

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

**United States Courts
District of Columbia Circuit**



James C. McKay, Esquire

**Interviews conducted by:
Mary B. DeRosa, Esquire**

May 8, July 29, and October 16, 2003

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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.

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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 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 E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcripts 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 (in WordPerfect format) are in the custody of the Circuit Executive of the U.S. Courts for the District of Columbia Circuit.

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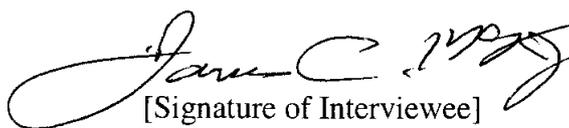
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2. I also reserve for myself and to the executor of my estate the right to use the tapes, transcripts and diskette and their content as a resource for any book, pamphlet, article or other writing of which I or my executor may be the author or co-author.

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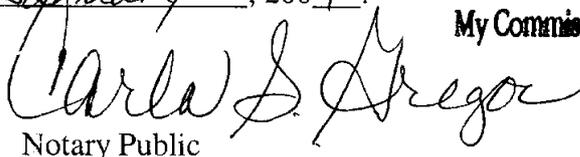

[Signature of Interviewee]

Jan 20, 2004
Date

SWORN TO AND SUBSCRIBED before me this

20 day of January, 2004.

My Commission Expires August 31, 2005


Notary Public

My Commission expires

ACCEPTED this 8th day of December, 2004, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.


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 5/26/05
[Signature of Interviewer] Date

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**ORAL HISTORY OF
JAMES C. McKAY, ESQUIRE
FIRST INTERVIEW - May 8,2003**

Ms. DeRosa: Would you please say your full name.

Mr. McKay: My name is James Creighton McKay. I was born on February 24,1917, in South Pasadena, California.

Ms. DeRosa: Would you go through your history very briefly of where you've lived and what your jobs have been so that I can go back and get into more detail?

Mr. McKay: I lived in California only for a short time, in fact less than a year. My dad, who was with the Department of Agriculture, came east. We settled for a short time in Kensington, Maryland, and then lived in various places in the District of Columbia area. We lived on Van Buren Street in Takoma Park, D.C. until 1927, when we moved to Somerset, Maryland. I lived in Somerset with my father, mother, brother, and sister from the age of ten until the beginning of my second year in college. While living on Van Buren Street, I went to the Takoma Park School.

After finishing the fifth grade at Takoma Park School, I went to Henry Pope School, which was at 7th and P Streets, N.W. After completing the sixth grade, I attended Columbia Junior High School, which was at 7th and O Streets, N.W. My next school was Gordon Junior High School on Wisconsin Avenue in Georgetown. Gordon had just opened as a new school. I went there for one year in the eighth grade. I then entered Western High School, which was on R Street, between 35th and 36th Streets. That school is now the Duke Ellington School of Fine Arts. I spent four very happy years at Western High School. I was in the high school cadets. I made

lots of great friends. I then entered Cornell University in September of 1934. I graduated in June of 1938 from the College of Agriculture.

My mother and father had attended Cornell, my father graduating from the College of Agriculture in 1908, and my mother graduating from the College of Arts and Sciences in the class of 1909. My mother's father attended Cornell and graduated in 1872, the first full four-year graduating class. My mother's grandfather on her mother's side was a member of Cornell's first faculty and dean of the English Department.

On my father's side, his uncle, after whom I am named, Professor James Edwin Creighton, was a professor of philosophy and dean of the Graduate School at Cornell. I had aunts who also attended Cornell, as well as a first-cousin. I had lots of Cornell background. To round it out, two of my children graduated from Cornell.

After graduating from Cornell, I got a job with an organization known as the California Fruit Exchange. My job was to promote the sale of deciduous fruits in the New Jersey area. When that promotional campaign ended after three or four months, I got a promotional job with the California Walnut Growers Association, which is now the Diamond Walnut Company. I promoted the sale of Diamond walnuts in the Eastern Pennsylvania area. Following that stint, which lasted about four months, I went to work for the Department of Agriculture in Washington, D.C. I was an assistant marketing specialist. My work involved formulating and administering marketing agreements between the Secretary of Agriculture, Henry A. Wallace, and growers of various varieties of fruits and vegetables. The growers agreed to not ship lower grades of produce in interstate commerce so as to, hopefully, keep prices at a reasonably high level. The agreements were formulated under the Marketing Agreement Act of 1936.

During that period, we were aware that a war was coming. I registered for the draft and was classified 1-A, which meant I was healthy enough to be shot at. Frankly, I was not happy about the thought of being drafted and earning \$21 a month. The last line of a popular song was "21 Dollars A Day Once A Month." I applied to the Army Air Corps and the Navy Air Corps. However, I didn't weigh enough. I finally was able to get an ensign's commission in the Navy. After I was provisionally accepted, I had to gain ten pounds in two weeks in order to pass the physical examination, which I did. My commission had a November 1941 date.

I vividly remember the bombing of Pearl Harbor. I was at home on a couch, listening to a radio broadcast of a professional football game between the Redskins and the Eagles. The announcer stopped the broadcast of the game to say that a report had been received that the naval base at Pearl Harbor had been bombed by Japanese aircraft.

I reported for duty on December 15 of 1941. I served until late September of 1945, after VJ Day. I operated in the Atlantic and the Mediterranean. I can talk later about my four years in the Navy. Meanwhile, while working for the Department of Agriculture, I entered night law school at Georgetown. I completed one year. When I was released from the Navy in September of 1945, I was a lieutenant commander. I was married in June of 1943.

After the war, I decided to go back to Georgetown Law School. I went to work for the firm, with which I am still associated. It was then called Covington, Burling, Rublee, Acheson and Shorb. I went to work as a law clerk and continued my night school studies. I got my LL.B in February of 1947. I later got an honorary degree of LL.D from Georgetown in June of 1989.

After receiving my LL.B, I became an associate with the firm. I left the firm for the

position of Assistant U.S. Attorney for a little over a year in 1948-49. I became a partner in January of 1957. I served as an independent counsel from February of 1987 to the fall of 1999. I became a senior counsel at the firm in 1987. I continued representing paying clients for five or six years, then concentrated almost entirely on pro bono work. I spent a year with the Justice Department in 2001-2002, working as a legal advisor in the Professional Responsibility Advisory Office. My pro bono work has included representing veterans in the U.S. Court of Appeals for Veterans Claims, and representing people who wish to adopt children in the Superior Court of the District of Columbia. I also have done a lot of creative writing. I have enjoyed myself very much.

Ms. DeRosa: Okay. That's fine. I wanted to have that in order to structure myself for the interview. Let's go back to the beginning. You said you were born in South Pasadena. Tell me a little bit about your parents and your grandparents and their history.

Mr. McKay: My mother's family goes way back in this country. Her maiden name was Curtis, Margaret Curtis. She told me a hundred times that one of our distant ancestors, going back to the 1600s, was Charles Chauncey who was the Vicar of Ware in England. Reverend Chauncey became the second president of Harvard College. My mother would not let her children forget that. Her grandfather, Professor Charles Shackford was, as I said before, the dean of the English Department and a member of the first faculty at Cornell University. My mother's father, Gram Curtis, was a civil engineer, who lived in the Pittsburgh area. He graduated in the class of 1872 from Cornell. My mother grew up in Newcastle, Pennsylvania. She had a sister and two brothers. Her sister went to Cornell, as did one of her brothers. The other brother went to Lehigh University.

My dad was born and raised in Nova Scotia. He lived on a little farm in River John which is on the Northumberland Strait. His Uncle James took him and his youngest sister from the farm and put them through Cornell University. My dad met my mother at Cornell. After graduating from Cornell, my dad had jobs involving agriculture, mostly with the Department of Agriculture in Washington.

Ms. DeRosa: If he was with the Department of Agriculture, did that take him out to California?

Mr. McKay: Yes. He was an agricultural economist. His specialty was cooperative marketing. He was one of the pioneers of the farmers' cooperative marketing movement in the United States. He was involved with the organizing of Sunkist, which used to be called the California Fruit Growers Exchange. He helped organize many other farmers' cooperatives in various parts of the country. Under President Hoover, he was the Chief of the Cooperative Marketing Division of the Department of Agriculture. I don't know why he was in California. For the greater part of his career, he was with the U.S. Department of Agriculture in Washington.

In addition to being a wife and mother, my mother wrote and published many short stories. She did a lot of creative writing. That was her extracurricular interest.

Ms. DeRosa: So, the time in California was only about a year?

Mr. McKay: For me, about a year. Yes.

Ms. DeRosa: Were your parents there before you were born?

Mr. McKay: They had been there for several years. I don't know what my father was doing out there.

Ms. DeRosa: But they wouldn't have considered themselves Californians?

Mr. McKay: No.

Ms. DeRosa: They were really from the East?

Mr. McKay: Yes.

Ms. DeRosa: I'm just curious because it seems like it would have been an interesting time to be active. Did they ever talk about that?

Mr. McKay: Well, I have many letters my mother wrote to her mother soon after I was born. Most of the time she was talking about me. She had a lively social life out there. My dad did a lot of traveling, as was reflected in the letters my mother wrote her mother. My grandmother saved the letters that my mother wrote to her, but I never read any replies.

I might say that Professor Shackford was a close friend of Ralph Waldo Emerson, which is interesting. I have several letters that Ralph Waldo Emerson wrote my great grandfather.

Ms. DeRosa: Wow!

Mr. McKay: I once wrote an Emerson-type organization and asked them what I should do with them, and they said, "preserve them."

Ms. DeRosa: And so you still have them at your home?

Mr. McKay: I have them here at the office.

Ms. DeRosa: And do you remember anything from those letters?

Mr. McKay: They are dated October and November of **1863**. They were trying to get together. Mr. Emerson lived in Concord. My great grandfather lived in Lynn. They talked about arrangements to meet. The letters are very short, but formal. He starts with "My Dear Sir," or

“My Dear Shackford.” He ended one of them by writing, “With kindest regards to Mrs. Shackford, & to my young friends. Yours, RW Emerson.”

Ms. DeRosa: That sort of demonstrates that your great grandfather was a part of a community. Have you heard any other stories about that?

Mr. McKay: No. But I might say that my great uncle, Professor Creighton, was a renowned philosopher in his day. He taught and wrote books on philosophy. I have a volume of philosophical writings that was dedicated to him by a philosophical group. I’ve tried to read his essays, but it’s very hard going. My mother’s father was the chief engineering officer for the Carnegie Steel Corporation in Pittsburgh. I remember him very well. His name was Gram Curtis.

Ms. DeRosa: It seems to me that it would have been unusual at that time for a woman to attend college. Was it?

Mr. McKay: Yes it was. Her sister also went to college. My father’s younger sister Katherine graduated from Comell. Cornell is a land grant college by virtue of the Agricultural College and perhaps other colleges. Women could not be excluded from land grant colleges.

Ms. DeRosa: Did your mother have friends? Was her circle of people mostly educated, with occupations like your mother’s?

Mr. McKay: She mingled with people who were interested in writing. From her earliest days she wanted to write. I have a copy of the first short story she sold. She got \$21 for it. She wrote on it, “My first sale!” My dad also wrote and published short stories, but he didn’t have as much time as she did to do that kind of writing, although he wrote a great deal about cooperative marketing.

Ms. DeRosa: Was politics of any significance to your parents in their life? Were they in any political group?

Mr. McKay: No, they weren't. My dad worked for the government. I don't think the law at that time prohibited government employees from engaging in political activity. I'm not sure. Anyway, they were almost apolitical. I do remember he told me that when President Roosevelt gave his inaugural speech during the Depression—about the only thing to fear is fear itself—he went out and bought General Electric stock.

Ms. DeRosa: That worked well for him if he held onto it.

Mr. McKay: Well, no he didn't, I'm afraid. I wish he had.

Ms. DeRosa: Oh well.

Mr. McKay: They were not politically inclined. They had their views, but did not participate in politics.

Ms. DeRosa: Let's wrap up the history of your parents before we get to your childhood. World War I, did that affect them in any way? Did your father go?

Mr. McKay: No. My father had a very severe leg injury as a young man. I think he was kicked by a horse. He had an awful scar on his hip. Also, he was married before the U.S. entered the First World War. My brother was born in 1914. I was born about six weeks before we got into the war in April of 1917. In her letters to her mother, my mother asked several times, "What does father think of Wilson now?" Those were the only indications that she was aware that we had gone to war.

Ms. DeRosa: Okay. Well, let's move on, unless there are any other interesting things about your parents' background?

Mr. McKay: My father was a very wonderful man. My mother was wonderful. They both had an enormous influence on me, especially my mother who was very erudite. When my brother and I were young boys, she read many classics to us. Charles Dickens was her favorite author. She read *Great Expectations*, *Barnaby Rudge*, *Bleak House*, *Oliver Twist*, *A Tale of Two Cities*, and others. She read *Zvanhoe* to us when I was eight or nine years old. I read it recently, and can't understand how I was able to understand it at the time. As a result of her reading to me, I did a lot of reading when I was a child. She had a tremendous influence on me.

