warner Gardner, Charlie Horsky, Marvin Smith and Leroy Jackson. And each of us was assigned a particular sort of area to be responsible for. Mine was the labor relations area. Paul Freund had the TVA. Alger had the Agricultural Adjustment Act.

QUESTION: Is this the Paul Freund who taught at Harvard who was a professor who recently died?

ANSWER: Yeah! Who just died.

QUESTION: Was this Alger the famous Alger Hiss?

ANSWER: This was the famous Alger Hiss. Marvin Smith handled the criminal cases and Jackson handled the tax cases. We all chipped in, but basically Reed made sort of a general assignment so when cases came up from downstairs or from other agencies with requests to file a petition for

certiorari or requests to appeal, they would go to particular people based on their general assignment. As I said, it was damned hard work; and I worked very hard and everybody else that I knew did. These were the days when we were all enthusiastic for we were making the world better, by God! Everybody that I knew, practically or most of them lawyers, were either doing the same thing as in the SG's office or somewhere else. When you went to a cocktail party, you talked about what you were doing to make the world better, and you didn't really have any opportunity to think about what kind of a city Washington was. You lived there, but your work, at least my work, was so all-consuming that I really didn't -- I can't really answer your question what did I think about Washington.

QUESTION: There are some Covington associates who might say that things haven't changed too much since they came to Washington and started working with the firm.

ANSWER: Well, I hope that they won't work as hard as I did. I worked all night several times, really.

QUESTION: How long did you stay at the Solicitor General's office?

ANSWER: I was there for two years from '35 to '37 of August, basically. And then I came here, Covington. So after I had been here about six months, I got a call from the new Solicitor General, Bob Jackson, whom I met when he was in charge of the Tax Division at Justice, and I got to know him that way. He said, "I need somebody in the office. If you want to come back, this time you will be eligible to argue the cases." When I was there

before, I had not been a member of the bar long enough. You had to be a member of the bar for three years to be a member of the Supreme Court bar, so the best that I could do was to sign my name to briefs, but I couldn't argue. But he said, "If you wanted to come back, I could give you some arguments." So I asked Mr. Burling if I could come back and he said, "Hell yes, go ahead -- get the experience."

QUESTION: He encouraged that sort of thing?

ANSWER: Oh yes! Very much so. He said, "You'll be a fool if you don't do it." I said, "Can I come back here afterward?" He said, "Of course!"

QUESTION: What was the connection that got you over to Covington? Was that another accident?

ANSWER: You know -- that's one of the things that baffles me. I have no recollection whatever as to how I made contact with Covington. I really don't remember a thing about it.

QUESTION: I can't ask you any thing that might refresh your recollection?

ANSWER: **No!** I'm sure not. Somebody, it could have been Graham Claytor -- it could have been anybody. I suppose he must have suggested why don't I come over and talk to people at Covington. People had asked me that many times, and I just literally can't remember what the connection was.

I know I got here, but I haven't any idea how I did it.

QUESTION: There is no question that you are here. So you went back to the Solicitor General's office?

ANSWER: I went back, and I argued several cases and stayed for a year and then came back here.

QUESTION What sort of work did you start at in Covington when you came back from the Solicitor General?

ANSWER: Covington had a rule; I think it was a rule, at least it seemed to be a rule that everybody that came had to spend at least a year working on taxes. The general rationale for that rule, as far as I can understand it, was that taxes was so important to everything that you do, whatever the kind of case you are handling, you have got to know something about the tax consequences of the things -- you had to have some smattering of tax law. So I worked on taxes with Paul Shorb, Marion Warmhout. Uncle Ned had a big tax case for somebody I think it was Dupont, and I spent the first year working on tax cases. I don't really remember what I did the second year. Particularly, when I got back to Covington I then considered myself an expert on appellate practice so I probably worked on Supreme Court cases, but I don't remember particularly what they were. I don't have any real records on particular cases that I worked on during the several years after I got back.

QUESTION: What was the arrangement for the time period for becoming a partner?

ANSWER: I don't know if there was one, Tom. If there was one I became a partner, I think, in 1939, and I had been there only about three years at that time. Gerry Gesell came from the SEC, and he became a partner when he joined the firm. So it was pretty loose at that time. Certainly wasn't any six

years or eight years or anything like that; and I don't know when that rule developed, but it certainly wasn't enforced when I first started.

QUESTION: After you became a partner, and you settled into your practice, was it mainly an appellate practice?

ANSWER: Mainly an appellate practice. I only tried, I think, two cases in my life in a court. I've tried a few administrative proceedings, but I am not a trial lawyer and never have been. Most of my work - a great deal of it in the Supreme Court. I go through my record of briefs a bunch of bound volumes out by my wall there. Most of them are Supreme Court briefs.

QUESTION: Were there any cases that you had either in the District Court or the D.C. Circuit Court of Appeals for the District of Columbia?

ANSWER: Well generally speaking, the work that I did when I came back was mostly Supreme Court work, and I had very few, in fact during my whole legal career I had very few trial cases. I never tried a case in the U.S. District Court here that I can remember, and I tried very few cases anywhere else except for administrative proceedings, I had some of those. But, as I said, most of my work was appellate work and that's what I considered to be my area of expertise. However, back in the '40s working with other lawyers in the firm, I did participate in a couple of cases of some interest.

QUESTION: These would have been cases before the Court of Appeals?

ANSWER: These were cases that reached the Court of Appeals although they started in the District Court. The first one was a case called Berrien v. Pollitzer which was a case seeking an injunction against the National Women's

Party for refusing to let one of its members use the National Clubhouse which is that building down by the Senate Office Building. The National Women's Party had developed a split, and the insurgents had tried to take over the Party machinery. They had been rebuffed, and the noninsurgents had taken revenge by banning them from using the Clubhouse. So Mrs. Berrien, who was an elderly lady -- I would guess in her late 60's or early 70's -- a buxom lady, a nice lady -- outraged at the fact that she could not get into the house came to me and asked if we would get an injunction against the Women's Party.

QUESTION: Do you know how she found her way to you?

ANSWER: Nope -- I don't. I suppose I may -- no, I don't know.

QUESTION: Can you think of some reason why women insurgents would have first thought of you who were in need of legal advice?

ANSWER: Well to be honest, I don't know whether she came to me or whether she came to Covington and was assigned to me, but at least I got the job; and I enlisted Spencer Gordon, one of our senior partners, an outstanding trial lawyer to help try the case with me. He did most of the trial work, and we tried to get an injunction in the District Court. Judge Curran refused to grant an injunction on the grounds that there was not enough of a property interest to warrant judicial interference. We appealed it to the U.S. Court of Appeals, and Curran was reversed and we got the injunction and Mrs. Berrien got to use the house.

QUESTION: Who was the judge who wrote up that opinion?

ANSWER: That was written by Judge Edgerton with Judge Clark and Judge W. K. Miller. Another case something like that involved the American Association of University Women ("AAUW"). This case I worked with Mr. O'Brian, although I did more of the trial work in this case and Mr. O'Brian argued the appeal.

QUESTION: Was this John Lord O'Brian?

ANSWER: John Lord O'Brian another one of the senior partners in the office. The AAUW moved to expel the Washington branch of AAUW on the ground that it refused admission to a black lady otherwise qualified. The AAUW National thought that was so inconsistent with its policies that after trying to negotiate with the branch to change its mind, it finally decided it would give it an ultimatum and terminate the branch if it didn't change. The branch didn't change but brought the injunction suit. And we represented the AAUW National in their defense of that action. We lost. We lost in the lower court and we lost in the Court of Appeals. Judge Clark wrote the opinion with W.K. Miller and Prettyman basically on the ground that they wouldn't interfere with the internal operations of AAUW That was a disappointment. Another relatively early case which did not involve the District Court was the Washington Ethical Society case.

QUESTION: What is the Washington Ethical Society?

ANSWER: What it is is what the case was about. It is an organization formed in New York about 1900 -- somewhere along in there. I can explain more

by what the case was about; that will tell you what the Washington Ethical Society was about. It had a building in Washington where it conducted Sunday services, and the District of Columbia finally got around to saying that it isn't a religion and therefore it's not tax exempt. And they assessed a tax on the property that the Society used for its services. The Society appealed to the Board of Tax Appeals in the District which turned out to be one man, and he wrote a very elaborate opinion which held it was not a religion because the members of the Society were not required to believe in God. It, was something like Unitarians but not quite Unitarians. You could believe in God, but you didn't have to. The question I briefed over the course of a summer is what is a religion and is the Ethical Society a religion? Well, it had a lot of the characteristics of a religion: it had Sunday services; it had Sunday school for kids; the minister was authorized to perform weddings and funerals; but its creed was that there is a high morality that transcends everything else, and it isn't necessary to have a supreme deity to be a good person. If you wanted to have supreme deity, fine, but you don't have to. And I wrote a brief about 30-pages trying to define what religion was. Not an easy job I can tell you. Then it was set for argument, and I decided that the best way to get a decision for my client, the Ethical Society, was to get somebody other than me to argue the case. So I asked Mr. O'Brian, John Lord O'Brian, then an elderly man, one of our senior partners, but also sort of the godfather of the Harvard Divinity School. He was very active in the Episcopal church

and he was the kind of a person that you couldn't really challenge as being a radical, and he argued the case. It was argued before a court.....

QUESTION: As we turned over the tape, I think you were just about to talk about the judges who heard the case.

ANSWER: Yeah, the judges that heard the case included Charlie Fahy who was a very ardent Catholic and whose daughters both became nuns, and really was about as Catholic as you could get. The opinion by the Board of Tax Appeals was, as the man who wrote admitted, mostly composed by people at Catholic University who were adamant that if you didn't believe in God or didn't require belief in God, you couldn't be a religion. So Mr. O'Brian argued the case, he sparred with Mr. Fahy for 30 minutes -- wonderful argument about religion and **God** and all these **things** with Mr. O'Brian being just as religious as Mr. Fahy but on the other side. The court finally ruled that they didn't know whether it was a religion or not, but it was religious enough to get a tax exemption. The footnote to that, which is very interesting, it was a pro bono case, but we had some expenses in printing the brief. The Ethical Society asked if they could use the brief, and I said sure -- **it's** your brief after all. So they reprinted a lot of copies and sold it for a dollar apiece around the country because it was a pretty good exposition of what the Ethical Society stood for, and they made enough money to be able to pay my expenses and make a little of their own. It now has a big building which you may know about. It's on the corner of 16th Street and Kalmia Road, and it's a good

organization -- it's really a great organization, and I really enjoyed that. Another case that was interesting which I handled pretty much by myself was a little bit later in the '60s. Montana Power Co. against the Federal Power Commission.

QUESTION: Did Montana Power come to you because you were a son of Montana?

ANSWER: Yeah! I think I got it because I was from Montana. I'm sure they came to me because I was from Montana, and I knew some of the people in Montana Power from Montana. So they knew who I was. Anyway it involved relicensing of a power dam out in Montana at the bottom end of Flathead Lake which the Montana Power Company had leased for 30 years from the Indians. That part of the lake **is** owned by a tribe of Indians. It's part of a reservation so the Power Company has to get permission and lease the property from the Indians, and the lease was about to expire, and the Indians wanted more rent. They wanted a hell of a lot more rent actually. After thirty years you probably would expect to pay more, but they wanted an exorbitant amount. The contract had a provision for arbitration and the Federal Power Commission said, "No, we aren't going to pay attention to that -- we are going to set the rent ourselves." And they proceeded to do so. So we brought an action to compel arbitration. It was an appeal from the Power Commission to the Court of Appeals. I argued the case in **'69** before Justice Burger, Justice Tamm and Harold Leventhal, and I got a 2-1 decision in my favor that it ought to be sent to arbitration. Burger and Tamm were on my side, but

Leventhal dissented. The Power Commission asked for a hearing en banc and unhappily for me between the time of the decision and the time that the en banc decision was made, Justice Burger became the Chief Justice of the Supreme Court of the United States and had left the Court of Appeals. So the en banc hearing was authorized by a **4-3** vote. If Burger had been there, it would have been the other way around. It would have been a **4-3** in my favor, and there wouldn't have been an en banc hearing. But the en banc hearing was granted, and the decision by the original panel was reversed. We tried to take it up to the Supreme Court, and we didn't make it. But that was a bitterly fought deal. The Power Company finally paid the rent that the Federal Power Commission wanted, and since that time we have represented Montana Power in a lot of proceedings -- not only another relicensing **of** that same dam but in other dams. Nick Fels has taken it over and has represented them in a lot of other cases. But that was a real disappointment, and I worked like a dog and if Burger hadn't been appointed, I would have won the case.

QUESTION: Were there other cases that you recall handling before the Court **of** Appeals?

ANSWER: Yeah! There were a few others. Let's see -- in the late **'70s** I did quite a lot of work for Southern Railroad and Central of Georgia Railroad. I did a lot of work on the appellate level, but I also handled some other cases. There was a case brought by a man named Victor Altman who owned some of the preferred stock and was persuaded that the Central of Georgia

Railroad was phony-ing up the books to avoid paying dividends on the preferred stock. It had to have a certain amount of earnings before the preferred stock got anything. He was sure they had misled everybody, and he brought a lot of actions. In the middle of all these actions the Central of Georgia and two other railroads wanted to become a merged railroad, which would eliminate the preferred stock and pay X dollars per share for it. He tried to stop that, and he went through a series of proceedings before the ICC and then the District Court -- all of which I participated in, and he lost them all. Mostly we got summary judgments. Finally, they did pay one dividend which he claimed he had forced them to pay, and he managed to persuade the District Court that it was his doing that got the dividend paid and therefore he was entitled to an attorney's fee. And we had one hell of a row about his attorney's fee. He wanted $300,000 with a multiple because he was doing it on a contingent basis. He was representing himself all the way through. And I litigated that.

QUESTION: Do you remember who the District Court judge was?

ANSWER: No, I don't remember who it was. He finally got a judgment for $40,000, and we argued that he wasn't entitled to anything; and we lost that before the Court of Appeals with McGowan sort of dissenting. MacKinnon and Bazelon said he's entitled to something. That went on for almost 7 years. That whole litigation was all about the things that

happened resulting from his minor ownership of a few shares of preferred stock in Central of Georgia Railroad.

There is another case in the early '70s in which the Central of Georgia wanted to terminate a passenger train -- the "Nancy Hanks" -- which ran from some place to some place. I can't remember. The National Association of Railroad Passengers brought an action to enjoin the termination on the ground that they hadn't gone through the proper machinery under the Amtrak statute, and I litigated that for the Central of Georgia in the early '70s. We argued it in the Court of Appeals, and the Court of Appeals said that the National Association of Railroad Passengers had a right under the Amtrak statute to bring an action. It wasn't confined to the Attorney General to litigate whether the statute was properly complied with.

QUESTION: Is that pertaining to whether there was a private right of action?