Ms. DeRosa: Well, you mentioned one brother. Did you have one sibling?

Mr. McKay: I had three siblings. My youngest brother, Bobby, died of spinal meningitis when he was three years old. My older brother died five or six years ago, I had a younger sister, Martha. She had a tragic life. She's gone too. I'm the sole survivor of the family.

Ms. DeRosa: How much younger was your sister?

Mr. McKay: Seven years.

Ms. DeRosa: What was your sister's name?

Mr. McKay: Martha. That was my maternal grandmother's first name. My brother's name was Curtis. My father's name was Andrew William McKay. My brother was Curtis Andrew McKay.

Ms. DeRosa: Your brother was two years older?

Mr. McKay: Two and a half years older. He was a Navy flier in the war and worked for the Federal Aviation Administration after the war.

Ms. DeRosa: When you were growing up did you have a close relationship with your brother?

Mr. McKay: Well, we fought all the time, physically fought. I guess that constitutes a close relationship. However, we didn't get very close in other ways until we were adults. We then became very close. But we had problems when we were boys.

Ms. De Rosa: That's very common. You mentioned your sister. Would you be interested in going into it a little more on that, or would you rather not?

Mr. McKay: Well, she committed suicide. She was psychotic. It was a terrible and tragic thing. Fortunately, my mother and father both died before that happened because that would have killed them.

Ms. DeRosa: Let me just say, when you said off the record, there's going to be a transcript made of this, we can take that part out if you would like.

Mr. McKay: Okay. Well, it's up to you.

Ms. DeRosa: No, no. I would like to have everything in there.

Mr. McKay: Well, let's keep everything in then.

Ms. DeRosa: So, she died when?

Mr. McKay: About ten years ago would be my best guess. She has one child who is getting married this month. I maintain a good relationship with her son. His bride to be is charming.

Ms. DeRosa: Back to your early childhood. Maybe if you can just talk a little about what memories stick out about school, religion. I don't know if you were in any church. Just sort of set the scene of what it was like when you were young.

Mr. McKay: Okay. When I was living in Takoma Park I went through the fifth grade at the Takoma Park School. I remember my kindergarten teacher's name was Mrs. Lee. My first grade teacher's name was Miss Holmes. The Takoma Park School was about a 15-minute walk from my home. I walked to school. In those days you didn't worry about getting run over. There were as many horse and wagon vehicles as automobiles.

I have clear recollections of the Takoma Park Theater where we saw the silent films. It was before the "talkies," as they called them. We walked to the theater Saturdays for the matinee. My memory about living in Takoma Park is very clear. I don't know how much detail you want me to go into.

Ms. DeRosa: As much as you can.

Mr. McKay: Well, I remember all the boys were crazy about baseball, as were my mother and dad. The owner of the Washington Senators major league baseball team was Clark Griffith. His sister, whose last name was Robertson, had been married to the manager of the Montreal baseball team in what was then called the International League. That league was one level below the American and National Leagues. Mr. Robertson died. She had seven children. Mr. Griffith brought all of them to Washington. There was a son, Calvin, who retained the name Griffith. Mildred also retained that name, as did Thelma. Those three children lived with Clark Griffith in a huge mansion at the corner of Decatur and 16th Streets, N.W. I drive by it frequently. The other four boys retained the name of Robertson. They and Mrs. Robertson moved to 7th Street, a block from our house. We nearly went crazy over the fact that we had the four nephews of Clark Griffith as neighbors. We became great baseball fans, and played baseball practically all of our spare time. Once in awhile, Mr. Griffith would come out in his Lincoln and

visit his sister. The boys would sit on the curb and watch as our heroes emerged from the limousine. Mildred later married Joe Cronin, a legendary baseball player. He played shortstop for Washington. He was the playing manager of the 1933 team which won the American League pennant, but lost to the New York Giants in the World Series. He later became manager of the Boston Red Sox team. Thelma married Joe Haynes, who pitched for the Senators.

The pinnacle of excitement was reached in 1924, when the Senators won the American League pennant, and then won the World Series from the New York Giants. I have vivid recollections of that season and of the World Series, even though I was only seven years old. My mother and dad attended one of the games in Griffith Stadium.

The Senators won the series in seven games. During the series, we walked to Walter Reed Hospital, where a huge board was set up. The progress of the game was demonstrated electronically. There was a diamond on the board. If there was a one-base hit, a black ball rushed down to first base. If it was a home run, the ball would go all the way around. They had wooden seats set up for the spectators. I did not go to Walter Reed Hospital for the last game of the World Series. I don't know why. I listened to the game on the radio. When the last out was made, the announcer shouted, "Washington is the champion of the world." The city was turned upside down by Washington winning the World Series,

The next year the Senators won the American League pennant. The Pittsburgh Pirates won the National League pennant. Washington won the first three games, but lost the next four. It was terrible. Walter Johnson was our ace pitcher. In the seventh inning of the last game it started to rain. The game should have been suspended, but the Pittsburgh umpires refused to take that action. It really was a terrible thing for Washington fans. It was said that during the rain,

when the Pittsburgh pitcher took the mound, sawdust was sprinkled on the mound so he wouldn't slip. The groundskeepers refused to do that when the Washington pitcher took the mound. I could not prove the truth of that accusation. We were pretty bitter about that.

Bucky Harris was the manager and second baseman of the Washington Senators' 1924 team. He was 29 years old, and was known as the "boy wonder." I could name the entire roster by position, but will refrain from doing that. His son, Stanley Harris, was a judge on the district court here in Washington and is now a retired senior judge. We are friends. Once in awhile, we discuss that terrible Pittsburgh game. I went to a number of schools in Washington before I entered Western High School.

Ms. DeRosa: Western is the one that is now Duke Ellington School of Fine Arts?

Mr. McKay: Yes. It's on R Street, between 35th and 36th, a few blocks from Wisconsin Avenue. I had a wonderful time at Western. I was in the high school cadets. In those days, the high school cadet corps was more important than football or baseball, or any other sport. Every high school in Washington had a regiment of cadets. There were five or six companies in each school.

Ms. DeRosa: Can I interrupt you and ask you what is the cadet corps? What did they do?

Mr. McKay: The cadet corps consisted of a regiment in each of the District of Columbia public high schools. The Western High School regiment was the fourth regiment. Each regiment had two battalions, composed of three companies. Each school had a cadet band. Each school had a reserve army officer who was in charge. The companies began drilling outdoors as soon as school started. **An** Honor Guard competition was held in mid-year when the

most proficient company in the city was designated.

The grand climax came in June when the competitive drill was held in Griffith Stadium. Every company in the city participated, about 30 in all. The drill lasted two days. Each day, the drilling companies were witnessed by more than 20,000 spectators. To win the competitive drill was like winning the Super Bowl or the World Series, nowadays. The captain of the winning company received a replica of the Allison Naylor medal. I never knew who Allison Naylor was. Each member of the winning company got free passes to movies, free rides at Glen Echo, free meals at restaurants, free soft drinks, etc.

In my sophomore year, I was assigned to Company G. We had a first-class drill unit. Our captain, a boy named Warren Draper, was an inspiring leader. We won the Honor Guard, and were the favorite to win the competitive drill. We were allowed extra time to drill.

During our performance when our turn came, we were doing well until the order came to stack arms. Each squad had eight cadets, and so there were two rifle stacks to a squad. When that order came, each of the six squads stacked arms and then fell out. Our captain had repeatedly told us that the worst moment for him would be when we stacked arms. Well, in this case, just as we fell out, one of the stacks of the first squad fell and hit the other stack, which also fell. It was a huge disaster. Warren Draper looked as though he had been kicked in the stomach when those eight rifles fell to the ground. My mother was in the stands. She cried. I still remember that awful moment.

Overall, I had a good time in high school and had wonderful friends. Western was the outstanding high school in Washington. Students whose fathers were Senators and Congressmen and ambassadors went there. I met a lot of interesting people at Western.

Ms. DeRosa: Were you in the band as well?

Mr. McKay: No. I did play the tenor banjo. That was another part of my growing up.

Ms. DeRosa: Were private schools very common back then?

Mr. McKay: They weren't as common as they are now. St. Albans was in existence. Bullis School also was in existence. Other private schools that had opened were Georgetown Prep, Holton Arms, Madeira School, and probably others. I don't think Landon had opened. Most of the parents, regardless of their affluence, sent their children to the public schools back then because they were regarded as among the best in the nation. My mother did not want me to go to a school in Maryland, even though we lived in Somerset. Montgomery County schools were not nearly as good as they are now, and certainly not nearly as good as the D.C. schools at that time.

I did fairly well scholastically. I probably had a B average. I seemed to have been in trouble frequently. I spent too many times in the principal's office, being reported for misdemeanors that I can't remember.

Ms. DeRosa: Were you sort of devilish?

Mr. McKay: Well, that was it. I did some stupid things. It was more just acting up in class. I stayed out of trouble after I started playing the tenor banjo. We had an orchestra in our neighborhood. My brother played tenor sax. Two other boys played the alto saxophone. Other instruments were the piano and drums. We had a trumpet player, who also played the trombone. We played for high school proms and tea dances. As a result, I still remember most of the music back being played in those days. I can still hum them. We made \$5 each when we played at a

dance. It kept us out of trouble and we earned pocket money. The only real musician in our orchestra was a boy named Billy Aiken. Billy Aiken had perfect pitch. He could pick up almost any instrument and play it. He picked up my banjo and played it better than I could. He was the boy who played the trumpet and the trombone. The name of our orchestra was "Billy Aiken and his Columbian Ramblers." Our theme song was "Just a Cheerful Little Earful." We played over WTOP before it was affiliated with CBS. It was a great experience.

Ms. DeRosa: Did Billy Aiken go on to perform?

Mr. McKay: My brother got in touch with him after the war. He had opened a music store in Richmond, Virginia. None of the other members of the orchestra continued with music for very long. I did not play the banjo when I went to Comell. My brother continued to play the saxophone through college, but did not continue with his music after he graduated.

Ms. DeRosa: Are there any other things besides what you described in Washington? It sounds like it was a baseball town during that period of time. Also, there was the Cadet Corps in the public schools. Are there any other things you can think of about Washington during that period of time that would be interesting?

Mr. McKay: Yes, there are. It was a town virtually without crime and without fear. Our group of boys never got into serious trouble. We thought nothing of going down to the 7th and U area at night. There was no place in Washington you couldn't go without fear of being molested. My parents never worried about us when we wandered around downtown Washington. We went to the movies at the Fox Theater at 14th and F Streets. That theater later was called the Capitol Theater. There were several other movie theaters along F Street, which we attended. We went downtown by streetcar. The streetcars were wonderful. When I went to

the Henry Pope School in the sixth grade, I walked from Somerset to Chevy Chase Circle. I took the trolley car down Connecticut Avenue and turned left on Calvert Street. Just after we crossed the bridge on Calvert Street, the trolley was lowered, and the plow was lowered from the bottom of the car through the middle rail. We proceeded on, turning right on 18th Street, left on U Street, then right on 7th, then on to P Street. I reversed the route in order to get home. Streetcars were a big factor in our lives. When I went to Western, I walked to the District line, because I would have to pay an extra ten cents to get on the streetcar in Maryland. My mother was very frugal. I took the streetcar to R Street, and walked from there to Western High School. The streetcars were quiet and without pollution. It was a terrible thing when O. Roy Chalk bought the Capital Traction Company, and ripped up all the streetcar tracks. He replaced the lovely, quiet, pollution-free streetcars with the horrible buses, which fill the city with pollution. He really messed up Washington. He should have been put in jail.

By and large, Washington was a small, quiet a town. We often went to Glen Echo. A Cabin John streetcar stopped at Glen Echo. There were all kinds of things you could do at Glen Echo. We rode the roller coasters, the Big Dipper, and the Little Dipper. We rode on the merry-go-round and the airplanes. We swam in the large swimming pool. The midway—a huge building—contained slides, rotating barrels, moving steps, and crazy mirrors. There was a huge spinning disk in the middle of the building. The trick was to get on the disk and stay on it without being thrown off by the rotation. We danced to the music of big bands at the Spanish Pavilion, which is still open. Glen Echo fell on hard times after World War II. It has been making a comeback recently, but is nothing like it used to be in the good old days.

Ms. DeRosa: What was the racial makeup of Washington at that time?

Mr. McKay: It's hard to believe now, but all the schools were segregated. Most of the high schools were totally white. There was a high school for black students. There were restrooms for blacks and restrooms for whites. The requirement that black people go to the rear of a streetcar didn't exist in Washington, perhaps because it's the Capital of the United States. However, I remember being with my mother in Virginia. I struck up a conversation with a man at the streetcar stop. When my mother and I got on the streetcar, we sat in a seat in the front of the car. The man walked to the rear. I asked my mother why he didn't set near us. She said, "Because he's colored." I was very surprised. I had very little contact with any blacks when I was growing up. There were very few black students at Comell. I'm getting ahead of the story, but one of the stars of the Comell football team was Brud Holland. He was black. He became an All American. Brud Holland ended up as the president of one of the very well known black colleges.

Ms. DeRosa: Were you in high school during the Depression?

Mr. McKay: The Wall Street crash occurred in October of 1929. I was 12 years old then, and was in the seventh grade at Columbia Junior High School. The Depression continued while I was in high school. It didn't end until after World War II began. One of my closest high school friend's father had owned a music school. His business failed. He became a chauffeur. I recall the Bonus March of 1932. During the Easter vacation period, we visited my mother's sister and her husband in Swarthmore, Pennsylvania. On one of those trips to Swarthmore in May of 1932, while driving north on Route 1, we saw a large group of men headed toward Washington. The veterans of World War I had been promised a bonus. When it was not forthcoming, it was very difficult for the veterans because many of them were without jobs. In

May of 1932, there was a march on Washington from many parts of the country. The veterans walked because they couldn't afford to take buses or trains. When they got to Washington, they set up these shacks and tents on the grounds of the Washington Monument and in other parts of Washington. Recently, the *Smithsonian Magazine* had an article about the Bonus March. The veterans stayed in tents and shacks. Some of them brought wives and children. They called their homes Hooverville, named after President Hoover. But, they did not get their bonuses. After a few months, a terrible thing happened. General MacArthur ordered the Army troops to drive the veterans from their camps. The troops were commanded by Major George Patton. Dwight Eisenhower, who was MacArthur's aide, advised against this cruel action. But MacArthur ignored him. MacArthur and Patton were happy to use tear gas on these veterans and their wives and children. They burned the tents and shacks. It was a disgrace. These veterans of World War I and their families were given this awful treatment by our government. Many of the veterans and their families suffered from the tear gas. That left a very bad black mark.

Ms. DeRosa: How long were they there?

Mr. McKay: They were there from May to late July. I don't think they ever got their bonus.

Ms. DeRosa: And would you see them when they were there, or was there a lot on the radio about it?

Mr. McKay: We read about them in *The Washington Star*. We heard about them being driven out.

Ms. DeRosa: Was there outrage at the time about that?

Mr. McKay: Yes. The entire country was outraged. I'm sure the old newspapers are available at the Smithsonian. It was a sad situation. I was 15 years old then, and remember the bonus marchers quite well.

Ms. DeRosa: Was your family somewhat insulated from the Depression because your father was in government?

Mr. McKay: Yes. We were very lucky. My dad was never out of a job and so we were lucky. Many families had very difficult experiences. There was not enough food. The kids got rickets. It was a terrible thing. You'd see soup kitchens and men who had had good jobs, lining up to get soup. It was terrible. Then the war came along, which had a lot to do with the ending of the Depression. Also, Roosevelt and his administration helped get the country out of the Depression.

Ms. DeRosa: You mentioned a little bit earlier about remembering his election and the sense of optimism.

Mr. McKay: Well, yes. As I said, my dad listened to his speech, where he said, "The only thing you have to fear is fear itself." Roosevelt was determined to get the country going again, and as a result, my father felt buoyed up and optimistic.

I don't know just how detailed you want to get but one of my sharpest memories is related to my experiences on a small dairy farm located about ten miles from Belair, Maryland. One of my dad's aunts, who was not much older than him, and her husband owned this tiny farm. My aunt's name was Margaret. Her husband was John Foster Creelman. From the time I was 12 or 13, I spent each summer working on the farm. My mother drove me to the farm the day after school closed. She drove me home the day before school opened. The farm was very rustic. It

had no electric lights, no heat, no indoor plumbing. They had 16 dairy cows, so few that they named them, as though they were pets. As I said, I went there every summer for three months from the time I was about 12 or 13 until the end of my first year of college. People used to say I had a strong grip. I think it was from milking cows. We had no milking machines. Anyway, my aunt and uncle got up at 4:00 a.m. and worked all day. I worked along with them. I went to bed about 8:00. My friends in Washington were going to the beach and having fun. I was working on the farm. But, as I indicated, it had a positive influence on my life. It was very hard work. My aunt and uncle had a ranch in Montana. They were driven out of Montana by the drought. They packed their belongings in a truck and drove to Maryland, where they bought this tiny dairy farm. They adopted a boy, who they named James Russell Creelman. They called him Russell. He died from a brain tumor. On one occasion, when my Aunt Margaret visited us when we lived in Somerset, I recall her asking me, "How would you like to come and visit us on the farm?" I said I would. They looked upon me as their son. Both of them were wonderful. They were very religious. They made me go to both Sunday School and church, which kind of cooled my religious feelings.

It was quite an experience, working on the farm and living that farm life. I made friends with all the farm boys in the area. It seemed difficult at the time, but I think it was good for my development.

Ms. DeRosa: And did you keep relationships with any of the people that you knew?

Mr. McKay: I kept up relationship with my aunt and uncle. One of the things about the farm that I disliked was the fact that we drank unpasteurized milk. In 1938, my Uncle Foster died

from undulant fever as a result of drinking that horrible stuff. My Aunt Margaret went to live with a cousin in Philadelphia. I kept in touch with her for awhile. Then the war came along and it was not easy to see her. She died in 1953.

Ms. DeRosa: You say you did that every summer through your first year in college. Why don't we talk a little about college. You moved up to New York, I take it?

Mr. McKay: Ithaca, New York. Yes, I entered college in September of 1934. I had scarlet fever (it seems like I'm jumping around but this is connected) when I was 14 years old. I had every known childhood disease, including rheumatic fever. I also had scarlet fever and the mumps. When I had scarlet fever, my mother, who was an avid Cornell booster, taught me all the Cornell songs. That inspired me to want to go to Cornell. Back in those days, it wasn't nearly as difficult to get in as it is now. In September of 1934 my mother and her sister, who lived in Swarthmore, drove me up to Cornell. I lived my first year in a dormitory called Cascadilla Hall. The Cornell campus is amazing. Have you been there?

Ms. DeRosa: I have, long ago. Gorgeous.

Mr. McKay: It really is. It's very built up now. But it still is a beautiful campus. Gorges that were carved out by the glaciers run through the campus. I used to go to sleep to the rushing roar of Cascadilla Falls. I attended the College of Agriculture. I took such courses as vegetable crops, entomology, plant physiology, biology, botany, and all of those farm-type courses. It nearly drove my mother crazy because she kept writing me, "take a course in English; take a course in philosophy. Your Great Uncle James was a world famous philosopher." I did take freshman English, but she was very distraught that I was taking courses such as vegetable crops I, II and III, and all those other agriculture courses. I had a faculty advisor named Professor

Powell. He talked to me at the beginning of each term about the courses I should take. I once told him that my mother was urging me to take a course in philosophy. He said, "Oh my God, philosophy. I had an old fuddy duddy teach me philosophy. It was awful." I asked him, "Was his name Professor Creighton?" He said, "Yeah, that's the guy."

"Well," I said, "that's my great uncle." You never saw a guy back down so fast. It was very funny. So anyway, my courses necessarily were fairly technical. Others included farm management and animal husbandry. I learned how to judge sheep and cattle. I joined a fraternity. I was pledged to Kappa Sigma. My brother was a Kappa Sigma at the University of Florida.

(Begin New Tape)

Ms. DeRosa: Okay, we will continue, talking about Kappa Sigma.

Mr. McKay: Oh, Kappa Sigma, right. My cousin, who is the son of my mother's sister who lived in Swarthmore, Pennsylvania, was a Kappa Sigma. Back in those days fraternities were really very constructive organizations. I met some of my closest friends in connection with the fraternity. It was a small fraternity. We had about 23 or 24 boys living in the fraternity house. I lived in Cascadilla Hall the first year, and in my sophomore, junior, and senior years, I lived in the house. We were very well organized. It was a very positive experience.

Toward the end of my freshman year, I began to worry about my father's finances. My brother was in college. My sister was nearing college age. The reason I went to the Ag School instead of the Arts and Sciences was that the tuition was \$200 for one semester. The tuition in the College of Arts and Sciences for one semester was \$400. And so I started waiting tables at

another fraternity house. My meals were free. Jumping ahead, during my sophomore, junior, and senior years, I waited tables at the Sigma Nu fraternity house. When I was a senior, I became house manager of the Kappa Sigma house, which resulted in my getting my room at no cost. And so, in my senior year, I did not have to pay for my room or board. That was very helpful to my dad. I believe his salary in those days was about \$5,600 a year. It's hard to believe how little the salaries were back in those days. But everything cost much less. We bought our first car for \$400. It was a Model A Ford.

My life at Cornell was a wonderful experience. I enjoyed it very much. I enjoyed the guys I met at the fraternity, and I enjoyed my professors. I did not do very well. I had about a B average at Cornell. I didn't even come close to being a Pi Kappa Phi. I will jump ahead to say I did very well in law school, because it was the first time I took courses that interested me.

Ms. DeRosa: Do you remember any kind of political atmosphere in college? Were there any political groups?

Mr. McKay: There were. Interestingly, I became very close friends of two guys who were members of Kappa Alpha. The Kappa Alphas were very erudite. Kappa Alpha wasn't like the ordinary fraternity. It was very scholastic. For some reason, these two Kappa Alphas took an interest in me. They were very active in politics. I sometimes had dinner at the Kappa Alpha house when I could get off from my table waiting duties. My Kappa Alpha friends were very active in the Young Democrats group at Cornell. They invited Mrs. Roosevelt to speak. I met Mrs. Roosevelt, as though I was a part of all this political activity, which I wasn't. Apart from that, I was not involved politically.

I went out for the freshman baseball team. I went out for varsity soccer. I wasn't

sufficiently adept at sports to be able to make any athletic team, so I became a cheerleader.

Ms. DeRosa: Cheerleader for what sport?

Mr. McKay: For football and basketball. Baseball was regarded as a minor sport then. Cheerleading was fun. We traveled to other colleges in the Ivy League, places like Princeton, Yale, Pennsylvania, Columbia, Brown, and Dartmouth. We also went to Syracuse, which was then a bitter rival in athletics. We led cheers. I had a big megaphone on my white sweater, with a big red “C” on it. I wore white slacks.

I enjoyed my four years at Comell. As I said, I wasn’t particularly interested in the subjects I took. The most interesting subject was plant pathology. It was taught like a graduate school course. The instructor, who was in graduate school, taught me something I still try to do: if I asked him for assistance, he invariably would order me to look it up. He would not tell me anything until I had exhausted my efforts to find the answer. That training helped me research questions in my later legal career. I remember among other things we had to study the life cycle of insects that injured fruits and vegetables. I wrote a term paper on the life cycle of the citrus white fly. In the meantime, my dad had taken a job with a citrus fruit company in Orlando, Florida. After three years, the company failed and he returned to the Department of Agriculture. I received a B in plant pathology. I was happy to get that mark.

I spent some vacations in Orlando. It was then a very quiet and peaceful town. But now—

Ms. DeRosa: Anything but—

Mr. McKay: Yes, anything but. We lived in a little cottage on Edgewater Drive between two lakes. We had a dock and an outboard motor boat. We had our resident alligator,

and so there was very little swimming. But it was possible to catch fish. Orlando was then a wonderful little town.

Meanwhile, life went on at Cornell. In order to graduate from the College of Agriculture, I had to earn farm credits. I had earned a number of farm credits by virtue of having worked on the dairy farm in Maryland. I worked on that farm the summer after my freshman year. The next summer I worked on the muck farm. That was quite an experience.

Ms. DeRosa: Muck farm?

Mr. McKay: I worked on a muck farm near Batavia, New York, not far from Lake Erie. Muck is an organic soil which was formed when the glaciers ground down millions of cattails. The soil is very black and highly productive. For example, inorganic soil might produce 150 bushels of onions an acre. The muck would produce 400 or 500 bushels an acre.

I worked on the Porter and Bonnie muck farm. Two other Cornell Ag students were with me. The owners hired two or three college students every year, mostly from Cornell. I worked ten hours a day, six days a week. We had 30 minutes for lunch. The 30 minutes were in addition to the ten hours. I was paid 20 cents an hour and so I earned \$12 a week for the six 10-hour days I worked. I paid \$5 a week for my room, board, and laundry. I lived in a house in Elba, owned by a very nice lady. I actually saved money that summer.

The muck fields were long and narrow. The soil was very light. Windrows of trees were planted on each side of the fields to help prevent the soil from blowing away. If I was harvesting spinach, I crawled on my hands and knees the length of the field, cutting spinach, and putting it in a basket. When I reached the end of the field, I crawled back, doing the same thing. I did that for ten hours a day. Sometimes, I topped onions. That involved walking alongside the onion

plants and snapping off the tops. I think that prevented the plants from going to seed, but I'm not sure now why we did that. At least I could stand when I topped onions. There were many other laborers, of course. Most of them were Polish people who came from Buffalo. The men brought their wives and children. They lived in camps during the harvesting season.

Ms. DeRosa: Did you eat any of the Polish food?