ANSWER: The private right of action. Bazelon, Skelly Wright and Wilkey. We got certiorari in the Supreme Court, and they reversed. I argued that case in the Supreme Court as well, and the Supreme Court said there is no private right of action to enjoin the termination of the train.

I had a few other cases in the **U.S.** Court of Appeals here. They were not particularly significant cases. One in the 1950's -- the News Printing Company against the National Labor Relations Board was a typical attempt to overturn a National Relations Board order, which we lost. We got one dissenting vote from Judge Miller. Judge Prettyman wrote the opinion. **I** had a three-judge court case with Judge Robinson, Judge Bryant

and Judge Smith -- American Waterways Operators against the Southern Railroad.

QUESTION: Were you representing Southern Railroad?

ANSWER: Representing Southern Railroad again. We won that, and it was affirmed in the Supreme Court. I think that's about all the cases I had in the Court of Appeals. I have a lot of cases on the shelves in my office from the 5th Circuit and the 4th Circuit and the 9th Circuit and the 6th Circuit and all around; and, as I said, an awful lot have been in the Supreme Court. I was sort of the Solicitor General's office for the Southern Railroad. They would either lose a case or win a case in the Court of Appeals somewhere and then want to know whether to take certiorari or have somebody defend an application that was made by somebody else. I would give them a judgment as to whether to apply for certiorari -- trying to use the kind of a judgment that I would use in the SG's office. Don't take it if it's hopeless. Don't waste the court's time and get yourself a bad reputation. But if you got a good one -- go ahead and try, and I did that for quite a number of years with reasonable satisfaction from Southern, but they didn't by and large produce Courts of Appeals cases for me to handle. They have their network of local counsel that handle cases through the Court of Appeals and it was only when it got to the Supreme Court that they came to me. So most of the work that I did for Southern was Supreme Court work and we had quite a lot of those cases which I worked on with various people in the office. Some successfully and some

unsuccessfully. But that all terminated when Southern was merged with Norfolk and Western, and they got different counsel. I don't think we do a substantial amount of work for Norfolk and Western any more.

Charles A. Horsky, Esq.
Covington & Burling
Washington, D.C.

September 28, 1994

Second Session of the Interview of
Charles A. Horsky, Esq.,
for the Oral History Project,
District of Columbia Circuit Historical Society

Ms. Bruce: You had a conversation with Tom Williamson 2 1/2 years ago and in that conversation you covered your youth, growing up in Montana, your college days, your law school days, your early days with the S.G's office, your coming to Covington, generally your work at Covington and very generally some of the appellate cases that you handled here in D.C. I thought today, there is so much to cover that it's whatever suits your pleasure as to where we start.

Mr. Horsky: It doesn't matter.

Ms. Bruce: I thought maybe if we could start where you left off and talk a little bit more about cases before the court and then move into discussion of your observation of the courts here in D.C. and how they have changed and grown over the years.

Ms. Bruce: Why don't we start with the cases here and elsewhere. Here and the Supreme Court.

Mr. Horsky: When I talked to Tom, all the cases that I discussed were numbered in the D.C. Circuit. I've had a smattering of cases in other circuits over the years. Some were interesting and some weren't. I had a couple of cases in the Court of Claims. For a

long time we represented the National Custom Service Association, and they had a whole lot of cases involving claims for overtime. Some of them were trials but I argued a couple of their cases. One of them was Meyer v. Morgenthau, Jr., another was DiBenedetto **v.** Morgenthau, Jr. The cases, and there were others, were generally handled by Amy Ruth Mahin, one of the early women lawyers in the office. She argued some on appeal, and I handled some. Some were in the Court of Claims, and some in the District Court here. I also had a couple of interesting cases in other circuits. One of them involved the issue as to whether or not a claim of conscientious objection to war could be based on something other than a regular religious belief. There had been quite a number of litigations in various circuits about people who had a deep-seated ethical reluctance about the **war** but were not affiliated necessarily with a church or some other organization like that. I had such a case for a man named Reel, who was not a member of any church, but claimed exemption from military service on the ground of his conscientious objection. His claim was denied, and I appealed to the Second Circuit. Actually I never had to argue the case because Mr. Reel had served enough time in a non-combat position pending his appeal that he became eligible for **a** discharge.

That whole issue has an interesting history. Because a strong dissent in a case in the Ninth Circuit made Congress worried that such objections might soon win court approval, a law was passed requiring that a conscientious objector believe in a "Supreme Being." That law came before the Supreme Court in a case like Mr. Reel's, and the Court nonetheless upheld the claim to exemption. The law was later repealed. I now teach all about that in my course at the Virginia Law School on Freedom of Religion. Another case I had in the Second Circuit was Dick v. Marr, which I tried as well as argued on appeal. We had represented the AB Dick Company for a good many years and some of the representations were in connection with allegations concerning antitrust violations involving the mimeograph process. We worked out a consent decree. But the Department of Justice lawyers found in Mr. Dick's office what they called a secret vault with secret papers. These papers they said showed that the Dick Company had obtained patent protection for its "dry" stencil by fraud. A "dry" stencil was a great improvement; it did not have to be wetted before you typed on it. They brought an action against the AB Dick Company in New York for fraud on the patent office.

Ms. Bruce: Who was?

Mr. Horsky: It was the Department of Justice that challenged the AB Dick patent.

We tried the case before Judge Harold Medina. It was a very nerve-wracking experience, because I had in my possession a file drawer of correspondence between Mr. Dick and Archie Cox, Sr., his lawyer, which detailed all the litigation maneuvers Cox had employed in getting the patent. I claimed that these pages were privileged, but I had to be sure my representations to Judge Medina were consistent with the correspondence, lest the Court finally rule against my claim of privilege. It was not easy -- trying a case in two venues, one open and one secret. I finally broke out in a rash from the strain. In the end, I never had to produce the Cox correspondence.

Another interesting bit involved the length of the trial. Government counsel and I persuaded Judge Medina to take the case by assuring him that it would take only two days to try. In the event, it took much longer. The government began with an opening statement based on its documents. His opening statement lasted for 8 and 1/2 days.

Ms. Bruce: That's absurd.

Mr. Horsky: Judge Medina kept interrupting him and argued all the points. I chipped in my nickel's worth and it just went on and on and on. The whole case was really played out in the course of his opening statement. Judge Medina never really chided us for taking so much time because he must have used at least two-thirds of the

time himself. We finally got around to trying it and we prevailed. Medina was quite complimentary.

Ms. Bruce: Was it a civil matter or was it criminal fraud?

Mr. Horsky: What I think it was to have the patent annulled.. I don't think it was a criminal matter.

Ms. Bruce: So it was a civil matter. Was it a jury trial?

Mr. Horsky: No, no jury.

The case was appealed to the Second Circuit, but I argued it before those judges from other circuits because all the judges on the Second Circuit had known Mr. Cox, and disqualified themselves. Judge Medina was affirmed, and certiorari was denied. When I told the Dick Company that the case was over, I think they immediately burned all the Cox correspondence.

I also had on appeal in the Eighth Circuit -- two in the Eighth Circuit -- one of them Tommy Austern got me into. He asked me if I would brief an appeal by American Can Company against The Bruces Juices Corporation, an antitrust case. I don't remember the details of it at all, except that it was known as the Bruces Juices case. The argument was very unpleasant. I don't know that I've ever had one that I liked less. The judges of that circuit at that time had a rule that they should not interrupt counsel. I suppose they would interrupt if they didn't understand what you said but not to ask you any questions. And I got up and talked my allotted

40 minutes or whatever it was and then sat down. I might have just as well have sent them a typewritten transcript. It was completely frustrating.

Ms. Bruce: In that sort of a setting you have no idea what is troubling to them, or of concern to them or what they want to hear about beyond the brief.

Mr. Horsky: You have no idea, they just sit there and look at you, and that's the end of it.

On the other end of that spectrum, when I was in the Department of Justice, the second time, I got some cases to argue in the Court of Appeals and I argued a couple of Labor Board cases in the Fourth Circuit. There, not only are the Justices very much aware of what you're talking about and ask you lots of questions but at the end of each argument they all file down off the bench, come down and shake hands and chat with you and have a little social session for about 15 minutes. Then they file back up on the bench and hear the next case. I think it was a wonderful idea. I don't know whether they still do that.

Ms. Bruce: It sounds very civilized.

Mr. Horsky: It's very nice. The other case I had in the Eighth Circuit was a case for David Dubinsky and the International Ladies Garment Workers' Union, which we represented for quite a long time. The Donnelly Garment Company of Kansas City represented by former

Senator Reed brought an action against Dubinsky and the ILGWU for an injunction against a strike on the grounds that there had been violence by the Union organizers. We defended that case. I helped try it and we won in the trial court and Iargued it on appeal again in the Eighth Circuit which affirmed.

Ms. Bruce: Do the same rules apply where you would just make the argument with no interruption?

Mr. Horsky: No, at that time, as I remember we did have some interruptions. It was a different panel from the first one, from the Bruces Juices case. I don't remember very much about that case, but I'm pretty sure that it was not quite so dull.

Ms. Bruce: The AB Dick case, the trial and then the appeal, what years were those cases in, if you can recall.

Mr. Horsky: **1952.** Roughly in that area. And the Donnelly case was in 1945. Bruces Juices was about 1950. That about exhausts my recollection of cases which I argued in courts of appeals. I can go on to Supreme Court cases if you want.

Ms. Bruce: Yes.

Mr. Horsky: Well, I start out with two cases that I argued when Mr. Justice Jackson said that I could come back to the Solicitor General's Office after having been away for a year because I would then be eligible to argue cases in the Supreme Court. He assigned me to two cases, neither of them of any great significance. One is called

United States against Powers, 307 U.S. 214 -- a minor tax case which I argued vigorously and lost -- this other one was United States against Bentelson and Peterson Engineering Company, also a tax case, which I think I won although I'm not sure I can remember whether I did. But neither of them were of any real importance.

Ms. Bruce: When was the Powers case? Do you remember when the other case was?

Mr. Horsky: The Bentelson and Peterson case was 306 U.S. 276. Both were argued in 1938. In 1939 I got one that was a little bit more significant. National Labor Relations Board against Sands Manufacturing Company. That was a case which unfortunately suffered from its timing. The Supreme Court originally vigorously sustained the constitutionality of the National Labor Relations Act, but later began to get second thoughts about how it was being enforced and it refused to enforce a lot of the awards the Board handed down. We appealed the denial of enforcement by a Court of Appeals and the Supreme Court affirmed. I lost that case, I know, I don't even think there was a dissenting vote. Well, those are my three Supreme Court cases which resulted from my coming back to the SG's office. At least it broke the ice for me.

Back in Covington & Burling in 1941, I was assigned by the court to defend a man named Forrest Holiday involving a rather arcane

aspect of habeas corpus law. Let me see if I can remember what it was. Oh yes, deciding whether or not in a habeas corpus case a federal court was authorized to refer to a magistrate to determine whether a hearing should be had on the questions involved. The magistrate recommended against a hearing, the court agreed. When we got to the Supreme Court I managed to persuade it that the law said the District Court was to decide on the hearing, not a magistrate. I don't have a citation for that but it's somewhere along the early 1940's, **'41, '42.**

The next case I'm really sort of proud of. I think chronologically, although I'm not sure of the dates of all of these, was Hecht Company against Bowles. He was Administrator of the Price Control System. The Hecht Company had been charged with violating the price controls and an injunction had been sought against them for the violation. The statute in effect said that if there has been a violation, an injunction shall issue. Well, the fact was that the Hecht Company had just broken its neck to try to comply. They had appointed a man to supervise the compliance with the price controls to be sure that the price that they sold it at was no higher than the base price at the time that the controls went into effect. And they had established an elaborate system within each department to be sure that this was done. They really had sought to be a bellwether in how to comply with the price control

-- but they made mistakes. Admittedly made mistakes. However, we resisted the injunction on the ground, basically, that it was unnecessary. We had a trial before Judge Letts in the District Court. I put on witnesses to explain the mistakes and how they happened. We went through every one. God-awful boring stuff like what should have been the price on this mattress and what it should have been on this teapot or on this pair of shoelaces. You know, just on and on and on. There were probably 25 or **30** mistakes that may have been made. Some resulted in refunds when the store found out about the mistakes. Some we explained even though the government had not discovered them. But anyway, when we got all the way through, Judge Letts decided that he didn't see any point granting an injunction. Hechts was doing everything that it possibly could and an injunction wouldn't make it do anything more. So he refused to issue an injunction and decided in our favor. Well, the government appealed that.

Ms. Bruce: Let me interrupt you one minute and stop the tape. It just got to the end.

Mr. Horsky: Judge Letts decided not to issue an injunction. But the government appealed at the Court of Appeals here. I argued that case at the Court of Appeals. **I** don't remember who the court was although I can pick it up.

Ms. Bruce: When was this, approximately?

Mr. Horsky: This was approximately **1944, '45,** somewhere in there. We got reversed, 2-to-1 decision. Well the Hecht Company said we worked a hell of a lot of time on this. Why don't we take the injunction, it doesn't make any difference. And I said, "I know we are right. We ought not to accept an injunction in this case. Let me take a petition for certiorari. It isn't going to cost you very much. If we get it we will win. If we don't get it, why that's the injunction." So the Hecht Company finally came around and said all right go ahead and petition for certiorari. So it was granted. And I argued that case. It was the only case I've ever argued, I'm sure, where I sat down knowing I had won. I got more favorable questions from the bench than you could believe. Everybody was on my side. When the case was over, the government attorney, I can't remember who it was, came up and congratulated me on the case. And we got a nine-to-nothing decision reversing the Court of Appeals. It required the court to say that when the statute stated that if there has been a violation, the injunction shall issue, it didn't really mean "shall issue." It meant that the Court was supposed to use its own discretion. And the Hecht Company had demonstrated that an injunction would have been absolutely futile and simply punitive and of no real value to the government or

anybody else. That was a very satisfactory argument, I must say that.

Ms. Bruce: I should think so.

Mr. Horsky: Then I come to the next case, which was, I think, also interesting. It was a minor case called Sam **Fox** Publishing Company against the United States. The United States was trying to reign in some of the very autocratic practices of ASAC, the American Society of Authors and Composers, who control the copyrights of all musical compositions, and had brought **an** antitrust case against **ASAC.** And a group of minor publishers in music, **Sam Fox** being one of them, tried to intervene on the ground that the government wasn't adequately representing the interests of the various small publishers. The trial court denied the petition for intervention and we did get certiorari. But the Supreme Court, after my eloquent argument, decided that the government was adequately taking care of the minor people and that they didn't deserve to intervene if the District Court didn't want them in. So we lost it. That was sometime along about **1945, '46.**

My next case was really interesting -- Griffin against Illinois. That was another one where I was appointed as counsel by the Supreme Court. Griffin had been convicted of a crime and wanted to appeal but he couldn't appeal because he couldn't raise enough money to print the transcript. And under the rules in Ohio, you could not

appeal unless you supplied the Court with a transcript of the proceedings below it. He claimed that this rule was unconstitutional because it deprived him of his right to appeal, while people who had money could -- an unfair advantage. I was assigned the case to brief and argue. I spent quite a lot of time trying to find out just how he would have fared around the world. There is no constitutional right to an appeal in the United States in a criminal case. I found that out early on in Supreme Court cases on that. So we couldn't base it on that. But almost nowhere in the civilized world could I find a case in which an appeal depended on whether you had enough money to appeal and to supply the necessary papers. And I argued vigorously in the Court that this was unconstitutional discrimination. One of the arguments that seemed to me to be persuasive, well, I think was persuasive in the Court was the result of my examination of the results of criminal appeals in Illinois over a 10-year period. It showed that in seventy percent of the cases the trial court was reversed. So appeal was not a futile business at all. The trial courts were not by any means perfect.

Ms. Bruce: Apparently not.

Mr. Horsky: Mr. Griffin's appeal at least had a reasonable chance of being a valid complaint. So the Court ruled it unconstitutional.

Ms. Bruce: And that's a famous case. I'm sure I can find it.

Mr. Horsky: This has a table of cases. Did I say Ohio?

Ms. Bruce: You said Ohio but I think it's Griffin against Illinois, isn't it?

Mr. Horsky: It's Griffin against Illinois.

Ms. Bruce: Right.

Mr. Horsky: That was in **1956, 351** U.S. **12.** If a person can't afford a transcript, the State's got to give him a free transcript. In **1944,** I think it was, I argued Korematsu against the United States. Korematsu was one of the Japanese exclusion cases.

Ms. Bruce: Right. And how did you come to be involved in the Korematsu case?

Mr. Horsky: **1944, 322** U.S. **214. I** have for sometime been active in the American Civil Liberties Union. In fact, one of the things I did was to start the branch in the District. That's another story. But in connection with the ACLU I got to know pretty well the lawyers in the Northern California branch of the ACLU and I acted with them in a number of cases for the Japanese. Korematsu was one of the cases that arose in the Northern California branch and I had it only in the Supreme Court. I didn't handle any other forum. Korematsu was a young, intelligent Japanese-American citizen who refused on grounds of principle to report for internment. He was arrested and because he refused to report for internment he was convicted and he wound up in one of the internment camps. The United States tried to avoid calling it a concentration camp, but it

was damn near that. Anyway, he appealed and finally got it to the Supreme Court and I was asked to brief and argue it along with the lawyer from California whose name was A.L. Wirin, a very active civil liberties lawyer in California. I had, I think, 20 minutes to argue. And I think it was the best argument I ever made. It did not prevail but I really put my heart into that one. I thought we were dead right.

Ms. Bruce: You were dead right.

Mr. Horsky: We were dead right as it finally turned out. One of the things that made it very difficult was that the government's case basically relied on the fact that all Japanese were not to be trusted. And that things had been happening in California that suggested that we have to just move all the Japanese out of California. There was a report written by the commanding general of the Pacific Coast command named DeWitt. The DeWitt report outlined a lot of things about why it was necessary to remove the Japs. And some of them I knew were false -- well, I had every reason to believe were false. For example, DeWitt said there were suspicious lights moving about on the Coast, which he said probably seemed to be signals to submarines lurking along the shore. And I had found out to my satisfaction that the lights were Japanese kids or maybe not even Japanese but kids going to outdoor toilets at night with a flashlight. Really, and other things like that. In addition to that,

the whole idea of the Japanese exclusion was an anathema to a lot of people in the Department of Justice, including, among others, Jack Burling, Uncle Ned's son.

Ms. Bruce: Did you say he was Ned's son?

Mr. Horsky: Uncle Ned's son. Eddie Burling's brother.

Ms. Bruce: Right.

Mr. Horsky: The elder brother. He was not a well person when he died a long time ago. Anyway, he talked to me on the QT more or less. He told me things about the DeWitt Report that I was sure were true and showed that the DeWitt Report was false. Well, he had caused enough fuss in the Department of Justice about the DeWitt Report that the brief of the government in a very, very wishy-washy fashion sort of disavowed it but not quite. They used it. But they didn't really say it was all true but they didn't say that it wasn't true either. It caused an enormous amount of controversy between the Department of Justice people, like Jack Burling and Charles Fahy, who was Solicitor General. The Pentagon wanted to stand up for General DeWitt and insisted on using the Report. **As** I said, the compromise was a wishy-washy kind of a footnote. Well, in the argument, I did not quite say that I thought Charles Fahy, who argued the case for the government, was misleading the court. But I came as close to it as I could without actually saying it, close enough so that Mr. Fahy didn't speak to me for years and years

afterwards. But as you know, by a 6-to-3 vote, the court said that military necessities were paramount. The final answer was given within the last two years. Mr. Korematsu had brought an action ~~coram nobis~~ to review his conviction. **A** District Court in California made elaborate findings after a full trial and found that the United States had misled the Supreme Court. It set aside the conviction and the government did not appeal. So, I feel a little bit vindicated about what I truly thought was a terrible decision.

At the same time, there was an argument which I did not participate in but which **I** helped brief called Endo against the United States. It also arose in California. She was represented by the ACLU. Miss Endo, a Japanese-American who had been cleared through the machinery of the relocation authorities to determine that she was not a traitor or any danger to anybody asked to therefore be released from the detention camp. And they said, "You can't leave." And she said why. They said it was for her own good. You might be assaulted or something when you get out. She insisted. She brought a habeas corpus. The Supreme Court really chastised Charlie Fahy on that one. I remember the Chief Justice practically giving Mr. Fahy a lecture on what business is it of the government telling people where they can live. She was released. That was a unanimous decision. But Korematsu

really bothered me. I should have won it. I just didn't have the nerve, perhaps, or enough information to really tie it down.

Ms. Bruce: Well, but given the times, I think, maybe you are being too hard on yourself. Given the climate. It was definitely a wrongly decided opinion but even had you brought all the evidence or information to the court. . . .

Mr. Horsky: One thing I didn't know was; something that came out later was that the Naval security apparatus had investigated all of these things and had given all the Japanese a clean bill of health. None of the allegations in the DeWitt Report, not one of them was true. The Navy had cleared them completely. I didn't know that. Another case which is in the same general character, which I also lost was -- it slipped my mind. I'll think of it as I go along.

Ms. Bruce: Okay.

Mr. Horsky: The case involved a Mexican-American man who had been born in the United States and gone back to Mexico from time to time. And on one occasion while in Mexico he had voted in one of the Mexican elections. And under the 1952 Act, whatever the name of it was, you forfeited your citizenship if you voted in a foreign election.

Ms. Bruce: You can't remember it [Perez v. Brownell, 356 U.S. 44 (1958)].

Ms. Bruce: It's okay.

Mr. Horsky: I'll carry on anyway.

Ms. Bruce: All right.

Mr. Horsky: As a result, when he came back to the United States they arrested him and said you have lost your citizenship and he was to be deported. We got certiorari on that. I argued that case.

Ms. Bruce: Was that another ACLU case?

Mr. Horsky: Another ACLU case. And again I thought I was dead right. It seemed to me outrageous that the person who voted in a foreign election but nothing more particularly because as a dual citizen, U.S. and Mexican because his parents were Mexican, he was required by Mexican law to vote if he was in Mexico at election time. It was a violation of law not to vote in the election. And I discovered there were a lot of really silly cases under this statute like the one where a woman had been deprived of her citizenship because she was in Canada for a visit and they had a referendum as to whether the grocery store should be allowed to sell wine and she cast a ballot in favor of the grocery store selling wine and she lost her citizenship.

Ms. Bruce: Oh, my heavens.

Mr. Horsky: Well, she could get it back. I mean she had to reapply and go through the motions of being naturalized. But there are a lot of cases like that where I thought it was absurd. But I lost the case 5 to 4 with Brennan, who's a Catholic voting against me. About two weeks after this after the decision I read in the paper that the Pope

died and that the College of Cardinals was gathering from all over the world to elect a Pope and that if the law applied to them, all of the Catholic Cardinals in this country were going to lose their citizenship. They didn't of course. I knew damn well that if I had cited that I would have gotten Brennan for sure. It made me physically sick. I lost the case because I didn't make the right argument.

Ms. Bruce: Wasn't it Solicitor General Jackson who said that whenever he makes an argument there are always three arguments: the one that he crafts so carefully before the oral argument; the clumsily delivered argument that he gives; and then the argument that he thinks of at some point in the middle of the night when he's sound asleep after his oral argument.

Mr. Horsky: Well, I normally don't do that but this one. . . .

Ms. Bruce: Well, I can understand.

Mr. Horsky: Anyway, because of the decision the law got quite a lot of publicity. Someone else thought of the Cardinals and the upshot was that Congress passed a special exemption for the Cardinals. That statute was very harsh -- a very restrictive statute passed in 1952 under which you could lose your citizenship in a vast variety of ways.

Ms. Bruce: Again, that was a reflection of the times, it's McCarthyism.

Mr. Horsky: Later section by section it was declared unconstitutional.

Ms. Bruce: Did there ever come a time, though, when that section was repealed by law, or is it still? I've never heard of it.

Mr. Horsky: Most of it was declared unconstitutional, and none of it remains today. In the meantime, between all of these interesting cases I had a couple of minor ones which were not really very important. I argued one for the Southern Railway. The National Association of Railway Passengers. And I argued one for the United States Smelting and Refining Company.

Ms. Bruce: Excuse me, this is the good tape recorder that stops so that's important.

Mr. Horsky: Well, it's 4 o'clock

Ms. Bruce: Well, if you can go to 4:30 because we started at 2:30 that would be two hours -- why don't we do that?

Mr. Horsky: The case I was mentioning was **U.S. v. U.S.** Smelting and Refining Company, which was an ICC case in which **U.S.** Smelting had a very minor role but they had ten minutes to argue and I argued for ten and I don't remember about what. I don't even remember how it came out. But I had some other interesting cases. One was Regional Rail Reorganization Act case. This is the culmination of the Penn Central reorganization in which the government proposed as a solution for the rail problems in the East to create Conrail and Amtrak but to pay Penn Central for the properties that it took only in some collateral fashion. I don't

remember exactly what it was. Clearly, not full value. And that issue came up to the Supreme Court. I was asked to argue against the plan in favor of sending it back for a better solution. We had devised an argument based around the Tucker Act -- that if the government took your property you were entitled to go to the Court of Claims for redemption for the full value of it. The issue really was whether we could insist on the Tucker Act being a remedy. If it was a remedy then the government could go ahead and do whatever they wanted to and we could sue in the Court of Claims to get our money. The question was whether the court would go that far. I prepared a long argument and finally managed to persuade the court that we did have a Tucker Act remedy. On the basis of that the plan was radically revised and the government finally paid Penn Central a vast amount of money for the property which was taken, which became part of Conrail.

Ms. Bruce: And you represented Penn Central?

Mr. Horsky: I represented Penn Central. I had been in charge **of** the Penn Central reorganization team from Covington & Burling for the whole period of the reorganization. Early on in the reorganization the trustees included Willard Wirts, one of three trustees. He was a former Professor of Law at Northwestern and former Secretary of Labor and **I** had known him both as a law professor and as a Secretary of Labor. He got to the point where he thought house

counsel of Penn Central was not adequate to take care of the trustee problems because they were in a sense fully occupied dealing with railroad problems and didn't have any time for the special bankruptcy problems. He asked could I come up and see if I could help. I came up and obviously they needed help. I got a couple of other people to help me and more people kept helping me and more problems came up and eventually we had a very large Penn Central team.

Ms. Bruce: When was this, was this in the '70s? I mean this was not that long ago.

Mr. Horsky: This was quite recently, yes.

Ms. Bruce: May be in the '80s actually.

Mr. Horsky: I don't remember the date of the case, '75 or '76 somewhere around there, not very long ago. Ultimately, we had 35 or 40 people here at Covington working on the Penn Central case. I don't know whether this interests you or not but we were being paid on a quarterly basis. The court and the ICC, which was sort of sheparding the bills, insisted on having details on what we did each quarter so I composed the regular and very elaborate bills to what we were doing, and I suggested the amount of the fees, which were quite large. At the end of the whole business, at somebody's request, I took all those bills and wrote the history of Covington & Burling's work for Penn Central Reorganization; how we helped

them out. There are copies of it floating around if you would like to have one.

Ms. Bruce: I will.

Mr. Horsky: I'll pick one up for you somewhere. I don't know exactly where they are. Anyway in the cases in the Supreme Court which was the crux of the final reorganization we finally persuaded the court to give us a type of remedy on the basis of which the government finally settled in what was called the valuation case. Ed Zimmerman had it here in the office with a lot of other lawyers. Another case was an interesting one. In some fashion I'd gotten involved in the nuclear power business representing companies that were trying to build nuclear reactors and having great trouble getting permission over the objections of the environmentalists and antinuclear people and so on. One case that finally went to the Supreme Court, which I argued, was called Vermont Yankee Nuclear Power Company v. The National Resources Defense Council, which was an environmental group. Vermont Yankee had gotten pretty well along with its plan but had all kinds of road blocks put in the way by way of you have to prove this and you have to prove that to be able to operate -- and they finally got the Atomic Energy Commission to grant them a license. The Court of Appeals had set it aside on the ground they hadn't gone through all of the hoops, they ought to **go** back and do some more work. And

we appealed that on the theory that there had to be finality at some point.

Ms. Bruce: Finality.

Mr. Horsky: Yes, and the Supreme Court agreed. It affirmed the Atomic Energy Commission grant of a license to operate and Vermont Yankee went ahead and built the plant. Apparently, that was somewhat of a surprise to the administrative law crowd. I remember one of my classmates in law school, Ken Davis, who wrote the Treatise on Administrative Law.

Ms. Bruce: Isn't he the same Ken Davis who you went traipsing through Europe with?

Mr. Horsky: Yeah.

Ms. Bruce: Okay.

Mr. Horsky: He called me up after the decision and said you ought to be ashamed of yourself persuading a court to do what you just did. That's so inconsistent with basic principals of administrative law and it's really outrageous. You ought to apologize to the bar. And I said well after all when you have a client and you want to win. I won.

Well, that pretty near exhausts my Supreme Court practice. It's been interesting. I got to know a lot of the Justices and it's great fun to argue before the Supreme Court, really.

Ms. Bruce: How has the argument changed over the years as the time allotted changed?