Mr. McKay: No. They wouldn't let us go into their camp. We were told to stay away from the camps.

I should say that the summer of 1936 was the hottest and driest summer I had ever experienced. One afternoon when we were quitting for the day, the temperature was at 136 degrees, which was the highest it could go on the thermometer. The muck, being very black, would not reflect the sun. When you put your foot in the soil, it was as though you were putting it in a hot oven. In order to take a bath, we college boys drove for miles, trying to find a creek that had not dried up. I started drinking beer that summer. It was either beer or soda pop. I chose beer. It was a great thirst quencher.

The next summer, the summer of 1937, I got a job with the Railroad Perishable Inspection Agency. It was amazing. I learned that they would give jobs to college students in the Manhattan Produce Yards, located between Jersey City and Newark. The pay was \$125 a month. It's hard to believe now, but that was a fortune. And so, I applied for a job with the Railroad Perishable Inspection Agency. I'll never forget when I received a letter in reply. I was so excited I ripped it nearly in half. I still have the letter. The letter said I would be hired and would be paid \$125 a month. That was an enormous amount of money to me.

The work involved inspecting carloads of watermelons shipped from the south to the

Manhattan Produce Yards. I lived with my aunt in lower Manhattan. I had to be on the job by seven o'clock in the morning. We broke the seals on the car doors and opened them. We then inspected the loads of watermelons to determine if any melons had been damaged. We had to figure out whether any damaged melons were caused by the railroad, such as by two cars crashing together when the train stopped suddenly, or whether the damage was due to improper loading or disease. That decision was important to the people receiving the melons because, if the damage was the fault of the railroad, they would be paid the value of the melon. Every penny was important during the Depression. I frequently had problems with the receivers, who were foreigners. If they disagreed with my determination as to the cause of the condition of the melons, I invariably got into a huge argument with them. I remember once being backed into the corner of the freight car by several guys screaming at me. It was scary. My boss's name was Andy. I told them that I would do whatever Andy said should be done. Andy looked at the load and said, "No railroad damage." The receivers were satisfied. I saved money that summer. Do you want me to continue with this?

Ms. DeRosa: I think probably what we can do is finish college and then we will have a natural break.

Mr. McKay: Okay. So I returned to college for my senior year in September of 1937. That was an uneventful year. I had better grades than before, but nothing great. I had good grades in a course called Farm Management. That pleased me because my professor, a Professor Rasmussen, was a good friend of my father. We left penny postcards with our professors, and they would send our grades on the cards. I got a 92 in Farm Management. Professor Rasmussen wrote "Congratulations" on the card. I sent it to my father.

During the spring of 1936, I wrote about 30 letters, trying to find a job. I still have copies of the replies, all but one saying “no.”

Ms. DeRosa: I’m curious about the atmosphere, because this was still during the Depression. Right? Was there a lot of difficulty finding jobs for people coming out of college?

Mr. McKay: It was very difficult. Jobs were very scarce. I finally received a letter from the California Fruit Exchange, a farmers’ cooperative marketing association with headquarters in Sacramento. They offered me a job as a dealer service representative. The pay was \$135 a month. I had to have a car. They would pay me five cents a mile. I was very happy to get a job. But unfortunately, I had to report for work before my commencement. I still hold that against them because it didn’t make that much difference. I wrote and told them my commencement date and asked whether I could report on the Monday after that date. They refused, saying that they wanted to get the sales promotion program started. And so, my diploma was mailed to me. I missed my commencement, but I had a job. That was the most important thing.

My dad found a Dodge coupe that had 11,000 miles on it. The price was \$200. That was one of the best cars I’ve ever owned.

Ms. DeRosa: How long did you own it?

Mr. McKay: I owned it until 1940. In 1940 I bought a new Dodge for \$833. After I bought the first car, I reported for duty in Manhattan.

Ms. DeRosa: Oh, your job was in Manhattan?

Mr. McKay: Well, it was for a very short time, maybe one week. I couldn’t hack it in Manhattan. I was supposed to promote the sale of deciduous fruits marketed by the California

Fruit Exchange, the Blue Anchor Company, as it was called. I visited produce markets. I had a terrible time finding a place to park in Manhattan near the markets I had to visit. It was very hectic. I reported my problems to my boss. He was very kind. It was agreed that I did not have the temperament to deal with the New Yorkers. It was suggested that I would be better off in New Jersey. I agreed. So I found a place to live in Rutherford. My landlady treated me like a son. I proceeded to promote the sale of deciduous fruits throughout eastern New Jersey.

Ms. DeRosa: This is a good time to stop.

Mr. McKay: Okay.

Ms. DeRosa: Just so I remember from the beginning, you worked for a couple of years before joining the Navy. Is that right?

Mr. McKay: Yes. I reported for active duty December 15, 1941. I graduated from Cornell in June of 1938.

Ms. DeRosa: Well maybe we will go up to the time when you joined the Navy if there are any significant memories you have from your first couple of jobs. You've talked a little about the first one and moving to Rutherford.

Mr. McKay: Right. My job had to do with promoting the sale of deciduous fruits or non-citrus fruit such as apples, pears, grapes, and plums. I don't know why they call those fruits "deciduous." I went from town to town in New Jersey, to places such as Newark, Jersey City, Elizabeth, the Oranges, Montclair, Secaucus, and so forth. I would contact the managers of fruit markets, and get permission to put up my displays. If I constructed a window display, I had a photographer take a picture which I sent to Sacramento. I prepared weekly reports of my

displays and the nature of the displays. When the California Fruit Exchange sales campaign ended, the California Walnut Growers Association asked me if I would do the same thing for them in eastern Pennsylvania. The organization is now called the Diamond Walnut Company. It's a cooperative marketing association. My main headquarters were in Reading, Pennsylvania. I lived in the YMCA. I traveled to the various towns in that general area. Another headquarters was Scranton. I lived in the YMCA when I was in that city. The hope of the association was that people could be persuaded to buy walnuts during all seasons of the year. That still may be the case.

Ms. DeRosa: Did you enjoy that?

Mr. McKay: Not particularly. It was very lonely. As I said, I lived in the YMCA. I was by myself. I worked during the winter months. It was tough driving in the snow. I had to use chains a lot. I went from town to town putting up displays in various types of stores. I don't know how successful we were in making consumers change their habits about buying walnuts. I remember my first visit to Scranton. I had been home for Christmas. When I got to my room in the YMCA, I saw a bulb hanging from a cord in the middle of the room that had one window with a green shade ripped its entire length. I was very depressed. However, to my surprise, Scranton turned out to be very lively at Christmas time, even though the Depression had hit that area very hard.

I went as far as Hazleton and Shenandoah in the hard coal region. The mines had been abandoned. Many of the streets had sunk into the mineshafts. It was very depressing. The people were very poor. All in all, it was not much fun.

I knew that the walnut program would soon end and I would have to get another job. I

wrote the Department of Agriculture and fortunately was able to land a job as assistant marketing specialist in the Marketing Agreements Division of the Agricultural Adjustment Administration. The division administered marketing agreements between farmers and the Secretary of the Department of Agriculture, who was Henry A. Wallace. He later was Vice President during the first three Roosevelt administrations. Under the marketing agreements, the farmers agreed they would not sell lower grade products in interstate commerce. They would sell only the higher grades, which would bring a higher price. It was the law of supply and demand. The less the supply, the higher the demand, and, hopefully, the higher the price that the farmers would get for their produce.

And so, I worked on developing marketing agreements for various kinds of agricultural products. I was paid the enormous salary of \$2,600 a year. I was able to buy a new Dodge for \$833. None of my friends made money like that. My problem was that I only had enough work to keep me busy for two or three hours a day. It was frustrating. Then my immediate boss came to me and said, "Jim, we're hiring a junior marketing specialist to assist you." I said, "I don't need any help. I don't have enough work to do." "Oh" he said, "we're going to expand." I was very angry. I spoke to a close friend, who had just started Georgetown Law School at night. I told him that even though I didn't have enough work to do, they were going to hire someone to help me. He said, "Well, why don't you go to law school?" And I said, "I'm going to do that." I walked to Georgetown Law School, which was then at 6th and E Streets, N.W., in a dingy old brick building, and told Dean Fegan that I wanted to go to law school. It was simple. All I needed was a transcript from Cornell and the money to pay the tuition. I was admitted to Georgetown Law School.

I attended law school five nights a week. By the way, Dean Fegan didn't like the term "night school." He referred to the "late evening classes." I worked at the Department of Agriculture during the day. I did a lot of studying at my desk, with a large agricultural report hiding my case book. I enjoyed studying law. I guess that's why I did very well. I was first in my class at Georgetown. They even gave me a check for \$35.

Ms. DeRosa: You mean after the first year?

Mr. McKay: At the end of the first year. The war messed me up as far as being in any particular class was concerned. I did well in law school after the war. My grades helped me in later life, because I was recommended by the dean to the U.S. Attorney, and was able to become an Assistant U.S. Attorney in Washington. That was a good result.

Ms. DeRosa: That was Dean Fegan?

Mr. McKay: That was Dean Fegan. I was able to finish one year at Georgetown before going into the service.

Ms. DeRosa: What was the experience? Did you feel in going to the late evening classes that you were part of the law school community?

Mr. McKay: No. Before the war, I was invited to join the *Georgetown Law Journal*. I didn't even know what that was or meant. I had enough work to do, and so I ignored the invitation. I should note that I think our instructors and teachers at the night school were as good or better than those in the day school. Many of them were practicing lawyers. I got a very fine legal education at Georgetown.

There were about 125 students in my class before the war. There were no women students at that time. The night students were very serious. Law school was just a means to an

end. We were not there for fun. It was hard to work all day, go to school at night, and then study for a couple of hours after getting home. It was even harder after the war when I was a law clerk at Covington because my work at the law firm was much more intensive than it had been at the Department of Agriculture.

During this period, I was concerned about the draft. I learned from a friend that the Navy was looking for recent college graduates to enter the Navy as administrative officers. I went the very next day to the Navy Yard. Only two applicants were there, including me. I was accepted. About 400 applicants showed up the next day. I was very lucky. That's how I got my commission.

Ms. DeRosa: I think you said earlier that you wanted to fly. Is that right?

Mr. McKay: My brother was a flyer. My best friend, who later became my best man, was a flyer. I had other friends who flew. My brother bought a Piper Cub for \$500. I flew with him several times. I applied to the Army Air Corps, but because I weighed only about 125 pounds, I was rejected. I applied to the Naval Air Corps. They turned me down because of my weight. Colonel Vandergrift and his wife lived next door to us. He later was the General Vandergrift, who led the Marine First Division that landed at Guadalcanal. He urged me to enter the Marine Corps. I decided that I didn't want to go into the Marine Corps, so I ended up going into the Navy as an ensign. My commission was dated November 23, 1941. I was ordered to report for duty on or before December 15. When Pearl Harbor was bombed, I called and asked whether they wanted me to come right away. They said they would wait a week for my services. So I reported for duty on December 15, 1941, as an ensign in the United States Naval Reserve. I even had a sword.

Ms. DeRosa: I was going to ask about Pearl Harbor, but maybe we'll stop here. Then we can get a few memories of Pearl Harbor. We can start the next session with that.

Mr. McKay: Okay. I have very vivid memories.

Ms. DeRosa: Yes. I think it's probably good to start with that.

Mr. McKay: Well, thank you.

Ms. DeRosa: Great. Thank you.

**ORAL HISTORY OF
JAMES C. McKAY, ESQUIRE
SECOND INTERVIEW - July 29, 2003**

Ms. DeRosa: All right, I'll just say we are now in our second session, and we are going to start again with Jim McKay. As we discussed, maybe you can give us your memories of Pearl Harbor.

Mr. McKay: Well, I think I have already stated that I received a commission as an ensign in the U.S. Naval Reserve in late November, with orders to report for duty on December 15, 1941. At that time I was working for the Department of Agriculture and, of course, I was going to cease working there soon. I was living at home with my mother and dad in Foxhall Village on 44th Street. It was a Sunday, as we all know, and I will always remember that. And I was lying on the couch, listening to a football game on the radio. The Philadelphia Eagles were playing the Washington Redskins. Suddenly, in the middle of the game, we heard the announcement, "Ladies and gentlemen, we interrupt this broadcast to announce that the White House has just reported that the Japanese have bombed Pearl Harbor and the Army Air Corps Base at Hokum Field. The extent of damage is not known."

I remember rushing upstairs to tell my mother that the Japanese had bombed Pearl Harbor. I had no idea where Pearl Harbor was. I don't think most Americans living on the mainland in the United States knew where Pearl Harbor was. Maybe I'm underestimating them, but in any case, I didn't, nor did my mother. We began looking through our library. We found out that Pearl Harbor was in Hawaii, much to our astonishment. It was incredible to think that the Japanese could have flown all the way to Pearl Harbor. I remember that throughout the

evening and into the next day we heard all kinds of terrible rumors about the Japanese. They were headed for Los Angeles, San Francisco, and west coast cities. It was an apprehensive situation that we experienced during the next week or so. In the meantime, I had purchased my uniforms and was ready to report for duty at the Navy Yard. Where should we go from here?