Mr. Horsky: Time allotted is actually different. In the early days you got an hour each side. You argued for an hour. Now, you get thirty minutes and you're lucky if you get to talk for fifteen of your thirty minutes because of the questions. Otherwise, it hasn't changed an awful lot. There were on the court justices who would ask questions and some that didn't. Some of them were questions that the justice used to try to argue the cases by getting you to argue back and forth with him. Other Justices would get irritated and they'd ask questions trying to shut the first justice up. The whole thing really got kind of frantic after a bit. But by in large it was good. I remember one occasion in one of these earlier cases, I think it was the Power's case, I was arguing some arcane question about tax law. I stated my position and Hughes, who was Chief Justice, said I understand that what you are saying is this and he stated it in a way which was obvious I was going to lose and I said well no that isn't quite right let me try it again. And I tried to say it a little differently and he said well let me see if I can do it. He stated it again in his way. Again, I would lose. And I said no that's not quite right. He said well all right have it your own way and I lost. But Justices are uniformly courteous. They appreciate a good argument I am sure and they probably don't get very many

because so many of the cases in the court are argued by people who have been there only once so if they get a case in the Supreme Court by God they are going to argue it themselves and not let somebody else take their cases. The result is that a lot of the cases are not well argued. The government has an enormous advantage in that respect because the Solicitor General and his staff have cases all the time and they do a good job. They also have the advantage of being able to pick and choose the kind of cases they want to take up there and if they really want to take a case by certiorari, they usually get it. It's because of the government's ability to chose their cases, so their score on certiori must be at least 50% where ordinary people maybe get **3, 4,** or ***5%*.**

Ms. Bruce: Do you think that lawyers who practice before the Circuit Court of Appeals. . .

Mr. Horsky: Find it different than the Supreme Court?

Ms. Bruce: Do they really -- is that enough of a preparation for arguing in the Supreme Court. Is it really different, significantly different?

Mr. Horsky: No, not really. When you're standing up there with nine people looking at you critically sometimes caustically it's quite different than an argument before a three judge court or a single court. I suppose even before a state Supreme Court. **A** lot of lawyers are what you might call novices trying to do their best. I've seen some almost just collapse and not be able to say anything, being

overwhelmed by the court, but some of them are good. I don't mean to minimize, but I suspect the general caliber of Supreme Court oral arguments is not terribly high and never has been.

Ms. Bruce: But isn't there a Supreme Court bar -- lawyers who do or have practiced enough before the Supreme Court that they are recognized? Take yourself, for example, as someone who would be -- a client would be well-advised to seek you out for an oral argument? Although, there is an argument to be made that the trial level lawyer can often times make the best appellate lawyer in a case because that lawyer is so familiar with the facts that he/she can state their facts in such a compelling way that there's almost no need to argue the law.

Mr. Horsky: Well, I'm sure in the early days of the Supreme Court way back in the 1800s there was definitely a Supreme Court bar. But as you get on toward the present time there are so many lawyers. Even with a lawyer who has argued a dozen cases in the Supreme Court and many who have argued at least a half dozen you have difficulty making a Supreme Court bar out of it. I don't think there really is a Supreme Court bar in that sense that is recognized as such. There may be lawyers whose reputation is high enough so that people come to them to take cases in the Supreme Court. I suppose John W. Davis was such a person. George Wharton Pepper was probably such a person. There probably are others

that we can think of that would be in that same category. By and large there isn't a Supreme Court bar except on the government side.

Ms. Bruce: Well, I think now might be a good breaking point and maybe next time we could take up the pro bono or the professional work that you've done over the years and then move into the White House years and then discuss your efforts specifically on the active bar with respect to court reform, and then to hone in on the courts themselves in the District of Columbia from what your experience was with them in Court reform. How does that sound?

Mr. Horsky: In the meantime I'll think of my other case. That was one of my most interesting cases and I can't remember what it was.

Ms. Bruce: The facts certainly sound interesting. It'll come to you. If you're like me you drive with a note pad on the seat next to you in the car because things come to you. Not often enough at red lights, usually as you're driving.

Mr. Horsky: Are you really sure that all of this is really what you want?

Ms. Bruce: Yes, I'm absolutely positive.

Charles A. Horsky, Esq.
Covington & Burling
Washington, D.C.

September 29, 1994

Third Session of the Interview of
Charles A. Horsky, Esq.,
for the Oral History Project,
District of Columbia Circuit Historical Society

Ms. Bruce: In your years of practice here in Washington you came to know many people.

Mr. Horsky: Actually the kind of practice I had didn't involve the kinds of people that you are talking about, really.

Ms. Bruce: Well, but in your years of practice here in Washington you came to know many people who today are regarded as leaders of the Bar, who were leaders of the Bar. Maybe not in Bar association terminology but just meaning the lights within the Bar, famous lawyers in Washington. Famous personalities in Washington.

Mr. Horsky: [Inaudible.]

Ms. Bruce: Let's talk about when you first came to Washington to practice law. When you first came to the Department of Justice what was Washington like back then?

Mr. Horsky: Well when I first came to Washington in 1935, the New Deal was in everybody's mind. I worked in the Solicitor General's office which was at the cutting edge, if you want to call it. It was the constitutionality of what made the New Deal. In that office we worried about the constitutionality of the National Labor Relations

Act, Tennessee Valley Act, Social Security Act, Agricultural Adjustment Act. And I had almost no contact outside of the Department of Justice with any of the rest of the legal establishment in Washington. But in the government area, it was an era of which everybody was assured that they were on the right track and that they were saving the world. And they should give their very best efforts to that end. It was an era in which when lawyers got together they didn't talk about the baseball games or the football games. They talked about what were you doing in your cases and how were you coming along with the problems. Most of the obstacles to getting such programs up and running successfully was a very heavy period when everybody worked without regard to the clock. I recall several times when I worked all night into the next day getting a brief out in time. Or in conferences with lawyers about what's going on in the cases which I was responsible for in the SG's office. But for those years in the Department of Justice, I was persuaded like everybody else that I was here saving the world and I was going to do my damnedest to get it saved. It was the time when the Supreme Court having declared the NIRA unconstitutional and a few other taxes unconstitutional began to turn around. Justice Roberts was the swingman and he began to vote **our** way and he miraculously got the National Labor Relations Act declared constitutional and the

TVA Act declared constitutional. It got the Social Security Act declared constitutional. We were all really very excited about the efforts we were making and the success we were having. But it was the kind of environment in which your relationship with the rest of the world including the rest of the District of Columbia and certainly the rest of the District of Columbia Bar were either zero or very minimal. Your focus was on the job that you were doing and that was it. I've been asked many times about the integration of the District -- segregation of the District. And I have to confess that it never impinged on my consciousness really. I drove to work and drove home where I was living.

Ms. Bruce: Where were you living back at the time in the thirties?

Mr. Horsky: I was living in a boarding house out on Wisconsin Avenue. And later in 1936 when I was married we moved into a small house that I rented in Georgetown. And the only real recollection I have of race relations was that in those days Georgetown was a very integrated community. In the same block in which I lived there were several Negro families. That never occurred to me that there was anything startling about that. That was the way it was. For that period I can't tell you anything about the rest of the Bar. I can only tell you about the dedication of government workers both in the Department of Justice and in the other agencies like the National Labor Relations Board and the TVA and Social Security

Administrations which were all in the same kind of like euphoric mood that I was. And it was wonderful. I never had a better time in my life. I probably never worked harder in my life than I did in those days.

When I first came to Covington, I guess I had had some experience with the other people in the Bar but I don't remember any. I worked basically with Paul Shorb on tax matters; I worked with Mr. Burling on a couple of tax cases that he had; and I got to know the people in this office. But again, I had almost no contact with the outside Bar. And I never have had really a great deal of contact outside of Covington. As my worth in the Firm developed, I began to see a little bit of lawyers outside my immediate colleagues of Covington but I don't recall any of it in particular being important or significant. I am sure I had cases against people, or at least people on the other side of the problems I was working on. But I have no recollection of them and I don't even remember who they were.

Ms. Bruce: When you came to Covington there was a time when you went back to the Solicitor General's office.

Mr. Horsky: I went back to the Solicitor General's office.

Ms. Bruce: And what years were those that you went back?

Mr. Horsky: Well I started with the SG's office on August 1, 1935 having finished a year's clerkship with Judge Hand in New York. And I

stayed there for two years until about the fall of **1937.** I don't remember if it was August **1** or not but it was about that time. And I stayed at Covington for a year and then as I probably said earlier in this operation, I got a call from Bob Jackson who was then Solicitor General offering me a job in the office again and when I would be eligible to argue cases in the Supreme Court. And I asked Mr. Burling if I should take it and he said, of course. So, I went back for a year. I was there from **1937** to the fall of **1938.** And then **I** came back and I have been at Covington with the various excursions ever since that time.

Ms. Bruce: Well why don't we talk about the excursions. I know of one. **I** see some of the photographs on your wall reflecting your service with President Lyndon Johnson.

Mr. Horsky: Well the first excursion was in connection with the Nuremberg trial. This was in the **1940's.** I read in the newspapers that Bob Jackson had been appointed chief prosecutor. The whole idea of the Nuremberg trial sounded very interesting, so I went to his office to see if I could help out, you know, do something in connection with **it.** And he said sure, he'd be glad to have me and he gave me some drafts of the indictment and of the charter of the international tribunal which he was working on. He asked me to look them over and see if I had any suggestions or ideas about them. So I took them home and scribbled some notes in the

margins. I came back in a couple of days. But at the same time I began to worry about the fact that they were all marked top secret and here I was carting them around in my briefcase. I told the Justice that I thought this was going to get both of us into trouble. I'd like to do it and I'd like to be helpful but I didn't want to get accused of violating the security arrangements. So he said, "Well that's all right, we'll fix it up -- I'll put you on Bob Patterson's payroll in the Defense Department," which is where his office was located, his Nuremberg office. I mulled that over for a little while and checked it out here at the office and discovered that if I was put on Bob Patterson's payroll I not only would disqualify myself from the kind of work I was doing at Covington, obviously, but I would also disqualify a lot of other people in the office from doing work on defense matters. *So* I told the Justice that wouldn't work. *So* he said, "Well, I'm *sorry,* I'd love to have you aboard but I don't see how we're going to do it and keep you happy at Covington at the same time." *So,* I left his office. When I came out there was a man in his office reception room named Sydney Kramer who was an officer in the Coast Guard, a friend that I had known for sometime. And I chatted with him about my problem. "Well," he said, "there's a very easy answer to that. The Coast Guard has an organization called the Temporary Reserves. They patrol the harbors and they are not paid but they volunteer. While they are

acting as Coast Guard people and patrolling the harbors they put on uniforms and they are members of the Armed Forces with all the perks that entails. And then they take off their uniforms and go back to being bankers or longshoremen or whatever. They are just citizens again. Why don't you join the Temporary Reserves?" ***So*** I went in to see the Justice and went back into his office and said, "I think we've got an answer. I can join the Temporary Reserves with the Coast Guard." And he listened to my explanation and Syd Kramer's explanation and said, "That's fine. I'll call up the Commandant of the Coast Guard. He called up and said I'd like to have Mr. Horsky join the reserves and I'd like to have him as my representative in Washington. ***So*** give him some kind of a rank so that he can really deal with people." ***So*** I went over to the Coast Guard office which then was where the new building is now being built for the International Trade and Cultural Center. It was in the old Southern Railroad Building which was the headquarters of the Coast Guard. And I discovered that in order to be eligible you have to be able to breath in and out and that was about all. I qualified and I was sworn in as a Lieutenant Commander, 2½ stripes. Not quite enough to get scrapple on the visor of my cap but a good rank. ***So*** I went out and purchased a uniform, two uniforms, a dress uniform and a regular uniform and became a member of the Temporary Reserves. And I got an office for

myself over at the Pentagon and I functioned as a reservist for the duration of the Nuremberg trial. My job was the Washington representative of Justice Jackson and to do whatever could be done for him in this part of the world, while he was over in Nuremberg. And I had a staff of two assistants and two secretaries and we arranged for witnesses, we arranged for getting additional lawyers, I kept the Justice abreast of the press coverage of the trial and how it is playing with the United States and I sent him daily reports and on about four or five occasions I took over the information on the witnesses myself just to see how things were going so I would be more intelligent about what was going on. And all in all I had a useful and very successful kind of an operation. There were two parts of this work that I remember very distinctly. One was to get an affidavit from Ambassador Messerschmidt, who had been Consul General in Austria at the time of the Anschlutz when Germany took over Austria. He was then Ambassador to Mexico. I was asked to go down to Mexico and get an affidavit from Mr. Messerschmidt about what happened in connection with the Anschlutz. Mr. Messerschmidt was a former school teacher and very little man, only about 5 feet tall. He had written reports from Austria to the State Department about what was going on in great detail, almost every day he would sit down and talk to his secretary for an hour and send that off to the State Department.

Ms. Bruce: This was during the war he did this?

Mr. Horsky: This was during the time when Germany was just taking over Austria. Before the war was on. That was called the annexation or absorption of Austria by Germany. So I went over to the State Department and I spent about two weeks running through Messerschmidt dispatches trying to learn as much as I could. I took some of his dispatches through with me down to Mexico City. There I sat down with the Ambassador and went through day by day, how things were going in Austria on the basis of his recollection. We developed an affidavit that was about 75 pages long. It was shipped off to Nuremberg and was introduced at the trial later on. I had been a member of the Coast Guard by that time, about three weeks, four weeks, something like that. Green as possible as far as the military was concerned -- I didn't even know when to salute, when not to salute and how I was supposed to act. When I went down there I went into the Ambassador's office. His secretary said she could fix me up with some place to stay and she did, at a hotel. Then I ran into the Naval Attache. He said "what are you doing here?" and I said "I'm down here interviewing the Ambassador." He said, "Do you have the clearance to do that? You're supposed to come and see me."

Ms. Bruce: Report to the Attaché?