Ms. DeRosa: Well, I guess just one question about learning about Pearl Harbor. Where did you get most of your news from? Mr. McKay: We read the newspapers. We also got news over the radio. There was no television back in those days.

Ms. DeRosa: And the rumors? Were they in the news?

Mr. McKay: They were in the news. Yes. It was a scary time. Nobody knew what was happening. Of course, the United States declared war on Germany and also on Italy within a very short period of time. Then the British lost one battleship from Japanese air attacks, the *Prince of Wales*. It was one of the most modern battleships at that time. The British also lost a cruiser. I think it was the *Repulse*. She also was **sunk** by Japanese aircraft. That was very upsetting. It was just devastating. Coincidentally, the *Prince of Wales* was the ship on which President Roosevelt and Winston Churchill had met for the Atlantic Conference near Newfoundland. The British lost thousands of sailors, who went down on those great ships. And that's the way it went. The Japanese troops could not be stopped. They captured Corregidor, which fell fairly quickly. MacArthur had boasted that all those islands, including the Philippines, could be defended. He took off and left General Wainwright to defend Corregidor. Wainwright was captured, and spent the rest of the war in a Japanese prison camp. Then there was the death march. It was a terrible, terrible upsetting situation. Things that are happening nowadays are

upsetting, but they are no comparison with the devastation and the terrible things that were going on in Europe and in the Pacific. It wasn't a happy time.

Ms. DeRosa: And so what happened when you reported as an ensign for duty?

Mr. McKay: Well that was not the happiest period of my life. I had never been on the water before but, being in the Navy, I thought I should be on a ship. However, they assigned me to the receiving station in the Navy Yard. What a receiving station does is receive sailors from all over the country and ship them off to their next duty. I was at the receiving station for nearly a year. It was a very unhappy period of my life. I was doing something that anybody could have done. I was doing administrative work. I became personnel officer and did mostly paper work. Meanwhile, my future father-in-law was the Inspector General of the First Army, and would soon be headed for Europe. I felt I had to get on a ship and so I applied to go to the Local Defense School in Boston. I was accepted and, in December of 1942, I entered that school. It was a very good school. I was trained in navigation, gunnery, communications, and seamanship. We went out into the ocean on YASS, which were yachts taken over by the Navy. We learned to pilot a ship. We took star sights with sextants. We learned the things that a naval officer should know.

After completing the course in Boston, I applied to attend the Submarine Chaser Training Center in Miami, Florida, and was accepted. That school was one of the finest training schools organized by the Navy during World War II. The school trained officers to become officers on anti-submarine warfare vessels, such as subchasers and patrol crafts called SCs and PCs. They were also trained to go aboard ships known as destroyer escorts or DEs. I reached Miami in the early spring of 1943. I underwent training there for about six or seven weeks. The school

graduated a class each six or seven weeks. SCTC, as it was called, provided thousands of officers to go aboard these anti-submarine warfare vessels. It was a wonderful program. Do you want me to continue?

Ms. DeRosa: Yes.

Mr. McKay: Meanwhile, in December I become engaged to be married. My training at SCTC ended on June the 10th, 1943. I came by train to Washington. I was married to Mary Anne Hunter on June 12, 1943. My wife and I recently celebrated our 60th wedding anniversary. We went by train to Miami where I awaited my orders for about a week. The thing that bugged me the most was that I had to do calisthenics at eight o'clock each morning, even though my schooling was over. I complained to the chief petty officer conducting the exercises. I told him I'd just got married. He just shrugged. We had a week in Miami. It was a great week, in spite of the calisthenics. I then received my orders to take the position of executive officer of the SC-1335, a subchaser. SCs were 110-foot wooden ships with a complement of three officers and 23 enlisted men. She was being constructed in Halesite, Long Island, which is on the north shore.

Ms. DeRosa: You were an ensign still?

Mr. McKay: Yes. And so I reported for duty. Mary Anne came up from Bethesda, where she lived with her parents. We rented a little apartment on the top floor of a home in Halesite. I remained there during the construction of the SC-1335. My commanding officer was George Doyle. The third officer was Bob Bartlett. I never called George Doyle "George" while he was my commanding officer. I always called him "Captain." He always called me "Mr. McKay." You had to maintain that formality, even though the three officers shared a stateroom.

We never stepped over the line. We were very busy during construction, which was completed in August of 1943. We then proceeded to the Brooklyn Navy Yard where we were commissioned as a ship of the United States Navy on August 12, 1943. We next received orders to proceed to Miami for shakedown. The trip to Miami was difficult. The captain was the only one of the three officers who had been to sea. Most of the members of the crew had never been to sea. And so the captain had his hands full. But we managed to get safely to Miami. While in Miami, we did shakedown training. We practiced attacking a submarine using our underwater sound gear, called "sonar," to detect the submarine. We practiced ship handling at sea, and went through various exercises, such as general quarters, fire drills, man-overboard drills, and so forth. All of those exercises were done under the supervision of experienced officers. Our next orders were to proceed to Norfolk, Virginia, to join a slow convoy bound for the U.K. Our ship received orders to proceed to Casablanca, where she would be turned over to the Free French under the Lend-Lease Program. And so we headed north. And I will say I don't know how I am sitting here after what we went through on that journey. Our captain made the mistake, in my view, when he decided that we would not proceed close to the coast, but would go east for 200 miles or so, then head north. In that way, we would avoid the busy shore traffic. We were always blacked out at night. And it was hazardous to travel up the coast when none of the ships burned running lights. That decision turned out to be almost a fatal disaster. No one had checked the weather reports. Maybe it was my responsibility. I don't remember. As a result, we encountered the worst storm that I ever have experienced. I will never understand why the ship didn't go down. She was only a tiny 110-foot wooden vessel. I remember being on the flying bridge and looking up at a 45-degree angle at the gigantic Atlantic rollers headed our way. The

winds were gale force and more. As I said, the waves were enormous. It was like being in hell. I was sure we would not survive. But, we did, obviously. It took us six days to get to Norfolk. Because we suffered such severe storm damage, the ship had to go into dry dock for repairs. I wrote a piece about that storm, called "The Storm," and also one about our trip to Casablanca. When repairs were completed, we joined the next slow convoy and headed for Casablanca. Our station at all times was about 2,000 yards on the port beam of the destroyer commanded by the escort commander, whose station was about 3,000 yards in front of the center of the convoy. He ordered us not to activate our sonar, which was rather insulting. There were numerous escorting destroyers. All of them had names such as Hercules, Samson, Poseidon, Ajax, and so on. Our code name was Kitten.

Ms. DeRosa: Can I just interrupt you. You mentioned you wrote two stories. What was the name of the second one?

Mr. McKay: "Hold Your Fire, It's Kitten."

Ms. DeRosa: And where are these stories?

Mr. McKay: On my computer. I've done a lot of creative writing. The "Hold Your Fire, It's Kitten," piece may include the storm. And so, we proceeded across the Atlantic. It was quite rough, but we had survived that horrible storm, almost hurricane force, certainly gale force. I still get nervous when I think about that storm. The base speed of the convoy was ten knots. There were about 150 merchant ships and about 16 escorting destroyers. Our complacency was interrupted when we were ordered to take on fuel. That turned out to be an exciting experience. We went alongside this huge tanker and they put a line over. We hauled in the hose and began taking on fuel. When fueling was completed, we cast off. We stopped our two engines to switch

over to the tank that had just been filled. It turned out that the fuel was filled with water and dirt. Our engines failed and there we were in the middle of the Atlantic, unable to move. We began sending blinker messages to the tanker, that was disappearing over the dark horizon along with the rest of the convoy. Finally, we got a message from the tanker that said that Ajax would take us in tow. You can imagine how we felt. Finally our wonderful engineer, a petty officer, got our engines started. And so we started off to resume our position in front of the convoy. The problem was that the speed of the convoy was ten knots. Our top speed was 12 knots. It took us many hours to catch up with the convoy. When we finally got along the port beam of the escort commander, it was about three o'clock in the morning. That seemed fine. We later met some of the destroyer officers in Casablanca. When they found out who we were, one of them said, "Oh my God! Were you on that tiny little ship?" We said we were. They told us, "Every time any member of our crew members complained about the weather we pointed at you and said 'just be thankful you're not on that thing.'" One of the officers went on to say, "You know, we nearly blew you out of the water." I should point out that an SC's profile at night resembles a surfaced submarine. The officer told us how his ship had come to general quarters because a surfaced submarine had been sighted. Just as their five-inch guns were trained on the target, a lookout shouted, "Hold your fire, it's Kitten." So that's how the name of the story came about. You're giving me a great chance to reminisce.

Ms. DeRosa: How interesting.

Mr. McKay: Well, we finally got to Casablanca. Oh, I should tell you that one of the most interesting people I have ever met was the prospective French commanding officer who

came aboard our ship in Miami. There were then four officers and three bunks. When one was on watch the other would sleep in that officer's bunk. His name was Jean Charles Devin du Fontenay. He had been a prisoner of the Germans. He told us that the Germans would periodically take one of the prisoners and shoot him or her to retaliate against some hostile action by the French. His father had been an admiral in the French Navy. His family bribed the German guards and he escaped. He made his way to the United States and was assigned to be the commanding officer of the SC-1335 when she was turned over to the French.

Ms. DeRosa: Can I just get the spelling, for whoever is going to be transcribing this.

Mr. McKay: Jean Charles DeVin du Fontenay is the closest I can come. Anyway, he was a character. He was sure he was going to die on February 27, 1947. We had many discussions about that. He said he would have his ship come to general quarters on that day. The entire crew would be wearing life preservers. We couldn't talk him out of it. I saw him after the war and I asked him, "Jean, you didn't die, did you?" You know how the French are. He just shrugged the Gaelic shrug. And so, we finally reached Casablanca. George Doyle and I stayed aboard for a week or so to teach the French crew how to operate the ship. Our French wasn't all that great, but we managed with the help of Jean to train the crew. Then, we had a ceremony. The U.S. ensign was lowered and the French ensign raised, and a little band played the Marseillaise. George Doyle and I were ordered ashore in Casablanca to await orders. They accidentally allowed us to stay in a VIP suite in a posh hotel. We each had a separate room with a bed covered by huge mosquito nettings. We invited friends to our beautiful quarters and served food and drinks, which cost almost nothing. Our brief holiday ended when we both were ordered

to go aboard the SC-507, which was operating out of Casablanca.

Ms. DeRosa: It was operating as a U.S. ship?

Mr. McKay: Yes. She was guarding the Port of Casablanca. Our job was to keep strange vessels away from the port. We challenged incoming ships with the current recognition signal and would be sure that the ships had the correct response. The Portuguese were engaged in a lot of spying activity. Once in awhile we would run off a Portuguese fishing vessel by firing our machine gun across her bow. That was a lot of fun. After about six months of that duty, my captain decided that I should be sent back to the States to attend the command course at Submarine Chaser Training Center. So, I was relieved of my duties as executive officer of the SC-507. Unfortunately, I hadn't had a plague shot. Otherwise, I would have been able to return on the Pan Am Clipper, which was going to Dakar, then to Rio de Janeiro, then to Miami. Because I had not had the shot, I could not go.

Ms. DeRosa: You hadn't gotten a plague shot?

Mr. McKay: No. And so I flew back on a Naval Air Transport Command aircraft from a port near Rabat. I think it was Port Leautey. The aircraft was called an R5D. It was the equivalent of a DC4. We landed for refueling in the Azores, and then went from there to Newfoundland where we again took on fuel. Our final destination was a naval facility near Washington. After about a week's stay in Washington, I was ordered to Miami where I attended the command course at SCTC. After completing that course, I was ordered to proceed to Norfolk to take command of the USS PC-1596. The PC was a 175-foot steel patrol craft. She had previously been a mine sweeper, operating out of Bermuda. She was named *Effective*, and was designated as AM-92. Her armament consisted of a three-inch 50 gun forward, a 40MM cannon

aft, anti-submarine rockets which were launched from the bow, and depth charges aft which were launched from K-guns on each side, and rolled from the stem. She also had six 20MM cannons scattered about the ship. The usual complement was five officers and about 58 enlisted men. I took command on June 4, 1944. Then we headed with four other PCs to Bermuda. All of the PCs had been AMs and had been converted to PCs. It was understood that we would conduct patrol operations out of Bermuda, guarding the island. However, no sooner had we tied up in Bermuda than we were told we were going to the Mediterranean. This was quite a blow because nobody really wanted to fight. I don't think anyone wanted to be a hero.

(End of tape.)

Ms. DeRosa: You were saying?

Mr. McKay: We learned that we would soon be headed for Bizerte, which is in North Africa. And so for about ten days in Bermuda, we went through a lot of drills. Then we left Bermuda to rendezvous with a slow convoy which had departed from Norfolk. It was denominated UGS-34. That trip took about 23 days. We went to general quarters many times, upon hearing the words, "Red alert. Submarine attack imminent." But none came. We were lucky because I have since read that our convoy was the only one of the UGS convoys up until that time which was not attacked by submarines in the Atlantic, and by German aircraft in the Mediterranean. Both Convoy UGS-33 and Convoy UGS-35 were subjected to submarine and air attacks. I think the reason was that we had a huge escort, both in the Atlantic and the Mediterranean, which included many destroyers, destroyer escorts, and a battleship. And 12 PCs also served as escorts. I'll never forget our arrival in Gibraltar. Seeing the Rock was a great thrill. As we waited for the convoy to form, a huge British battleship joined us, along with

British destroyers. With that enormous escort, the convoy headed eastward in the Mediterranean along the coast of North Africa. Every night we received red alerts that an aircraft attack was imminent. We would rush to our stations at general quarters, but nothing would happen. We reached Bizerte unscathed. When we reported to headquarters, we became a unit of the 8th Amphibious Force, a part of the 8th Fleet.

Ms. De Rosa: Now, can we get the context of this? Where are we as far as World War II is concerned?

Mr. McKay: We are in the third week of July 1944. The Sicilian invasion was in of July of 1943, followed by the Salerno and Anzio invasions. I was in Casablanca while all of that was going on. By the time I got to the Mediterranean, the Americans had occupied Sicily, and the 5th Army was fighting on the Italian mainland. The Normandy invasion had occurred on June 6, 1944. I was not involved in any of those invasions. We knew that another invasion was coming soon, and that we would be involved. I guessed that the invasion target would be southern France, and that's where it turned out to be. And so, we knew that we would start preparing to participate in the next invasion. As it turned out, the air bombardment and shore bombardment was the greatest in history up until that time, even greater than the pre-invasion bombardment at Normandy. The expectation was that southern France would be the bloodiest landing of all. In fact, it turned out to be mild, comparatively speaking. **An** Admiral Moon, who had an important role in the invasion of Southern France, committed suicide. We were not happy when we learned about that before the invasion. We practiced escorting landing craft to the beach in Salerno. We then headed for Ajaccio, Corsica. Ajaccio is a port on the west side of Corsica, the largest port in Corsica. We learned that our job would be to escort LCIs to the

beach. "LCI" stands for landing craft infantry. They hold 45 or 50 GIs. Their job is to land on the beach and lower their platforms. The GIs then rush to the beach. We were ordered to escort elements of the 45th Division to about a mile from the beach. We rendezvoused with the LCIs near Ajaccio the evening of August 14, 1944. We then headed for southern France. H-hour was 0800 on August 15. The landings were to be in the St. Tropez area. We were underway the entire night, escorting the LCIs. I remember there was a perfectly beautiful full moon. The Mediterranean was like a calm lake. We already had learned that the Mediterranean can get very, very rough. That really surprised me. We experienced some terrible storms in the Mediterranean. But this night was gorgeous. All of us were wearing helmets and life jackets. We were at general quarters. I remember wondering why people were thinking of killing each other on such a beautiful night. As we approached the beach, we came upon the first line of the shore-bombardment units, a line of battleships blasting the beach. I remember most vividly seeing the beautiful French battleship, *Richelieu*. She was the most beautiful ship I have ever seen. We went by the line of battleships firing those tons of shells at the beach. Then we passed by the cruisers, and then the destroyers. During this period, we could hear the air bombardment, the bombs dropping and exploding so fast, it sounded like a loud, continuous drum roll. Our LCI charges were following us as we headed for the beach. When we reached a point about 2,000 yards from the beach, we signaled the leading LCI to continue on course. We then turned back and headed out to sea. We saw several hostile planes. We also saw our ships firing at British Spitfires. I felt *sorry* for the British pilots who were trying to land on newly constructed landing strips. It was a bit of a chaotic situation. But none of them was hit by the so-called friendly fire.

After D-Day, we had a number of assignments. One of them was to circle the U.S.

battleship *Nevada* one night, to protect her from underwater saboteurs. After leaving the Southern France area, the PC-1596 engaged in escorting small convoys of LSTs or LCIs to various ports in the Mediterranean. Palermo, Sicily, became our main operating base. Whenever we needed major repairs, we went to Bizerte. We patrolled out of Marseille for several weeks, protecting the port from entry by enemy vessels. We operated out of Naples, to a certain extent. On several occasions, we conducted a night patrol out of Leghorn. We operated under the command of the British Navy. The patrol was called the "Niffy" patrol. We never figured out where the name came from. Our mission was to prevent German E-Boats, based in La Spezia, from attacking the ships in the Leghorn. We patrolled about five miles off the beach, coming as close to La Spezia as we dared, then turning back for ten miles or so, then turning toward La Spezia again. That would go on until dawn. We patrolled beyond the front lines of the U.S. 5th Army, which was battling the Germans in the mountains. We had a ringside seat of the war. It was like a huge Fourth of July celebration. One of us would point to the beach and say, "Oh my God, look at that!" We would see these huge explosions and thousands of tracers. The 5th Army was fighting the Germans in the rugged mountains, while we were a few miles away, comfortable in our little ship. That was a very interesting experience. We were in Palermo on VE Day. That was May 8, 1945. The word came over the BBC radio that the Germans had surrendered. The poor people in Sicily had suffered for years. First, the Americans bombed them. After the Americans captured Sicily, the Germans bombed them. They were bombed repeatedly by both sides. VE Day was an absolutely beautiful day in all respects. A couple of officers and I went uptown. It was so heartwarming to watch these people. Everybody was out walking with linked arms, as Europeans do. Bells were ringing. People were smiling

and laughing. It was wonderful. No more war for them. The PC-1596 was ordered to escort a group of small landing craft to Oran. After that, 13 PCs gathered in Oran to get ready for the trip to the United States. Off we went, some of the ships flying "Homeward Bound" pennants. The seas were rough and the winds were high. The only incidents of note were when we twice passed surfaced German U-Boats on their way home. We stared at them without binoculars. It gave us an eerie feeling to see those ugly boats. We stopped for refueling in Horta in the Azores. Our next stop was Bermuda, where we again refueled. We then proceeded to Charleston.

After I reported to naval headquarters in Charleston, we were ordered to proceed to Jacksonville, where the ship was to go into dry dock for repairs prior to proceeding to the Pacific. I received orders, upon being relieved as commanding officer of the PC-I 596, to report to the Pacific by the fastest available government transportation, first to San Francisco, then to Honolulu, then to Okinawa. I didn't look forward to duty in the Pacific, with the terrible things going on out there, including the Kamikaze attacks. An officer named Bill Taylor had been assigned to take command. But, since I was the captain, I delayed being relieved of command and kept stalling. After the atomic bombs were dropped, I figured that war would end pretty soon. And it ended while I was in Jacksonville. I then turned the ship over to Bill Taylor and headed for Washington. My orders to the Pacific were cancelled.

I should back up, because I neglected to tell about a very momentous thing that happened. While we were on patrol duty out of Marseille, President Roosevelt died. That was a huge shock. I was in command of a task force of four PCs assigned to protect the port of Marseille. We were the only United States ships in port. I was the senior officer on board the U.S. ships. By then I was a full lieutenant. The official term was Senior Officer Present Afloat, or SOPA.

Naval regulations provided that, upon the death of the President, the SOPA was required to conduct a ceremony on his ship to be attended by the crews of all ships in the port. Everyone was required to wear black armbands. Well, I nearly died when I read that. We rushed around, getting our mess hall ready for the ceremony. We located material to make armbands. We were about to notify the other ships of the time of the ceremony when we received a message from the Naval headquarters at Marseille that, due to wartime conditions, naval regulations were suspended insofar as they applied to the death of the President. So I was spared from that ordeal. I was very relieved. That was a memorable occasion. No one, at least not me, knew anything about Harry Truman.

Ms. DeRosa: So it was memorable. Were people frightened or sad?

Mr. McKay: We were not frightened. We were very sad, yes. It was a terrible blow. It was like when Kennedy was killed. Not that horrible. The President had been sick. It was one of those events that sticks in your mind because it was such a historical thing to have happened. It seemed a shame because VE Day came along soon after President Roosevelt died. He didn't get to celebrate that great day. As I said, I returned to Washington after VE Day. I was relieved from active duty, but remained in the reserves for a couple of years.

Ms. DeRosa: Can I back you up for one thing? You mentioned your reaction was that war would be over soon. Is there anything else that you remember about it?

Mr. McKay: I remember being in a barber shop's chair in Jacksonville. I heard one barber say to the other barber, "Hey, I just heard over the radio that they dropped a bomb on Japan that has the equivalent power of 40,000 tons of TNT." I thought "baloney," but soon learned that an atomic bomb had been dropped on Hiroshima. Then another was dropped on

Nagasaki. That may have been overkill, but I have no regrets that the bomb was dropped on Hiroshima. It probably saved my life and the lives of thousands of other. I had been ordered to Okinawa for duty on another ship. I've seen the plans prepared for the invasion of Japan. They have been declassified. At least a million casualties were expected. It would have been a terribly costly invasion. After the bombs were dropped, there was a great wave of hope that the war would be over soon.

We were staying in Jacksonville. My wife had come from the Washington area. Some of the other officers' wives were there. We were waiting for orders to go to the Pacific. Then, we didn't have to go. That was a big relief for everybody.

I had completed a year of law school at Georgetown night school. I mentioned that a friend had suggested I go to school. Incidentally, my friend was on one of the ships that escorted the convoy to Bizerte. He and I had a wonderful reunion in Bizerte. He was killed on July 24, 1945, a few weeks before the war ended. He was on the USS *Underhill*, DE-682. She was sunk by a suicide submarine that the *Underhill* was attacking. The submarine blew itself up under the magazine of the *Underhill*, killing 112 members of the crew. On every July 24 there is a ceremony in Annapolis in honor of the *Underhill*. I went last year. I couldn't go this year. I keep in touch with my friend's granddaughter and his son, who was born on July 12, 1944. I was the one who informed his father of his son's birth by blinker message while we were in Bizerte.

Getting back to my return to Washington, I could either return to my job in the Department of Agriculture, where I was promised a two-grade raise, or I could get a daytime job and go to law school at night. One of the officers I met in the Mediterranean was the legal officer of the 8th Amphibious Forces. I learned he was in Washington. His name was David Louisell.

And so, when I got to Washington, I went to see him at naval headquarters. I told him I didn't know whether to continue with law school or work for the Department of Agriculture. I was mamed and my wife was pregnant. They were offering me a two-grade raise which would pay nearly \$5,000 a year. That sounds like peanuts now, but was a lot of money then. He said, "Why don't you talk to my law firm?" His firm was Covington, Burling, Rublee, Acheson and Shorb. The Acheson was Dean Acheson, who later became Secretary of State.

Ms. DeRosa: Covington, Burling —

Mr. McKay: Covington, Burling and Rublee, Acheson and Shorb. So, I went up and talked to Gerhard A. Gesell, who later became a district court judge. He said, "We'd like to help out you fellows, but we can't pay you any more than \$150 a month." I told him, "I can't do that." And back to the Department of Agriculture I went to report for duty. But I changed my mind. I just did not want to work for the Department of Agriculture. My decision was triggered by the condescending attitude of the personnel officer. I had a huge chip on my shoulder in those days. And so, when I walked out of his room and saw an empty telephone booth, I entered it and telephoned the law ~~firm~~. Fortunately, I had a nickel. That's all I needed. I spoke to Dick Moore, one of the lawyers I had talked to when I had visited the firm. I asked him if the law clerk job was still open. He said, "Yes, but why?" I said "Never mind why. I'll take it." He later told me he thought I was crazy. And so I went to work as a law clerk at Covington & Burling at \$150 a month.

Ms. DeRosa: Do you remember when you started?

Mr. McKay: In October of 1945. I was able to start law school that term. I went to classes five nights a week, and continued through the summer. I finally got my LL.B degree in

February of 1947. At the firm, I had the good fortune of being assigned to work for Howard Westwood, who was the dean of the aviation bar. The firm represented American Airlines. Howard was the greatest mentor I've ever had, although he was very rough on me. He had been a corporal in the Marine Corps, and was delighted with the fact that he was giving orders to a former officer in the United States Navy. I'd been a lieutenant commander in the Navy. He did it in a good humored way, but, as I said, it was tough going.

Ms. DeRosa: This was when you were a law clerk but also after you were—

Mr. McKay: As a law clerk until I was admitted to the bar. I worked continuously for Howard until I went to the U.S. Attorney's Office in 1948. Working for Howard Westwood was a fabulous experience. He taught me more than I've ever learned from anybody else. Even now, when I have to get a job done, I pretend that Howard Westwood has asked me to do it. That spurs me on. He was a great man and a great mentor. In June of 1946, I took the bar examination, even though I was still in law school. You could do that then. I passed the examination, and was admitted to the bar in October of 1946. I had the nerve to insist that, since I was now a lawyer, I should be paid as a lawyer. My salary was increased to around \$3,000 a year. A few months after I got my LL.B degree, an episode occurred which led to a career change, and greatly affected my career in a positive way. I was sitting in my office, which I shared with another lawyer. The telephone rang. When I answered, a voice said, "Mr. McKay?" I said "Yes." She said, "I'm calling from the United States Attorney's Office. The United States Attorney would like to see you if you could come to his office."