Mr. Horsky: I said, "Well, I didn't know that. And he said, "Well, how long have you been a member of the Coast Guard anyway?" And I said, "About two weeks". He said, "Oh, my God, well, I won't put it in your file that you violated a regulation, but next time that you come for God's sake come in and report to me. And I'll take care of getting you a hotel and all the rest of it." That was my first unfortunate dealing with the military. Anyway I got the affidavit and enjoyed my conversations with the Ambassador. We worked very hard getting him to give me an idea of what to say and then writing it up in the evening and going over it with him in the morning, and then spent part of the afternoon getting part ready. We worked for a period of about ten days. All this was on government pay and allowances, I didn't have to pay for it. That was one interesting part of the assignment. The other one was even more interesting. One day I was sitting in my office at the Pentagon and a man named Bostaert came in and asked to see me. He said "I'm curious to know how you're working out the arrangements of this trial for taking care of the various languages that are going to be involved. You got a Russian judge, a French judge, two English speakers and a lot of German defendants and German lawyers and you'll probably have witnesses that speak other languages. How are you going to do it." I said, "Well, I don't really know. I suppose we'll just have to have somebody

interpret as we go along." He said, "Oh, God that's going to be awful, too. How are you going to have a person interpreting the Russians, the French and the Germans?" He said "You know, we've had some experience, I've had some experience with what you might call simultaneous translation. I can rig it up with headphones. When somebody speaks in any language the interpreter translates it into other languages as they go along. It's never been done with more than one different language but I'm sure its not technically impossible, four or five or six and I think you at least ought to consider it." And I said "I sure will consider it because I see your point as to how difficult it would be otherwise." So I got on the telephone with the Justice and I said, "I don't know what arrangements you're thinking about to deal with the language problems, I just had a suggestion from Colonel Bostaert" . . . it wasn't Colonel it was Professor Bostaert . . . "as to how we might do it through a system of simultaneous translation with a wire hook-up to everybody with their own language. At least don't make any other arrangements until we've tried it out." So I got a hold of Bostaert and we rigged up a test case at the Pentagon. We brought in a lot of wires and headphones and interpreters and we had a session in the Pentagon with four or five people talking different languages simultaneously through the listeners' earphones. It was awful crude but it did work. He said

well I think we've shown that it can work and it's just now a matter of getting the different interpreters that are going to be necessary to make this thing happen. So I shipped him off to Nuremberg and he talked to the Justice. America was really handling all of the physical arrangements in Nuremberg. The other countries -- England, France and the Soviet Union -- were content to let Uncle Sam take care of all that, including fixing up the court room, rejuvenating the building that it was housed in and so on. ***So*** we got IBM to contribute the necessary machinery, wires and switches and it worked. It was a very interesting system. There was a room with a glass front where the interpreters sat so they could see what was going on. They could see who was talking, who was about to talk. One man in that galleria was responsible for translating everything for the English language circuit. Whether it was spoken in French or Russian or whatever, he had to put it into English. Another one was responsible for the French language, and another one was responsible for German language, another one responsible for the Russian language. Prof. Bostaert was finally made a Colonel in the U.S. Army and he came over permanently from the United States to get adequate people to do this.

Ms. Bruce: I guess you need, like you say someone responsible for Russian language, it would be someone who would be able to take the

Russian language and interpret to German, or someone who could take Russian and interpret it to English. So you would need maybe ten Russian translators for ten different languages, right?

Mr. Horsky: Well, what they really wanted was a man who would be able to take any of the languages that were likely to be spoken and make them into Russian or French or English or you would just have to have one man.

Ms. Bruce: Not just somebody who is bi-lingual, but who is multilingual.

Mr. Horsky: One man for each circuit. Every seat in the court room including the defendants, judges, prosecutors had headphones and a switch on which he could choose to hear his own language, English, French, German or Russian. Everything that was said in the court room came over in your language.

Ms. Bruce: I'm sure he has had the League of Nations or later the United Nations have that type of . . .

Mr. Horsky: I think they did. Well, I was there the first day they used it. There was a button in front of everybody. Particularly in front of the judges, they had buttons. If the translation wasn't working one could push the button and everything in the court room would stop until they got the interpretation going again. And the first day the red button was pushed an awful lot of times. The interpreter would get behind or they would get confused or something like that. But later on in the trial it was like a charm-nobody ever

thought about the problems with the interpreter. They sat up there, did their job and we listened to what was going on and kept what was going on in English.

Ms. Bruce: That was a valuable . . .

Mr. Horsky: And I think we made the trial possible with it, otherwise I don't know how it would have been possible to do it because we had a Russian judge, interrupting a German who was being cross-examined by an Englishman. You know, the interpreters could see what was going on so they knew what to expect. I mean the interpreters were really superb. They really did a marvelous job. I had an occasion later to experience their skill, when I went over to help General Taylor in the subsequent trials of some of the Germans, the lesser lifes, whom the United States prosecuted after the Nuremberg trial was over. I was over there for a couple of months helping General Taylor. I was examining a German witness and I had an interpreter, one of the regular ones who was still around after the Nuremberg main trial. I was waging a pretty vigorous examination. I had my earphones so I could understand his answers, and he had his to understand my questions. I looked up at the interpreter once and he was reading a comic book. Interpretation was automatic as far as he was concerned. He didn't even have to think. He was enjoying the comic book while I was doing this rather vigorous examination. The interpreters were very

wonderful people and they were good. Anyway that was another thing that I managed to accomplish in that office.

Ms. Bruce: Okay now we are all set, so we were asked --

Mr. Horsky: Well in the final analysis -- when the trial was over, Justice Jackson asked me to go with him to the final episode of the Nuremberg trial -- the sentencing of the defendants. I did so. I listened while the court imposed sentences on all of the defendants, and acquitted some of them. Then General Taylor, who I say was one of Jackson's principal assistants, asked me if I would help with the cases he was going to *try*. As a result, I stayed on in the Coast Guard for another period. I was in Nuremberg for about a month as a trial lawyer in the Subsequent Proceedings -- cases in which the U.S. tried a number of lower-level Nazis for war crimes -- doctors, lawyers, judges. I enjoyed that very much. Most of these lower level people were just as guilty as the big ones. I.G. Farben, for example, was one of the defendants. And that was -- that was my first excursion out of Covington. It didn't take me out very much, and I still carried on practice here. I spent a good deal of time at the Pentagon in my other office. Nobody in the office seemed to object, everybody thought I was having a good time, and I was.

Ms. Bruce: What was -- what was your second excursion?

Mr. Horsky: My second excursion was to -- the White House. I came home one evening from a party at about 10:00 o'clock and the phone was ringing as I walked in the door. I picked it up and it was Phil Graham on the telephone, he was the editor of the Washington Post and an old friend of mine from way back and he said that "I've just been talking to the President about the District of Columbia and we need somebody to help him do something for the District and I recommended they appoint you," and I said, "My God! What does that mean, going over to the White House? "and he said, "Yes it does . . . and be his advisor on the District." So I said, "Well, thank you Phil. I'll think about it and talk to the people here at the office about whether I can get away or not. But I probably can do it for a year or so, without too much trouble." And I came back and I talked to Dean Acheson, he said oh don't do it -- all those Irish fellows over there would never work with you. However, I thought this was just too good a chance to pass up so I called Phil back and I said "I'm glad to help, where do we start." And he said, well talk to Bobby Kennedy, he's Attorney General and he'll straighten it all out. I told him that I had to go to Wisconsin to make a speech. I can't remember what about. When I was in Chicago on my way back to D.C. I put in a call to Robert Kennedy at the Department of Justice and got some secretary and said, "I'm supposed to call the Attorney General, my

name is Horsky, about a job in the White House. She said, well the Attorney General is busy but I will make a date for you, if you want. ***So*** we made a date for me to go down and see him. When we met I explained what had happened and we had a good conversation. At the outset I said that there was one thing I think I better tell you about: I'm probably on the FBI's undesirables list. I have been representing people the FBI doesn't like, people that have been guilty of contempt of Congress. I one time circulated a petition or started to circulate a petition to have a Congressional investigation of the FBI for tapping lawyers' telephones. When this petition became public, **J.** Edgar Hoover went into action and gave to a friendly reporter my F.B.I. file. The Star condemned the petition as outrageous and listed all of my contacts with the American Society -- American Soviet Friendship Society and my representation of people who had been accused under the Loyalty program. And, I said, "You know, I don't want to embarrass the President by getting over there and having a big hooray about getting this subversive person on his staff." Bobby said "Well, I've -- I've known something about that and I've got your file from the FBI and I looked it over and I think it's fine. I'm all for you, go ahead." ***So*** I took the job and I went over to the White House and got myself an office staff.

Mr. Horsky: This was 1962, and I took my vacation in Montana as I usually do in August. I started about the first of September in the White House in '62. I was assigned an office in the Executive Office Building, a beautiful office on the first floor overlooking the White House grounds. I shared it with -- I shared a bathroom with Esther Peterson, she had the office on the other side of the bathroom and we got to be good friends. I had a secretary from the White House and I took Eunice Graham, my secretary here, with me and she got established and I stayed over there as advisor to the President until the spring of 1967. I originally planned to stay maybe a year, maybe two years. But I just couldn't ever get permission from the Presidents to leave. Kennedy wouldn't let me go and when LBJ came in I submitted my resignation along, as everybody else did. It was customary and he called me and said, "I don't want you to leave, I need you." "Well I've been here quite a long time." He said, "Stay a while longer, it won't hurt." And I finally was able to persuade him to let me go in 1967, only because he said, "If you can find somebody else like yourself, who knows about the District, who will come over and take your place; then okay, you can leave." So I finally -- managed to round up Steve Pollak, he said he would be willing to do it. He came in and succeeded me for about a year before the office was finally abolished. But that was a five-year absence from the office.

Ms. Bruce: And what -- if you could describe that position for me -- I mean this would pre-date any sort of home rule in the District of Columbia.

Mr. Horsky: Oh yes, yes.

Ms. Bruce: With that -- we still had a Commissioner form **of** government.

Mr. Horsky: Well I think I can best explain it by my first conversation with Jack Kennedy. He said, "Well, you know I've been in this town for quite a long time and in the White House for a year and **I** don't know a damn thing about the District really, except that it exists and what **I** really need is somebody who will tell me what to do. The District is being run by the District Committee of the House which was a collection of Southern Democrats, headed by a man named John McMillan of South Carolina, who kept getting reelected regularly by telling his constituents that he kept those "damn niggers" in Washington under control, which he did. The idea was that if the President would take some responsibility for the District it would improve things here a little bit. ***So*** the President said what **I** want you to do is do what you think ought to be done in my name and whatever you do I will back you up. Just go ahead and do it, keep me posted as to what you're doing so I will know what's going on, but don't come and ask me what to do, that's what you're supposed to do. You know -- in fact what I was -- was the President's voice in District management. This was not

terribly popular with the Commissioners. Walter Tobriner who was the President of the three-man Board of Commissioners at the time, was a friend of mine and I had known the other commissioners in connection with the work I'd done even around the District on a pro bono basis. Walter felt that he wasn't going to be really the top man now anymore as far as the executive branch is concerned anyway and why the hell did the District need a White House lawyer? He said I am perfectly competent to run the District. But we had a couple of meetings and I persuaded them -- that I wasn't there to tell him what to do -- I was there to help him do what he wanted to do, and really that's fine. I knew he had things that he liked to see accomplished in the District and couldn't get permission from the District Committee to do, he couldn't get money to do, I said I think I can be helpful. So he finally, said well alright, if that's the way it's going to work that's fine we'll get along. So I established a relationship with the Commissioner and then I went to work.

The first thing I did was to address the problem of the federal payment which over the years the committee had kept at a certainly low rate. Theoretically the federal payment is to reimburse the District for the loss of tax revenues.

Ms. Bruce: Because of the federal land here?

Mr. Horsky: Because of all the federal -- they're losing because of exemptions that the Federal government gives to Embassies and church organizations and libraries and God knows what all. And it had been at a very low level. So I got busy with the bureau of the budget and we worked out a budget for the District which anticipated a much larger federal payment. Then I asked the President if he would be willing to sign a budget message for the District. Until that time the District budget was simply an annex to the Federal budget and nobody paid any attention to it, really on the Hill. So I wrote a budget message, a damn good budget message. It explained the needs of the District and why we were spending this money, and set out a variety of other things that ought to be done. All this caused quite a big sensation on the Hill and we did get the Federal payment raised very substantially, I came to know about Senator John McMillan. I tried to make peace with him, I went up to his office a couple of times and made an appointment to come and see him to explain what I was doing and that I needed his help. And each time I got to his office I was told that my appointment had been cancelled. I never did see him the whole time I was in the White House. Well that isn't quite true, I saw him once. But he did not like to have the President interfering with his --

Ms. Bruce: -- Plantation.

Mr. Horsky: Correct.

Ms. Bruce: That's how it's often been described.

Mr. Horsky: Well -- the fact is that an appropriations committee cannot appropriate money unless it's authorized and the House District Committee was the one that made the authorizations, so that Committee really had fiscal power, and McMillan, and he used it to the limits. The real problem was his real aversion to have anything good happen in the district because it was black. Another thing I did right at the beginning -- I suggested that since the President customarily met with the heads of the various appropriations committees to talk about agriculture and defense he should meet with the heads of the committees for the District. The President agreed to the meeting, and this is the one time I met John McMillan. John McMillan came over as the Head of the District Committee, Senator Byrd who was then Head of the District Appropriations Subcommittee in the Senate Appropriations Committee came over and some other Senators I can't remember -- Senator Bible -- more of them came and we had a picture taken in the White House of me and the President and the four Heads of the Committee. I thought this was going to be a good meeting and I handed the President in advance a little check list of what to talk about, but it turned out that Senator Byrd had just gotten word that the District was misusing its welfare program and of all kinds of

abuses in the welfare program and he wanted it stopped and we didn't talk about anything else. (laughing) Senator Byrd was insistent that was the -- that was the thing that had to be taken care of and nothing else. It's important to talk about. Anyway we had the meeting.

The budget message contained one thing, which I had known about for a long time and thought about for awhile, which was the lack in the District of Columbia of a college or university. I put in the budget message the suggestion that one of the things that ought to be considered was the creation of the University **of** the District of Columbia, because the District was the only place, really under the American flag, which all of the possessions and territories, where a person can graduate from high school and have nothing left for him by way of higher education except a Teacher's College, which had been in existence for quite a long time. That institution was too busy turning out teachers for the District **of** Columbia Schools to do anything else. ***So*** I suggested we ought to do something about it, and I put that in the budget message and the President signed it. I went over to Ken O'Donnell who sort of ran the President's office and said I need some money for a committee that would study the problem of the District of Columbia University. He said, how much do you need? I said probably about 50 or 60 thousand dollars. He said well alright, you got it and go ahead. So I dug

around and I got a committee appointed with really substantially prominent educators not from the District, Chicago, New York, St. Louis, Kansas City and one -- Agnes Meyer -- from the District, and a good man from a college in New York as its Executive Director or whatever you want to call it. We ran a study to see why -- why the District should have a university and how to do it and we prepared a Report. It's called a report to the President, and it recommended the creation of a Federal City College. Senator Morse introduced the appropriation bill in the Senate, which passed it. In the House Ancker Nelson, a representative from Minnesota, which had a two-year technical school, said he wanted one in the District. So the final legislation provided for a Federal City College and a Washington Technical Institute. That was a little bit difficult also because it seemed to supplant Teachers College, and Paul Cook who was the President of Teachers College, was quite upset about the fact that there was going to be another institution which could really be superior and above his and he took a little calming down. I told him we still support the Teachers College but we need something better than that. When I left the White House in **1967** the bill had just finally cleared and much to my surprise I was notified by the President that I was appointed to the Board of Higher Education which was created by the legislation to bring the college into existence. It was

a very high-powered board, a lot of people who were substantial citizens. We had a meeting, at the meeting I got appointed to be Chairman and I started off trying to figure out how to create a college and I had a marvelous time. It was a new experience, being handed a piece of paper saying that there shall be a college, and making a college out of it.

Well the first thing I had to have some money, get a secretary and place to operate so I went to the D.C. Board of Education and I said I'm sure that Congress is going to appropriate some money for this but they haven't yet. I'd like to get started, could you lend me $100,000 and they said we'll lend you $100,000. ***So*** I got my money, I hired a secretary and we started in. All of us on the Board undertook **to** learn how you do **this** by going to New York and other places to find out how you start. We finally found a man out in Oregon who had created a couple of colleges out there, a white man who we made President. That's a real long story I won't go into it but the important thing was that we finally got the thing started. We had a little problem with the Technical Institute Board because they were also getting started and we were both competing for a location. One of the things that I thought was a possible location was the old Bureau of Standards site on Connecticut Avenue which was then being vacated by the Bureau of Standards. They were moving out into Maryland and

the buildings were just stranded there vacant and I thought that would be ideal but that was under the jurisdiction of the Department of Commerce and they were not enthusiastic about giving it up. So I went over and saw Secretary Hodges. I assured him that our use was only going to be temporary, we just need some place to get started and we won't be there for more than a few years and anytime that you want it back you can have it back. He said well I'm not enthusiastic but O.K.

Ms. Bruce: Is this where the University of the District of Columbia is now located?

Mr. Horsky: Yes. The upshot was that both the Technical Institute's Board and my Board -- we finally found two places -- the other one was the old temporary building down on E Street which is now a home for the homeless. It was then vacant. So we had two places one downtown and one quite a long way out. Our Board finally decided that we would rather be downtown. We expected a lot of part-time students. It would be much easier to get down to E Street than it would be to get way out Connecticut Avenue. So we agreed we'd take the downtown building. Much later, when the University of the District of Columbia finally was created merging Federal City College with both the Technical Institute and the Teachers College it located on the Bureau of Standards site.

Ms. Bruce: And the University of the District of Columbia is the successor to Federal City College?

Mr. Horsky: Well, carrying the story along quite a long ways finally after I left the Board of Higher Education after a lot of preliminary work had been done while I was there we arranged for a merger with Federal City College with the Teachers College so at least there wouldn't be three organizations. Then some years later the University of the District of Columbia was created by another act of Congress which merged the Technical Institute and the University into one institution. It is now the University of D.C. so there is now just one school instead of three. But they stayed at that location. We stayed down on I guess E Street until quite late. We finally got another place over on H Street, an office building we rented and the College moved around from time-to-time and then they finally located on Connecticut Avenue. But that was fun.

Ms. Bruce: I should think so.

Mr. Horsky: It was a lot more fun before we had any students. It was only a matter of hiring faculty and we relied on the President to tell us how many faculty and that we needed a librarian and a library, of all of the details of a university which we didn't know anything about, but he did. He did a good job and we got the thing going finally and offered open enrollment, very inexpensive. The theory was that anybody could come and if they persevered they could

graduate, may not be in four years, maybe it would take ten years, as long as they were willing by working part-time or whenever they could carry on. The enrollment turned out to be entirely black, almost entirely black. There was great tension between a white President for a black institution. We finally changed the President while I was there, while I was on the Board to a Black man. That was the period when Black studies were all the rage.

Ms. Bruce: This was in the '70s? Would it be up to the '70s at this point, the 1970s?

Mr. Horsky: Yes, this was in the '70s. Black students were insisting on having a Black physics and Black mathematics, and Black everything. They wanted to have a completely Black oriented institution. The new President managed to calm that down. We got over that. It was pretty hectic for a little while. In fact, I had police escorts to get home from my Board meetings.

Ms. Bruce: When did you go off the Board?

Mr. Horsky: I went off the Board after about five years. I was Chairman for three years, and succeeded by a Black man.

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October 6, 1994

Fourth Session of the Interview of
Charles A. Horsky, Esq.,
for the Oral History Project,
District of Columbia Circuit Historical Society

Ms. Bruce: When we stopped last time we were discussing . . . we talked a little bit about your White House days and we talked about the formation of Federal City College. Then we were going to go back to the White House days a little more, a little more detail about what you did in the White House and the position you were in. I thought maybe we could start there and then move into a discussion about the judiciary . . . , personalities basically and then discuss the report that you made on the courts, the court reform. . .

Mr. Horsky: With respect to the White House, I had a free hand, pretty much. Neither Kennedy nor Johnson was inclined to tell me what to do, but inclined to have me tell them what to do. *So* I operated on sort of a free-wheeling basis and involved myself in anything that seemed to be going on. At that time there were several items of concern in the District. One of them was the proposal to build a subway. This had been talked about over the years a good many times. It had come down to a situation where it was about to happen if all of the hurdles could be overcome. One of the hurdles

was to get an agreement among the District, Virginia, Maryland and Congress on an interstate compact which would govern the operations of the subway because it would extend both into Maryland and Virginia and the compact had to have the approval of Congress. If you think it's easy to get an agreement between two states on something, it is astronomically more difficult to get an agreement among three jurisdictions and then to get Congress to approve it as well. But with a lot of maneuvering and a lot of negotiations back and forth they finally arrived at the compact which now governs the subway and for that matter, buses and taxicabs across the state line. The Washington Metropolitan Area Transit Authority. That was one of the hurdles. The next hurdle was to overcome the objections of the man that ran the street car system who regarded it obviously as a threat to his system.

Ms. Bruce: That was O. Roy Chalk?

Mr. Horsky: That was O. Roy Chalk. And O. Roy Chalk was really quite energetic in his opposition. He would call me at home at night and berate me for supporting the subway which he thought was a boondoggle and whatnot and completely unnecessary and too expensive but we finally got rid of that. The labor unions, startlingly enough, were also opposed too on the ground, I guess, that it would take away the jobs they had in the street car system. There was opposition from the labor counsel here in the District.

Then there was a problem of reconciling it with the Highway Department. Darwin Stolzenbach, who was an old friend with whom I had run on a ticket for County Councilman of Montgomery County in 1948, had been named the director of the subway project and he was not, to say the least, a very diplomatic man and he gloried in pointing out that if the subway was going to be built, there wouldn't have to be built all these highways. That made the Highway Department particularly unhappy and in a sense in opposition to the subway because it would destroy some of their pet projects, as indeed it would. Well Darwin prepared a report for the President on the project of building the subway and he had in it all of his elaborate arguments about what great savings there would be because of the elimination of the need for superhighways in and around the District. I had the job of trying to edit them out to the point where they wouldn't at least be inflammatory -- wouldn't rub [the Highway Department's] noses in the fact that they weren't going to have these highways. Darwin and I had quite a lot of very difficult sessions, but we finally got a report to the President that was not too bad and the subway finally went forward. I remember going down to a ground breaking ceremony of what is now the Judiciary Square station and all these people who had been bitterly opposed to the subway now cheering it on because it was going to happen anyway and they wanted to be in

on the celebration. That was a substantial part of the job that I had for quite a long time. In addition to that, and as part of a corollary to that, I got mixed **up** in the District's highway program. The District at that time, as you know, had three commissioners, one of them being an engineer commissioner. It was customary, almost mandatory, that the engineer commissioner make his reputation as a commissioner by doing something, building something. The then current engineer commissioner was no exception. There was a master plan for **D.C.** highways which included two things that were highly controversial. One of them was a bridge across the Potomac at the Three Sisters Islands, a series **of** three little islands about a half mile up stream from the current Key Bridge. The other was a proposed inner loop which was going to circle the District, basically along what is now Military Road and was going to go under the Tidal Basin and pretty close to the back end of the White House and more importantly was going to require the demolition of the Anderson House which is the home of the Society of the Cincinnati. Well, it was obvious there was quite a lot of opposition to it and I was trying to keep the President from getting involved, but at the same time I was quite clear myself that a lot of this highway construction wasn't really essential and if the subway were built it would be superfluous or almost superfluous. Anyway, a tunnel under the Tidal Basin, running in back of the White House

and out through Massachusetts and Florida Avenue would seem to me to be giving too much to the highway people. There was a motto by the anti-highway people that they wanted to have a balanced transportation system, but the balance was between asphalt and concrete. Well, I arranged for having further studies done about the highway projects and the studies by disinterested experts poured cold water on some of the projects and the upshot was that the highways weren't built. The inner loop still does not exist and the Three Sisters Bridge does not exist, thank goodness. I leaned pretty heavily in that direction without trying to get the White House too committed during the controversy, but I did my best to try to put cold water on the projects. There was a fairly good highway program which I did support and the engineer commissioner finally came away happy with his achievements, particularly in improving K Street with underpasses and things like that.

I am trying to think of other significant things that happened. One rather interesting one was the building of the Watergate Complex. I don't know whether I mentioned this before or not. When the plans were first announced there was some opposition because it required -- well let me go back. The idea was to have an arts center for Washington and the first debate was where it should be located. The preferred location was down on the Potomac where it

is now and where the federal government already owned a considerable swatch of land and would have to condemn only a very small bit. But part of what it would have to condemn was a very popular restaurant and that caused some trouble. The other proposed location was to split it into three parts, have three theaters spaced along Pennsylvania Avenue as a part of the plan to improve Pennsylvania Avenue. The difficulty with that was it would require condemnation of land along the avenue of the District by the federal government and that would be expensive, very expensive. Anyway, the argument, pro and con, went back and forth, back and forth. President Kennedy got interested himself in this and the week before he took his fatal trip to Texas we had a presentation by what was then called the Pennsylvania Avenue Commission headed by a man by the name of Nathaniel Owings, he's an architect from California of Skidmore, Owings and Merrill. It proposed that the center be built down on the Potomac and the President at that meeting approved that. So we got that settled and the plans for the center went forward on that basis. Of course, after Kennedy was assassinated it became The Kennedy Center rather than The Washington Center for the *Arts* but it came perilously close to being built on Pennsylvania Avenue in three pieces.

Ms. Bruce: We might not be here.

Mr. Horsky: We might not be here, that's right. Which reminds me of another project which was going on at that time, which was the rebuilding of Pennsylvania Avenue. Again as everybody knows when President Kennedy took his inaugural ride up Pennsylvania Avenue after he had been sworn in he was appalled, so it is said, and I think it's probably true, by the kind of buildings that line our major national thoroughfare, if you can call Pennsylvania Avenue that, which I think it probably is. Second-hand shops, boarded up buildings and generally decrepit construction all the way along. *So* he appointed a committee to do something about it. Nat Owings was the chairman, the man I previously mentioned, Pat Moynihan was on it -- he was then in the Labor Department -- and a series of other distinguished architects and city planners comprised the commission. Well, I got involved with that to some extent, working with them on what Pennsylvania Avenue would look like. I didn't have much to do with the **final** result **of** the study, but I helped chauffeur it through the White House machinery, which took a little doing to get money to print up the report and things of that sort. It was a very elaborate report, containing particularly a history of Pennsylvania Avenue written by Pat Moynihan which was very interesting and very suggestive of what the Avenue might have been and could be and was not at the time. The report recommended a huge square which would have required tearing

down the National Press Building right there by the Treasury Department to be called National Square. Much bigger than the one that is there now which is called Freedom Plaza. That drew objections from a great many people. Moreover, the problem was that this was all a White House initiative and Congress felt it occupied one end of Pennsylvania Avenue and ought to have something to say about it and they therefore refused to do any active work in connection with the plan pending some review of it or legislation. Well, we got legislation introduced authorizing the commission to proceed but in Congress, not Congress' fault, there was a great deal of controversy as to who should run the program. Should it be the Interior Department or should it be the National Park Service and they squabbled about it and the result was that Congress never did anything about it. I remember talking to President Johnson from time to time whenever he was entertaining people from Congress and asking him to please put in a good word for the Pennsylvania Avenue plan when you are talking to them. He'd say, I will, and I'd see him later and he said, I did, but still nothing happened. Anyway we never got any action from Congress until very much later, long after I left the White House. After I did leave I kept in touch with Nat Owings who was still the chairman of this commission and we had a little bitty office over in the Commerce Department where Nat and I would conspire to try

to get things done and we finally did get the Pennsylvania Avenue authority created and Congressional approval and Congressional support and Congressional funding to do the job. It isn't quite what Pat Moynihan and Nat Owings' book recommended but that was the initial push to get the thing started.

Ms. Bruce: Had they, in their proposal, recommended refurbishing of the Willard? Wasn't there some controversy over the Willard for awhile, there was some talk of tearing it down.

Mr. Horsky: There was some talk about two buildings. One was the Willard, which everyone said ought to be saved but nobody knew quite how to save it, and the other was the Old Post Office Building, which a good many people thought was an eyesore and it didn't fit in with the rest of the architecture on Pennsylvania Avenue. In general it was antiquated and outmoded and inefficient and all the rest of it. Well, Nat Owings was determined to save the Old Post Office Building and fought all out and finally arranged to have the Post Office Building refurbished. Legislation was passed which I had nothing to do with, which authorized the government to rent part of its buildings for commercial purposes which made it possible to have the kind of operation that now goes on both there and in the Union Station. The Willard was a problem because it was sort of a white elephant. Finally they worked out the deal with a hotel chain which bought it and refurbished it and it survived. These were the

sorts of things. Well another thing I was going to mention in connection with the Watergate which was built or at least begun, during Kennedy's administration. There was a story in Jack Anderson's column -- a nationally syndicated muckraking column, I suppose you'd call it -- that the arrangements had all been made to have the Pope live at the Watergate. A suite of rooms was being prepared for the Pope. Why the Pope would want to live at the Watergate, I don't know, but anyway the basis for the rumor was that the engineering firm that won one of the contracts to build Watergate was an Italian engineering firm in which the Vatican has a 30 percent stock interest. This was the Vatican connection and this resulted in the Pope living in Watergate. As a result of Anderson's column letters began to flood into the White House, asking President Kennedy as a good Catholic to stop this. This was not the way to have the Pope come to Washington. It was outrageous to think about the Pope coming to Washington and he as a Catholic ought to be able to do something about it. Well, after the flood started, the White House, in general, decided their regular answering machinery was not going to cope with it so they shipped it all over to me. I got stacks of letter about so deep every morning for quite a long time. I created a series of answers. I think I had about eight different replies depending on the tone of the letter and whether or not it was scurrilous or reasonable. I'd

take my letters home and my wife and I would sit on the living room floor with this batch of letters and sort them into which answer applies to this letter and I'd take them down the next morning and give them to Eunice, my secretary from here who went over to the White House with me and another man who was my other secretary and they'd be busily typing off these letters. Well the President was kind of irritated about it but he said you take care of it, I don't want to have anything to do with it. So as far as I know, he never signed a single letter to any of these people but I did, I signed all kinds of letters explaining that the Pope wasn't going to live in Washington and this was all nonsense. That was the kind of jobs that I had while I was there. I don't think there are many other significant things besides working on getting Federal City College started that I can remember.

Ms. Bruce: When you came back into private practice, was it a bit of a let down having been at the White House and been in the thick of things there?