People had been playing practical jokes on each other in our office. I said, "Oh yeah?" She said, "Yes." Then I began to cross-examine her. I asked, "What's the name of the United

States Attorney?" She said, "Well, George Moms Fay." Then I asked, "Where is his office located?" She said "We're down in the district courthouse." Then, I asked, "What's your telephone number?" She gave me a number, and I told her I would call her back. So I dialed the number she'd given me. The same voice answered. I was really embarrassed. So I said, "Look, I'm sorry. I feel like a fool." Then a man's voice came on the line. The man said, "Mr. McKay, this is really the United States Attorney."

I started to babble. He interrupted and said that Dean Fegan had given him my name, and that he would like to talk to me. And so, down I went to his office. I'd been watching the television program called "Mr. District Attorney," or something like that. I had visualized somebody who would look like the television character. However, Mr. Fay looked like he was about 25 years old. He offered me a job as an Assistant United States Attorney. After talking to Howard Westwood about it, I agreed to accept the position. It was one of the smarter decisions that I have made in my life. Getting that kind of experience trying cases is just incredibly wonderful. I was in court continuously, trying mostly misdemeanors. I also handled cases in what was then called the Municipal Court of Appeals, and is now the D.C. Court of Appeals. I wrote briefs and argued cases in that court and also in the District of Columbia Circuit Court of Appeals. I was very lucky. I had lots of trials and wrote a number of briefs and argued a number of cases in the two appellate courts. Then one day the phone rang. Gerhard A. Gesell was on the line. He said he wanted to see me in his office. And so up to the firm I went and met with Mr. Gesell. He said that the executive committee of the firm wanted me to return. He sort of stumbled over the next words which were "on a permanent basis." I said, "Well, I can't come now." I wanted to put in more time in the U.S. Attorney's Office. When I told my fellow

Assistant U.S. Attorneys that I'd put Gesell off, they thought I'd lost my mind. But I stayed on for another six months. It wasn't as long as I would have liked, but I did have the chance to go back to a great firm. So I returned to Covington, I believe in the fall of 1949. I can't remember for sure.

Ms. DeRosa: Let me just ask, Judge Gesell, was he— Mr. McKay: He was on the executive committee. He was also one of our most prominent litigators. When I talked to him he said that the **firm** needed to have someone who at least knew where the courthouse was. That obviously was an exaggeration. He was looking for somebody to help with the litigation in the office. Shall I continue?

Ms. DeRosa: Yes. As you do, I think it would be interesting to give a flavor of what Covington was like.

Mr. McKay: Okay. Well, at that time in 1948 or 1949, we were on the two floors of the Union Trust Building at the southwest corner of 15th and H Streets. Our main entry was on the seventh floor. We had all of the seventh floor and one-half of the sixth floor. Our bookkeeping department was in one room on the fifth floor. What a difference. Now we have a huge accounting department, with layers of bureaucrats. They would drop dead if they heard me refer to it as the bookkeeping department. We had maybe 35 lawyers when I first went to work as a law clerk. Many of the lawyers were still in the service. As the firm grew, we cut a hole through the wall and took offices on two floors of the Walker Building, next door. Judge Covington had died before the war ended. The name of the **firm** was Covington, Burling, Rublee, Acheson and Shorb until Mr. Acheson became Secretary of State. Mr. John Lord O'Brian had joined our **firm** after the war. When Mr. Acheson left to become Secretary of State,

the name of the firm was changed to Covington, Burling, Rublee, O'Brian and Shorb. Mr. O'Brian was one of the most wonderful men that ever lived. He was a truly great lawyer. He joined the firm when he was in his 70s. He was head of the War Production Board during the war. He was from Buffalo. He was probably the most prominent lawyer in the United States at that time. He lived to be nearly 100 years old. I worked with Mr. Gesell on several cases. Then I was assigned to a case in which we represented DuPont. DuPont was by far our most important client in those days. We represented DuPont simultaneously in about six huge antitrust suits. I was assigned to work for a case referred to as "the paint case." I don't know how much detail you want. DuPont formulated and patented a synthetic finish called "Duco." Before that synthetic finish was developed, automobiles were lacquered by hand, one at a time. Many coats of lacquer were used on each automobile. After Duco was invented, automobiles were put on an assembly line and the synthetic finish was sprayed on them as they went by. Duco was used in industries other than the automotive industry. It was used as a finish for houses, for locomotives, refrigerators, and for many other manufactured products. Duco was enormously profitable. DuPont entered into licenses with many paint companies, which allowed them to use Duco on their manufactured products. Those companies included Sherwin & Williams, Pittsburgh Plate Glass, Glidden, and many others. Those companies paid a license fee which permitted them to manufacture Duco. Dupont established the price at which the Duco products could be sold by the licensees to their customers. DuPont's biggest customer was General Motors. Duco was used on General Motors automobiles and on other products manufactured by Dupont, such as refrigerators, locomotives, and house paints. The Duco patent finally expired. However, the Department of Justice claimed that the paint companies continued to agree on the resale prices of

the Duco finishes, even though the licenses also had expired. An indictment was issued in Pittsburgh, charging the entire finishes industry with price fixing in violation of Section 1 of the Sherman Act. There were about 12 corporate defendants and about another 15 or so individual defendants. As I said, I was assigned to work on the case.

At that time, another unbelievable lawyer entered my life. His name was Hugh B. Cox. Mr. Cox, and I never called him anything but Mr. Cox, came from a firm that had an office in New York and an office in Washington. In New York, the firm was called Cleary, Gottlieb, Friendly & Ball. In Washington, it was called Cleary, Gottlieb, Friendly & Cox. The Friendly was later Judge Friendly of the Second Circuit. Mr. Cox left that firm and came with us. It was one of the luckiest breaks our firm ever had. I had the great luck of working with him on the paint case. All the indicted companies and individuals pleaded nolo contendere, except DuPont and Glidden. We had a lot of pretrial work to do, and then we had a two-and-a-half month's jury trial in Pittsburgh. It was a wonderful experience. We had a great trial team. My colleagues included Burke Marshall. Burke later became Assistant Attorney General in charge of the Civil Rights Division under President Kennedy and President Johnson. He became one of the top executives of IBM. He preferred academia and ended his career as associate dean of Yale Law School. He died about two months ago. He was a wonderful man. After an exciting trial, the jury brought in verdicts of not guilty as to DuPont and Glidden. How much detail do you want me to go into?

Ms. DeRosa: Well, I think, particularly as you've been doing significant cases and why they are significant and what is interesting.

Mr. McKay: Mr. Cox was an interesting and remarkable man. He loved England. He

was educated at Oxford. The only holidays he ever took were to go to London where he bought his suits and visited libraries. He's my all-time hero as a lawyer. He represented the Pennsylvania Railroad and I was fortunate enough to represent the Pennsylvania Railroad in many jury cases. That's how I got a great deal of civil trial experience. I had a great deal of criminal trial experience at the U.S. Attorney's Office.

I was involved in many personal injury cases on behalf of the Pennsylvania Railroad, including grade crossing crashes, derailments, windows being broken by children throwing stones at trains, and electrifications. The Pennsylvania Railroad was electrified. Children and adults would climb on the boxcars, touch a wire, and be zapped by 10,000 volts. I was involved in many interesting jury trials. I appeared before many trial judges and appellate judges. I was fortunate as an associate to get that much trial experience in such a large law firm. Many of our associates don't get a great deal of trial experience, other than being second chair or taking depositions.

Ms. DeRosa: And that was as true back then as it is now?

Mr. McKay: It was. I was lucky because of working for Mr. Cox and his happening to represent the Pennsylvania Railroad.

Ms. DeRosa: Was Covington mostly a litigating firm at that point?

Mr. McKay: It was a large litigating firm, but not to the extent that Hogan & Hartson was. We did have a large antitrust practice and very larger tax practice. Our international law practice also was very active. The antitrust cases were the largest cases we handled during that period, in terms of the number of lawyers involved. The next huge case I worked on was the so-called "*General Motors* case." I believe it was the largest antitrust suit that had been brought as

of that time. It was a civil divestment case under the antitrust laws. DuPont owned 25 percent or 30 percent of the stock of General Motors. The government claimed that, by virtue of DuPont's stock ownership in General Motors, General Motors was required by DuPont to buy its automotive finishes from DuPont. The government sought to divest DuPont of its stock ownership in General Motors. The charge was ludicrous. I actually volunteered to work on the case. Everybody thought I had lost my mind. The case was thought to be a huge giant that swallowed up lawyers. I ended up having to live in Wilmington for seven months while we prepared the case for trial in Chicago. I volunteered because Mr. Cox was in charge of the case at our firm, which represented the Dupont Company. The Dupont "family" also were defendants. They were represented by a New York firm, which later became the Dewey, Ballentine firm. The chief lawyer from that firm was John Harlan, who later became a Justice of the Supreme Court. The Sidley, Austin firm from Chicago was brought in to help out. There were about 30 lawyers working on the case. We all moved to Wilmington where we prepared for trial. I had a wonderful experience because Mr. Cox gave me very interesting work to do in that case. I have gone back in time because my work on the General Motors case occurred before I began to handle cases for the Pennsylvania Railroad.

The General Motors case was interesting in many respects. I met Alfred P. Sloan, who was the CEO of General Motors. I met Pierre DuPont. I met Irene Dupont. When I met Alfred P. Sloan at a lunch, and listened to him speak, I thought how ridiculous it was to think that Dupont could force him to do anything he didn't think was in the best interest of General Motors. In fact, the reason why General Motors bought its finishes from DuPont was because Dupont's products were the best that could be obtained. One of my assignments was to visit all of the

many manufacturers of refrigerators that also bought finishes from DuPont. These include companies like General Electric and Philco. The officials of all of those companies said they bought from DuPont because of Dupont's price, quality, and service. Those were the three keys. DuPont had the best quality and service at reasonable prices. I lined up witnesses from those companies and prepared them to testify in Chicago. Unfortunately, I did not get the opportunity to examine them. I did resent that a bit.

I also developed the evidence involving a company partially owned by Dupont, called "Kinetic Chemicals." That company manufactured Freon and sold it to General Motors and other companies for use as refrigerants in refrigerators. The government claimed that General Motors bought our Freon solely because of the stock ownership, which was untrue. I prepared those witnesses and brought them to Chicago, but did not get to examine them, much to my disappointment. The trial in Chicago lasted six or seven months. I did not have to go there for the duration because one of the partners, who had been handling the Pennsylvania Railroad cases, unfortunately died. It was very sad. However, it was a break for me because Mr. Cox asked me to take over his cases. That's how I began trying cases for the Pennsylvania Railroad.

Ms. DeRosa: After the Chicago trial?

Mr. McKay: The Chicago trial went forward. I didn't have to go out there until "my witnesses" were scheduled to testify. I then went to Chicago and met with them and with Mr. Cox, who examined them. That was the *General Motors* case, which was a very key case in my life. During that period of time, none of the out-of-town firms had Washington offices of any size. As a result, I handled a number of cases that Piper & Marbury, located in Baltimore, referred to us. I handled several cases for General Electric that Piper & Marbury sent us. They

were not large cases. We used Piper & Marbury as local counsel when we had cases in Baltimore. That firm was our local counsel in a case I handled in the Baltimore district court for Parke-Davis, a pharmaceutical firm, against a retailer that was selling Parke-Davis's product below so-called "fair trade" prices. At that time, the Fair Trade Act allowed companies which sold trade marked products to require their customers to adhere to minimum resale prices. That law was later repealed. The firm handled many cases arising in Washington which were referred to us by out-of-town law firms. That doesn't happen very often nowadays.

Ms. DeRosa: And when area firms would refer cases sometimes, did they involve cases brought by the government or cases brought against the government?

Mr. McKay: Yes, but I didn't get involved in those cases. We were often asked by out-of-town law firms to handle cases brought by or against the government in the District of Columbia, not as local counsel, but as the principal firm.

Ms. DeRosa: Talking about your experience, would you say the two DuPont cases were the pivotal ones?

Mr. McKay: I think working with Mr. Cox was pivotal, particularly on the DuPont cases and on the Pennsylvania Railroad cases. I also worked a lot with Mr. Gesell. I called him Mr. Gesell at first, but finally got up the nerve to call him "Gerry." I worked with him on a Robinson-Patman Act case brought in Tampa, Florida, against the American Can Company. He and I tried a lengthy criminal antitrust suit brought by the government in Baltimore against the Hiram Walker companies and several officials. Unlike Mr. Cox, Gesell let me examine witnesses.