Mr. Horsky: Well, I suppose it was a let down although I kept fairly actively involved in things of the District for quite awhile. Two things happened to me immediately after that. The President appointed me to two positions as I left. One was the chairman of the board of higher education, which was going to run Federal City College, and I think I've talked to you about that and the other was to the

Woodrow Wilson Center for Scholars which had been created by statute. For a long time there had been some efforts to get some kind of memorial for Woodrow Wilson and there'd been a Woodrow Wilson Commission which had been in existence for about 20 years without ever coming to any conclusions about anything. Nat Owings again, being one of these guys that like to get his fingers in every pie, thought this was the way to get something moving on Pennsylvania Avenue. Why don't we have a building for scholars on Pennsylvania Avenue dedicated to Woodrow Wilson. ***So*** he energized the Woodrow Wilson Commission. I think energized is exactly the right word. He got them to issue a report recommending that there should be a Center for Scholars based on a similar organization in Italy with which Nat had some kind of connection, which I'm not sure about. The idea being that it would bring scholars to Washington, not just to give them a stipend but give them a place to live, a place to work and a congenial atmosphere with other scholars with the hopes that the interaction between their scholarly work and the political life of the District would produce some interesting things. But it required a building, a place where they could live. Nat's idea was to have it basically down in the area around the Archives Building so he pushed very hard for a Center for Scholars. Well we got the report from the Woodrow Wilson Commission and we gave it to

President Johnson and he approved the idea, not necessarily where the building was going to be but that being a monument to Woodrow Wilson. *So* the …

[interrupted by phone call]

As it finally panned out the building wasn't built on Pennsylvania Avenue but we got Dillon Ripley, who was director of the Smithsonian to agree to let us use the top floor of the old castle as a center for the Woodrow Wilson Center where it has been since. But anyway I was appointed to that board by the President and I spent quite a lot of time working on its problems. Hubert Humphrey was the first chairman of the board and we had the problem of how to organize it and who was to be the first director, and so on. I spent three years on that board and enjoying myself working on that. The Board of Higher Education kept me a lot busier than the Woodrow Wilson Center. That was almost a full time job. In any event, I didn't feel let down particularly coming out of the White House, I had enjoyed it very much, it was a fun job, it was an interesting job, it seemed to me a worthwhile job and **I** flatter myself that I think I left the District in a little better condition than when I took the job. In any event, I tried. Where do you think we go from there?

Ms. Bruce: Well, when you came back from the White House job it sounds as if **a** good deal of time was devoted to the other commission work, establishing the Federal City College and working on the Woodrow Wilson Center for Scholars, but you also resumed your practice, and we discussed some of the cases that you handled during that time period. When was it that you came to be involved with the courts here and the question of court reform? How was it reached out to you in 1983?

Mr. Horsky: The way I got involved with the courts and court reform was somewhat later. **I** had been for quite a long time a member of the Washington Housing Association which was **an** organization founded by Eleanor Roosevelt basically trying to get rid of alley dwellings in the District -- these little squares down near the Capitol, inside the houses that were facing on the street were really slum conditions, alleys in which a lot of people lived under very bad conditions. The Housing Association was formed partly to get rid of those and also to promote public housing. I'm digressing because I think it makes sense. I got interested in the Housing Association in a very curious way. I had had almost no connection with the District except as a place to come and work during the time I'd been here, **I** knew where the District Building was, but that was about it. But, one day I was reading a newspaper and I discovered that the community chest, as it was

then called, had refused to fund the Washington Housing Association on the ground that public housing was too controversial, and they didn't want to get into it. Well, I had learned enough about public housing and what not just from reading the paper and I though that was a pretty shortsighted view for the community chest. So I decided that I would remedy that as far as I could by sending my contribution directly to the Housing Association. Well, in those days it wasn't a very big contribution. I suppose it was $250 or something like that which I would normally give to the community chest in those days, and it turned out to be one of the largest contributions that the Housing Association got. So I was promptly elected a member of the Board of Directors and very shortly after that was elected President. So I became knowledgeable through that association because it was working on not only public housing but zoning matters and various other physical aspects of the District's development. I began to learn something about the District and I got acquainted with people in the District Building and it was on the basis of knowledge I think I gained through the Housing Association that I was suggested by Phillip Graham to work in the White House.

Ms. Bruce: So when was it that, do you remember approximately the year that you got involved in the Washington Housing Commission?

Mr. Horsky: Yeah. I started back in 1955.

Ms. Bruce: Oh, okay.

Mr. Horsky: And I stayed as Chairman of it until 1962 when I went to the White House. The Association still exists now as Washington Planning and Housing Association. But it's a good organization. Anyway that got me generally concerned with District matters. Partly as a result of that I was elected to the Board of Directors of the D.C. Bar which was created as a compulsory bar for the District along about the '70s I guess.

Ms. Bruce: In the early '70s?

Mr. Horsky: Early '70s.

Mr. Horsky: I served a couple of terms I think on the Board of Governors. During one session of the Board somebody suggested that the tenth anniversary of the reorganization of the District of Columbia Courts was coming up. About ten years before Mr. Ellison -- of Covington & Burling -- had chaired a committee which studied the D.C. court system and recommended, in effect the present D.C. court system, one Superior Court and one Court of Appeals rather than a whole series of independent lower courts which had existed before. The Ellison Commission is about ten years old and somebody said the Bar should see how the new organization of the courts is working. Well, let's appoint a committee to make a study. Who should we get to be on the committee? Well, the chairman -- at that time I can't remember who it was -- said we

ought to have somebody that really doesn't have any axes to grind. "Charlie, have you ever had a case in the District of Columbia Court?" I said no, I never had a case. "You're an ideal man to do it then because you've got no background, no prejudices, you can look at it even-handedly, and we'll appoint a committee, and you can be the chairman." I said, well, all right. So I was made chairman of the committee, and at that time only three other people were appointed. I don't remember who they were. And we had a meeting and we decided that that was silly. If we were really going to investigate, to recommend or evaluate the court system, it was going to take a lot more than the spare time of three people, four people. So with the permission of the Chairman of the D.C. Board, I enlarged the committee as you know from the report, the final report, and created a rather substantial committee. I also got funds from the Meyer Foundation and from the Ford Foundation which I went up to New York to appeal to and enough money to hire an executive director, Mr. Harrihan, Sam Harrihan, who had been working in the District of Columbia government and knew quite a lot about it -- not about the judiciary -- but at least he knew his way around in the District. He'd been working on the proposal to build a park out on the Anacostia River, which never came to fruition. But he was available and he was selected and he turned out to be the exactly right man. So we started and we created

subcommittees of this large committee of mine for each of the different kinds of courts, as you can tell from the report. There's one for the Probate Court, and the Tax Court, and the Court of Appeals, and the Landlord and Tenant Court, and so on. And each of them was assigned the job of evaluating how the new system was working as compared to the old system, which meant that in most cases there was a description of the previous courts and a description of the present court and a series of recommendations. And the recommendations were very carefully crafted. Before they got any publicity at all, they had to be approved by the full subcommittee and submitted to me and Sam Harrihan for a general inspection, not approval. And then before they got any farther, they were circulated to the court in draft so the judges would have a chance to talk, and also to the public so that the members of the bar that practiced in that court would have a chance at it. We had hearings and comments and letters written and what not. And by the time all of the machinery had been exhausted, we had a report which at least had the benefit of input from almost every source that you could imagine. Not that everybody agreed with everything in it. But at least everybody had a chance to talk about it, have their say. And we did this committee by committee by committee as we went along. Some of them were fairly easy to make recommendations about, some of them didn't need many

recommendations. Some of them were very difficult. The landlord and tenant court is a perfect example of one that is an abomination but nobody knows how to change it. It handles thousands of cases a year in the most outlandish fashion. That's just the way it is. Well, anyway, we got all these reports together. And I had been friendly for a long time with Senator Mathias of Maryland. Notwithstanding the fact that he's a Republican and I am a Democrat. I have got to know him, and advised him from time to time on judicial appointments. I asked him if he would be willing to make our report a Senate document, which would mean that we would have copies of it and it would look like something. You know, more than just a bunch of mimeograph sheets that somebody put together. And he said he would. So that the result is you've got that nice big fat volume which contains all of our reports. It was a job that took almost four years. And an awful lot of people worked on it much harder than I did. I sort of kept my finger on what was going on. I'd push Sam and Sam would push the other people to get the things done. And I'd occasionally intervene or mediate when the going got kind of rough on something or other. By and large the work was done by Sam and the multitude of people that served on those subcommittees. And if I do say so myself, it was a good job. It really explored the

workings of the courts and made some quite sensible suggestions as to how to carry it into effect.

One of the great problems of anything like that is carrying through afterwards, getting something done. The court, I suspected, impressed more or less by the fact that the thing was a Senate document recognized that it was a real report. They could pick it up in their hands and it looked so official. Soon after it was printed, the court appointed a committee of three judges to evaluate the recommendations. And they went through it. Some of the recommendations required judicial actions, some required congressional actions, some required District action. They went through and they said, yes or no to every recommendation that concerned the courts -- concerned the court acting. And they adopted a great many of them. They thought they were sensible and feasible and they recommended that the court do it and they did. The D.C. Bar tried to do its part. It appointed a committee which John Pickering headed. It was called the Implementation Committee. And it worked on getting these through both the Congress and the D.C. Council. Recommendations were made for action by both of them. And that Committee functioned for about five or six years and managed to get a number of other recommendations adopted by the Council and by the Congress. In addition to that, Sam Harrihan had bugged me relentlessly to create, or help him create, or take

part in creating an organization based on the Vera Foundation in New York. An organization of judges, citizens, lawyers and generalists who would try to improve the court system in general. And after the report was in and after we had gone through the immediate problems of getting the judges to look at it and getting the D.C. Bar involved with John Pickering, we finally did create the Council for Court Excellence. We had a terrible time picking a name for it and I'm not sure that's the best name in the world but at least it's pretty good. We had some preliminary meetings and a preliminary board of directors. We made Sam the Executive Director of that. And that has functioned now for about 12 years. Its initial impetus was to work toward implementing the things that our report had recommended. But it soon began to branch out into other areas and concentrate more on particular items in the court system and in educating the public about the court system which is one of the things that is in its charter as important as anything else. Letting the public know how the courts work, where they are, how they operate. And as you know, the Council has put out pamphlets on how to proceed in Probate, how to proceed in Bankruptcy, how to do this and that, in both English and Spanish. And a fairly large book describing the court systems of the District, Maryland and Virginia, in some detail, so that you know what these courts are and what jurisdiction they have. In other words, it was a good

organization. I was chairman of it for quite a long time and after about seven or eight years I decided it was time for somebody else to take it on and I persuaded Mack Mathias to take on the chairmanship. And he held it for six years, I think. Then he thought it was time for him to quit and we got Ken Starr to take it on. Ken Starr is now the Chairman of the Board. And it has been a quite successful organization. It operates entirely on donated funds and foundation grants. And as with all such organizations, its finances are never in very good shape but it's managed to survive and pay Sam and pay rent and its miscellaneous other charges. That operation did bring me into contact with the courts and with the judges, more than I had ever had before. This was a study of the District of Columbia courts, not the federal courts. And I had come to know the chief judge and some of the other judges, not any intimate way at all but at least to be able to say hello to them and know who they were which I'd never had before. I have still never appeared in the District of Columbia court. No, I take that back. I moved an admission in the D.C. Court of Appeals once. And won. But that's the only time I've ever appeared in the District of Columbia Court. But I did know some of the federal judges. Maybe I could say a word about that.

Ms. Bruce: Yeah. I thought maybe first, I'd want to ask you a few questions about the study itself.

Mr. Horsky: Alright.

Ms. Bruce: In the -- it was the Board of Governors that appointed you and the others to perform the study?

Mr. Horsky: Yeah, yeah.

Ms. Bruce: I had a sense from the Report that you did receive a great deal of cooperation from the local courts when you did your study.

Mr. Horsky: Oh yes.

Ms. Bruce: And I'm wondering, I couldn't tell it from the report. But how involved, if it all, was the chief judge of the courts in recommending people to serve on the committees? Or were they -- responded to your request?

Mr. Horsky: No. The courts had nothing to do with appointments.

Ms. Bruce: Okay.

Mr. Horsky: What we tried to do with respect to the Committees or the Subcommittees really, which the totality of which comprised the full Committee, which rarely met en banc. What we tried to do in picking the Subcommittee was to get practitioners who had practiced in that particular court or in that area of the court system so that they would know something about how the system actually worked. **As** far as I can remember, we never got a suggestion from the chief judge or anybody else as to whom we should put on the Committee. We did have complete cooperation from the court after they found out how we were doing it -- that we were going to

show them what we were doing and ask for their comments and criticisms and suggestions and be sure that we weren't making any mistakes. So they were quite willing to cooperate in talking about the court system and what they thought might be done. Or what they thought about our suggestions for change. Chief Judge Moultrie was completely cooperative, although I think that he would have been happier if we had never had done it. We made the best of it and we got along fine.

Ms. Bruce: **Let** me, let **me** just stop for a minute. This fire alarm has been going for a while now. Let me see what's going on out here. You hear it?

Mr. Horsky: No.

Ms. Bruce: There is a fire alarm that's on.

Mr. Horsky: Really.

Ms. Bruce: It's been on for a little while and I keep thinking it's -- well it appears they've turned the alarm off. So we must be safe for the moment.

Mr. Horsky: Until they turn it on again.

Ms. Bruce: Until they turn it on again.

Mr. Horsky: Where were we?

Ms. Bruce: We were talking about how the court was sort of reluctant partner in this undertaking. They didn't appoint people or actively involve themselves in it other than respond to requests.

Mr. Horsky: Well no, when we got a draft of the report on say the Probate court. . .

Ms. Bruce: Right.

Mr. Horsky: They would review it, make the suggestions, criticisms, further ideas. They would say that this is wrong, this isn't the way it really works, you know. And we would argue those things out. I did not try to sit as an ex officio member of each of the subcommittees. I thought that was unnecessary and really unwise. I thought each of these subcommittees was competent to do the job. What we did was after a subcommittee report was in a sense finalized, we submitted it to the total committee and we circulated it to members of all the subcommittees for their comments so that we could say with accuracy that this is a report by the whole committee, prepared by the subcommittee but that the full committee **has** endorsed it. It worked, it worked, very well.

Ms. Bruce: And you **have** through the Council for Court Excellence and also through the Pickering Committee seen many **of** the proposals that were made by your Committee actually adopted by the courts. What were some of the principal proposals that you are most proud of to see in changes?

Mr. Horsky: I'd have to say that I can't answer that question. It's too far back.

Ms. Bruce: Okay.

Mr. Horsky: I don't remember that any of them stood out that way. If I re-read the report I probably could refresh my recollection but I don't have any at the moment. Really I don't.

Ms. Bruce: Well it's been now 11 or 12 years since the report was issued. And as I think I told you, not during the course of our interview but at other times during breaks in the interview, that the D.C. Bar Board of Governors is now considering establishing another commission or responding to Chief Judge Hamilton's request to establish a commission to evaluate the courts. Do you think such an exercise is worthwhile? It seems that your exercise followed a decade after the initial court organization.

Mr. Horsky: Well there's a bit more justification for what we did than there is now because court reorganization had really changed the courts drastically. There's no longer a juvenile court. The whole court system was thoroughly remodeled and the D.C. Court of Appeals became a court of final jurisdiction, reviewable only by certiorari rather than by the **U.S.** Court of Appeals. It changed the tone of the courts because as I'd like to say, for all practical purposes we now have home rule for the District of Columbia Courts. The only exception is that they are all appointed by the President. But there's a Judicial Nominating Commission as you know which cabins the President's discretion a little bit. And which has --

Ms. Bruce: When the tape stopped we were talking about the Judicial Nominating Commission, and how, to a certain extent, the Commission limits the President's discretion.

Mr. Horsky: Apart from that part, D.C. courts really do have home rule. With no supervision from the Federal courts which they used to feel subject to. So when we made the study ten years after that reorganization there was a real basis for asking how good is the new system that Ellison's Committee created. If you do it now after twenty years, you don't have quite the same benchmark as a basis of comparison, you can still talk about I suppose what recommendations our committee made that had not yet been implemented or some of it had been implemented, it's really not quite the same. I don't want to pour cold water on the idea, it is a little different than it was ten years ago.

Ms. Bruce: Alright, I can see that. You're not doing a comparison of the old system before the Ellison Commission, I guess they have in mind more of a Future's Commission. What are our problems now in the courts, public perception and delivery of justice and how can we fix it and looking ahead 20 years from now where do we want the courts to be.

Mr. Horsky: That's partly what the Council for Court Excellence is trying to do. We took up one sort of issue at a time. We had a problem with

the jury system. We plugged along until we finally got the court to adopt the one day, one trial system. We saw the problems of the Small Claims Court and the tremendous concentration of small claims in the regular Superior Court and it took five years and three Congresses to get the jurisdictional limit raised from $750 to $2,500 or whatever it is. And it's been raised again with beneficial results both for the Small Claims Court and for the Superior Court because it takes a lot of cases out of the Superior Court docket. Again there is a problem in Small Claims Court about corporations. They had to hire an attorney. A corporation can't come in by itself, couldn't. We got an amendment to the rules which permits corporations to come in by one of their principal officers and defend which makes them much more receptive to using, tolerate a Small Claims Court, for their controversy. We are working now on the Probate Court. Trying to get a uniform probate code which has been adopted in about a dozen, about 20 states which will radically change the way estates are probated by making it possible to have almost no probate supervision of small estates. We don't have to go through all of the auditing and inventory or whatnot that the estate is under a certain amount of, number of dollars and if everybody consents. The problem is that would throw about ***85%*** of the people that are presently working with Probate Division out of work. Obviously, there is

considerable opposition to it, both from the people in Probate and I think probably from the Chief Judge who is a little unhappy about losing all of his members. But the bill has been introduced in the City Council and its going up for hearings. Unfortunately, its sponsor is Mr. Nathanson who was defeated for re-election in the primaries. So you now have to find a new sponsor for the legislation, but I think it will pass ultimately. It's one of those things like "one day-one trial", takes a long time to get people educated to understand how much better it would be if you do it a different way. Things of that sort the D.C. Bar can legitimately investigate, there are probably a multitude of others that I don't know about. Both in the criminal practice and the civil side. *So* I wouldn't say that you shouldn't do it, but I don't think, it's just not the same as it was ten years ago.

Ms. Bruce: Over the course of working first with the Committee that was set up by the Horsky Commission as well as later on, you got to know in a sense some of the judges in the court and I would just like to ask you now about personalities either in the District Court, the bench, the judges you got to know and U.S. Court of Appeals, either through your cases or just the professional contacts or in a local match?

Mr. Horsky: Well, my first intimate contact with a federal judge was with Bill Bryant back in **1961.** Before I went to the White House. Walter Tobriner was Chairman of the D.C. Commissioners.

Ms. Bruce: What was his name please?

Mr. Horsky: T-o-b-r-i-n-e-r. Walter. Was a lawyer and was somewhat disturbed by the prevalence in the District of what they called arrests for investigation. If there was a hubbub somewhere in the District, the police would just round up everybody and arrest them. Not charge them with anything but arrest them for investigation. Walter thought this was probably a bad idea but he didn't quite know what to do about it. So he appointed a committee with me as Chairman to explore the problem of arrests for investigation. Two other members of the committee were Bill Bryant and Roger Robb. Roger Robb at that time was not on the Court of Appeals, as he subsequently was. He was a practicing lawyer and he was Counsel for the police department. He represented policeman when they were accused in various misconducts. So we decided to really do a job and **I** got a small grant from the Meyer Foundation to hire some students and to print a report. The students analyzed documents which were supplied by the police department. They were willing to cooperate. Each arrest for investigation produced a single document, a report of the arrest for investigation, when it took place, where it took place, something of the circumstances,

what happened to the man arrested, how long he was held and so on. For reasons which I'm not quite clear about the police department meticulously kept all these records. So we got the records for five years back and the students analyzed them to see what the results were of the arrest for investigation, and it turned out that they were practically zilch. Most of the people were held for awhile and then discharged. And nothing ever happened afterward. It was just a means of conveniently getting people off the streets. So we wrote a report dated July **1962** explaining our work and containing a lot of statistics about how long people were retained and what happened to them and so on, Appendix A, B, C, and **D** and so on. You can have that. I got multiple copies of it.

Ms. Bruce: Oh that's great.

Mr. Horsky: Well, we got the report all drafted and we recommended that they abolish the arrest for investigation as both unconstitutional and unnecessary. We wondered about how we were going to get Roger Robb to agree to it. Bill Bryant and I had several long conversations as to how to do it. We finally decided that the best way to do it, was to just do it. We showed him the report and asked him if he would agree and much to our surprise and pleasure he said "Sure, I'll agree." So we had a unanimous report and Walter Tobriner immediately abolished arrests for investigation. They're patently unconstitutional. They probably were not quite so

patent in those days but they certainly are now. You don't have any probable cause, anyway it's a very learned discussion of the law in that report as well.

Ms. Bruce: That must have been a very gratifying result, though.

Mr. Horsky: It was, it was. I was pleased, very pleased and so was Walter Tobriner. One of the things that made him a little bit less antagonistic when I was appointed by the White House, the next year. But I got to know Bill Bryant quite well and admired him very much. He's a very solid sensible citizen. He's rather soft spoken, but he has a marvelous gift for telling stories which I enjoy. He teaches classes at Howard Law School and he's adored out there. He's a good judge. I've never sat in his courtroom. I never watched him perform but he has a reputation for being one of the better judges and he is now senior judge and still sitting. The other judge that I got to know quite well is Charlie Fahy. He sat on the Court of Appeals. I got to know him back in the New Deal days when he was General Counsel of the National Labor Relations Board and I was in charge for the Solicitor General more or less of the Supreme Court litigation involving the Board and we had a number of conversations. We got along very well until the case involving the Japanese internment camps and I virtually accused him of deceiving the court, which he was, and our friendship chilled considerably after, but we still said hello to each

other but we were never really friends after that. But I admire Charlie Fahy. He was a good, solid judge. He was very quiet, almost a mouse-like voice. The story was that he talked just loud enough for a majority of the Supreme Court to hear when he was Solicitor General and that's probably just about right. But he was diligent, hard working, conscientious and I don't know what went wrong in the Korematsu case. Political pressures I guess were just too much for him. But I'm sure he knew he was doing something that he shouldn't be doing but he did. Anyway that didn't keep him from becoming a judge and as far as I know he was a very good judge. The judge I knew best of course was Gerry Gesell, who was a partner here in the office a long time ago.

Ms. Bruce: Do you know what led Judge Gesell to seek the bench?

Mr. Horsky: I can tell you pretty much yes. One morning I came in to work, this was in the Union Trust Building. My office was next to Gerry and there was a connecting door between the two. And I came in and sat down. About 10:00 Gerry came in and said do you know what's happened. I said, "No, I don't know what's happened." "I just got a call from the President." And, I said, "Gee, what did the President want?" He said, "He wants me to be a district judge." And, I said, "Well that's wonderful, what did you tell him?" "Well, it went through my mind that I had better check this out with my partners and see if I can arrange for the cases I've got

and I better talk to my wife and so I said, 'Yes, I'll take it.'" It came out of the blue as far as I know. He just had a chance and he said, "yes." And he loved it. He didn't want to be, I think if he had been offered a job on the Court of Appeals, he'd have thought a lot harder before he took it. He turned down I think, now this is rumor, I think he turned down some appointments to the Court of Appeals as not wanting them really. But as a trial judge, he was superb. He got the Devitt Award as you know. I was one of the ones that nominated him, I put it all in a book about the Watergate trials and whatnot. He deserved it, the Devitt Award, I don't know a lot about that. I knew Gerry, we had lots of conversations as next door neighbors in the law firm. What he was doing, what I was doing. He was a first class trial lawyer. He tried a lot of cases for the DuPont Company and other anti-trust cases. The other lawyer I really knew something about was Harold Leventhal. He served on the D.C. Court of Appeals, U.S. Court of Appeals. I had run into Harold while he was a law clerk for Justice Stone back in those days and we sort of kept in touch and we went to parties together and I saw him occasionally, he was what I would call a good friend, although not an intimate friend. He was a good appellate judge although his opinions tended to be tremendously long opinions. He would dot every i and cross every t and every argument that was presented and sometimes would

create arguments of his own and then answer them so he would be sure to cover all the bases. And he wrote very learned, very good opinions but terribly long ones. I guess he was a liberal judge in the sense that he would probably side more often with a defendant in a criminal case than most judges would, but he was a good judge.

Ms. Bruce: I was fortunate to have three arguments before him.

Mr. Horsky: Really.

Ms. Bruce: In the **U.S.** Court of Appeals, I believe it was three of the panels and I always looked forward to it. You know I represented the **U.S.** I represented the Government. He always asked the most searching questions. He was always the best informed on the panel. It just made it a lively intellectual experience.

Mr. Horsky: He was a real good judge. He died very young too, unfortunately. One of the things that I had little bit of help with. He had an adopted son and I had tried to help work out the adoption. So I got to know him a little bit in reference to that. I knew Spottswood Robinson **a** little bit. Mainly because we journeyed down to the Williamsburg Judicial Conferences together about a half a dozen times. I got to know him and his wife Marian quite well, the long conversations en route. He was another one of these people who believed that every case that was cited had to be mentioned in the opinion or it wasn't a complete opinion and he

was dreadfully slow. I suppose he had the reputation I think of being the slowest man on the court, but it wasn't because he was lazy, it was because he was conscientious. He couldn't do anything without comprehensive review of the whole works. Well I got to know some of the other judges in various places. I was a member for six years of the Committee on the Judiciary of the ABA. And that committee had jurisdiction over not only the Federal appointments in the District but also as it turned out over the judicial reorganization by the Ellison Committee of the District Courts as well, so far as the Federal courts are concerned. I was the one in the District that was supposed to run a check on the nominees after the Department of Justice had sort of come to at least a tentative decision as to who they wanted and as a result of that I personally interviewed quite a number of present sitting judges. I'll have to get a list of them to refresh my recollection. But I remember the present Chief Judge.

Ms. Bruce: Garrett Penn, John Garrett Penn.

Mr. Horsky: John Garrett Penn who was then in the Department of Justice. I remember interviewing him.

Ms. Bruce: Norma Holloway Johnson.

Mr. Horsky: I don't remember her.

Ms. Bruce: Joyce Green? Harold Greene? When were you on this **ABA** Committee, was that in the '80s then?

Mr. Horsky: I can't remember exactly, I . . .

Ms. Bruce: Was it after you did the report, the Horsky Commission?

Mr. Horsky: Yeah, I think so.

Ms. Bruce: Right. Then you probably would have interviewed people like Judge Jackson and Judge Hogan.

Mr. Horsky: Yeah, that's right.

Ms. Bruce: That group of people and even Royce Lamberth.

Mr. Horsky: The appointments were also to the Court of Customs and Patent Appeals.

Ms. Bruce: Gosh, they keep you busy.

Mr. Horsky: Well, it was fun, there weren't that many really and the job was to get what **I** would call a peer evaluation from the judges before whom the person had appeared and from the counsel who had either been in cases with him or against him or who knew something about him. It was a telephone job for the most part except you would have to personally interview the nominee at the end of the whole system. Ask him about any derogatory information that you had found and then you prepared a preliminary report to the Chairman of the Committee. The Committee consisted of one person for each of the circuits. This was the circuit. And after the chairman got it, he would circulate it to the entire committee for any additional comments and a vote on the proposed recommendation and then he would give it to the

Department of Justice. It was a real good job. You didn't have to do it for the ABA bureaucracy. You operated as a committee and that was it. Lawrence Walsh was Chairman much of the time that I was on the committee. I admired Judge Walsh, got along nicely. The more interesting part of it was when we had the Supreme Court nominations.

Ms. Bruce: Oh, yes.

Mr. Horsky: And during Nixon's time we had some time pretty terrible nominations which, - - -

Ms. Bruce: Didn't one of them, who was it that you evaluated as being mediocre or - - -

Mr. Horsky: There were some you couldn't even call mediocre. On a Supreme Court nomination, we had a rule that we would only report either qualified or not qualified.

Ms. Bruce: I see.

Mr. Horsky: For the regular courts we had well qualified, very well qualified, qualified, not qualified, variations. For the Supreme Court we thought that was silly, so we just had up or down and each member of the committee all over the country was supposed to collect information that anybody had on a nominee. And some of them were so unknown, didn't know them at all. But they were pretty hectic days when Nixon was trying to put people on the court. I think just to embarrass the court really. And we tried very hard to

keep him from doing it. We were reasonably successful. That was an interesting job. That was the best job I ever had with the ABA. So I got to know some of the judges. Not well. Just got to be on an acquaintance basis. I don't remember any others that I really say I could call friends. Aubrey Robinson I did get to know pretty well because we served on the Meyer Foundation Board of Directors together for quite a long time. And I came to know Aubrey not as a judge but as a human being, really rather as a man who had a deep sense of responsibility for the District of Columbia, who knew a great deal about it, how it worked. The people who were important and unimportant and was not afraid to express his opinions on such matters. We would have some quite vigorous debates in the Board of Directors about whether we should grant some money to this organization or that organization. Aubrey had . . .

Ms. Bruce: I'll let you continue the tape is still running.

Mr. Horsky: Had one point of view and so did the some of the rest of us had a different one. And I don't know anything about Aubrey as a judge at all, but as a human being he's great.

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