Howard Westwood was very supportive of me at the firm. That also was pivotal. I had

worked for him as a law clerk and as an associate before I went to the U.S. Attorney's Office. For example, if I did something a client thanked me for, Howard would write a memorandum to the executive committee, saying something like, "I want you to know what Jimmy has done lately." He always called me "Jimmy." I would say that Howard Westwood, Gerhard Gesell and Hugh Cox were my strongest supporters at the firm.

I was made a partner on January 1, 1957. At the same time, the firm made two other partners. They were Paul Warnke and Don Harris.

Ms. DeRosa: Just the three?

Mr. McKay: Three of us. Yes.

Ms. DeRosa: Is that about how many usually were made partners?

Mr. McKay: That's right. At least up until that time. Some years, only one partner was made. I believe the firm took in five partners a couple of years later. I remember I was very naïve, because when Eddie Burling, Jr.'s secretary asked me to come to his office, I had no idea why. When I entered his office, Paul and Don were the only ones there. They were looking very pensive. I said, "What's going on? Why are we here? What have we done?" I guess I had a guilty conscience. They were silent. We were told by Eddie Burling's secretary to go to the conference room. We were in the Union Trust Building. At that time, all the partners could fit into a relatively small conference room. We entered and there were the partners, seated around a conference table. Newell Ellison, who was the chairman of the executive committee, told us to be seated. He then said that he had been authorized to say that the firm wished to invite the three of us to become junior partners. Would we accept? I nearly fell out of my chair, but I accepted.

Ms. DeRosa: That's interesting because I know that the process now is quite formal in most large firms and it is unlikely that someone would be surprised by being made partner. There would be a certain amount of time when you knew you're being considered. But that's not the way it was?

Mr. McKay: No. At least it wasn't that way with me. Don may have been told. Paul Warnke probably was told by Tommy Austern, who was the partner he worked closely with. The closest I came to being told arose from the fact that a couple of years before I had received an offer from the Sylvania Electric Company. Because I had three kids by then and was getting concerned about my future, I had started putting out my resume to a number of companies. Campbell Soup offered me a position, which I refused because I would have had to move to Camden. If you've ever been to Camden you'll know why I refused. DuPont offered me a job in their legal department, but at that time I'd decided I did not want to work for a corporation. Yet, as time went by, I began to get discouraged. I was in my late 30s, having lost time by not going to law school immediately after college and by being in the Navy for nearly four years. Sylvania offered me a job that would pay about three times as much as I was getting from the firm. I went to Gesell and told him I was thinking of accepting the Sylvania job. He said, "Well, let me talk to the executive committee." He called me to his office a couple of days later and said, "I've been instructed to tell you that if you go to work for Sylvania you probably will make more money than you'll make here, but if you continue on here there is a reasonable chance that you will become a partner. It's up to you." And I said, "I want to play in the big leagues. I think I'll take my chances." So that's why I stayed at the ~~firm~~. That was the only advance notice I had received. Nothing had been said to me about a possible partnership during the next two-year

period.

Ms. DeRosa: So you didn't know, It wasn't said that you'll be considered in two years or anything like that?

Mr. McKay: No. It didn't work that way with me. I don't know about Don and Paul. The procedure was not as regimented as it is now. In the meantime, before being made a partner, I tried a case for DuPont in Martinsburg, West Virginia, I'd like to talk about. Actually, I had been in charge of several small DuPont cases that were brought in Washington. One involved selling DuPont house paint to a woman. who claimed to have been poisoned as a result of inhaling the fumes. She died before the case went to trial. And so, that was the end of that case. I probably shouldn't mention this, but I deliberately refrained from taking her deposition, with the thought that she might die before the case went to trial. She didn't die from the paint fumes. The case in Martinsburg was one of the most interesting trials I've ever been involved with. DuPont had a laboratory near Martinsburg called the Potomac River Laboratory. DuPont manufactured commercial explosives called Nitromon that was used in construction jobs. Dupont tested those explosives at the Potomac River Laboratory. The testing involved setting off 50-pound shots, 25-pound shots, and 10-pound shots. The people who lived in the vicinity of those activities claimed that their chickens stopped laying, their turkeys became frightened and smothered themselves when they crowded up against a fence in panic after hearing the shots. They even said that the foundations of their houses were cracking from the explosions. Several of them filed a law suit in the federal district court in Martinsburg, alleging that Dupont was maintaining a private nuisance and asking the court to enjoin DuPont from continuing that activity. It was a very important case because those testing operations were very important to the

company. I was very lucky to be able to take charge of the case and try it.

Ms. DeRosa: Was this your first chair kind of thing?

Mr. McKay: No. I had tried many jury cases as an Assistant U.S. Attorney. After that, I had been the principle trial lawyer many times in cases brought against the Pennsylvania Railroad, as well as in quite a few other cases, some of which I mentioned earlier. So I went out to Martinsburg. I was the only lawyer from my firm, but I was assisted by a Martinsburg lawyer who had the fortuitous name of Clarence Martin. A lawyer from DuPont was with me and helped a lot, but not by examining witnesses or arguing to the court.

The trial lasted about two-and-a-half weeks. We had a jury selected from farmers in the area. The judge was Judge Boreman. He was a terrific judge. I got to know him very well. We all stayed in the same little hotel. We would be having breakfast and there would be Judge Boreman, a table away from us. We never approached him, of course. He was a very fine man. He later was appointed to the Fourth Circuit Court of Appeals, where he was an excellent judge.

Before the trial, I followed Judge Boreman around West Virginia to argue pretrial motions. We had a number of local witnesses who did not want DuPont's testing operations to cease. DuPont employed a large number of people who would lose their jobs if the laboratory was shut down. I remember I was at one of our witness's home when one of the 50-pound test shots went off. I nearly went up to the ceiling, it surprised me so. I thought "Oh my gosh! It's going to be awful if the jury hears any of these shots." I was very concerned. Just before the trial was to begin, the plaintiffs' lawyer asked the court to have a site visit so that the jury could hear the shots. I argued that, "Well, your Honor, it really isn't fair. The jury would have the wrong perspective. They will be waiting for the shot and be very apprehensive and nervous." I did not

prevail on that point. The judge was not impressed by my arguments. However, he denied the request because it should have been made sooner so as to give the court time to arrange for a bus to take the jury to the site of the explosives testing. The judge did not want to delay the start of the trial. I breathed a big sigh of relief. We had a very interesting trial. We retained a seismologist from Harvard. His name was Dr. L. Don Leet, the director of Harvard's seismograph station. He was one of the most prominent seismologists in the country. Before the trial, we had him visit several of the homes in the area with his seismograph. DuPont would set off a 10-pound shot, then a 25-pound shot, then a 50-pound shot. Dr. Leet's seismograph measured the sound. To my surprise, the 10-pound shot showed a very tiny wiggle on the chart, the 25-pound shot a little bigger wiggle, and 50-pound shot a little bigger wiggle. None of the wiggles was very large. Then he measured the sound of a person walking up the stairs in the house. That showed a much higher wiggle on the chart. I was a little dubious, but he turned out to be one of our strongest witnesses. We showed these seismographic charts to the jurors. They seemed very impressed. I had another seismologist from DuPont testify. He was equally as good. Some of our other witnesses included farmers who lived in the area. Clarence Martin presented them as witnesses. Before the trial, Clarence had obtained signatures on statements which said, among other things, that the shots did not disturb them and did not result in any debris falling on their property. Every time these witnesses testified, our opponent would seem to finish his cross-examination. He would walk toward his seat, then turn, and ask, "Oh, by the way, how do you spell debris?" None of the witnesses knew how to spell debris. That bothered me a little bit. I had asked Clarence to make the closing argument to the jury. Clarence was a very quiet man. I was a little concerned that he might not be very persuasive. But I was wrong.

After all of the evidence was in, we recessed until the next day. The DuPont lawyer and I looked for Clarence so that we could give him some advice on his closing argument, but he disappeared. We never saw Clarence until the next day, just before he was going to give his closing argument.

His argument was a huge surprise. He was like a Baptist preacher. I've never heard anything like it. He practically had us out of our seats. He closed his argument by shouting, "Ladies and gentlemen of the jury, our good people of West Virginia may not know how to spell debris but, thank God, they know how to tell the truth." It was something else. The jury went out, and stayed out and stayed out. We were really white-knuckling it. Finally, the jury came in with a verdict for DuPont. We learned later that a holdout had believed the testimony from the plaintiffs' witnesses that the shots had cracked the foundation of some of their homes, which we thought we'd shown through expert testimony could never have happened. The juror finally was persuaded to vote in our favor. That was the end of the case because the plaintiffs did not take an appeal.

Ms. DeRosa: You've talked about a couple of people at Covington. Dean Acheson went on to be Secretary of State. Gerhard Gesell went on to be a judge. Was that common at that time? How often did that sort of thing happen, and who are some of the personalities that you knew that went on to do different things?

Mr. McKay: Well, there were quite a few that at least did different things temporarily and then returned to the firm. John Douglas, who is now a retired partner, went to the Kennedy administration as Assistant Attorney General in charge of the Civil Division of the Justice Department. I mentioned Burke Marshall earlier. He left the firm to become Assistant Attorney

General in charge of the Civil Rights Division in the Kennedy administration. John Jones became a Deputy Assistant Attorney General in the Tax Division. Charlie Horsky is another attorney who left Covington for a time to work with the government, He was from Montana and was the salt of the earth. Everybody in Washington knew Charlie Horsky. Charlie was a senior advisor to President Kennedy and later President Johnson, for District of Columbia affairs. He was very active in civic affairs in the District of Columbia. Al Moses was appointed Ambassador to Romania by President Clinton. He later was put in charge of the mediation between Turkey and Cyprus. Al earlier had been appointed as special advisor to President Carter for District of Columbia affairs. Al is now a senior partner here. Gene Ludwig served for eight years in the Clinton administration as Comptroller General. A newspaper profile stated he had changed what was formerly a mundane, rather uninteresting United States Government organization into a bully pulpit.

W. Graham Claytor was another firm lawyer who held important government positions. He was a terrific guy. Graham clerked for Justice Brandeis. It is said that he had the highest marks ever at Harvard Law School. I first saw him when I attended Submarine Chaser Training Center. Graham was an instructor in anti-submarine warfare. After he left SCTC, Graham commanded a destroyer escort, the USS *Doyle*. People who are still around and recall what was going at that time will never forget when the USS *Indianapolis* was sunk a few weeks before the war ended. There have been books, a movie, and a television program about the sinking of the *Indianapolis*. The commanding officer's last name was McVay. Coincidentally, I met his first cousin during the war. Anyway, the *Indianapolis* was underway for the Philippines, transporting atomic bomb parts. Captain McVay was supposed to zigzag at all times, but failed to do so at

night. By a stroke of fate, a Japanese submarine launched torpedoes which headed for the ship. The *Indianapolis* blew up and went down in about 15 minutes. The ship had been maintaining radio silence. It was not known for several days that these poor sailors were in shark-infested waters, being eaten by sharks and dying and drowning. Finally the word came that the *Indianapolis* was missing, and a May-day signal went out. Graham's ship was headed away from the scene at that time. He ordered a 180-degree turn and headed toward the scene. He ordered that his searchlights be beamed skyward to let the poor struggling sailors know that help had arrived, even though there might be Japanese submarines in the area. He took aboard 60 or 70 of those poor sailors. Other rescue ships finally arrived, but about 800 sailors drowned or were eaten by sharks.

Graham came back to the office after the war. Graham loved the sea and he loved trains. The basement of his home in Georgetown was filled with electric trains and tracks. After practicing law at Covington for several years, Graham was appointed Secretary of the Navy by President Carter. Then he became Deputy Secretary of Defense. Soon after he returned to the firm from that position, he became general counsel, and later president of the Southern Railroad. After that, he became president of Amtrak. He remained as president of Amtrak until he was in his 80s. There is a concourse in Union Station called the Claytor Concourse. If you go to where you board the trains, you will see a bust of Graham in the concourse.

I shouldn't overlook Bob Owen who was legal advisor to the Secretary of State during the Carter administration. Bob argued the hostage case before the World Court. He was the legal assistant to Richard Holbrooke during the Dayton peace talks and also when Holbrooke represented the U.S. during the Bosnia and Kosovo problems. Bob was the presiding arbitrator

for the Brcko Arbitration Tribunal. Later on, he was appointed to be the head of the mediators who are handling the Holocaust claims. His government service has been very impressive. He has returned as a senior partner.

Ms. DeRosa: Was it, particularly in the earlier years, normal for there to be a revolving door situation? Or was it a situation where the people who left for the government had been practicing as lawyers and returned to practice law?

Mr. McKay: I think it's the latter. I can't think of any revolving door situation as that term is usually used. Mr. Acheson had a great relationship with President Truman. It was understandable why Truman would appoint him as Secretary of State when General Marshall resigned. When Mr. Acheson left that position, he came back to the firm. But I don't think that was like the usual revolving door situation.

Ms. DeRosa: Maybe it's the right time. We can stop here and the next time, I hope you will agree to talk about the National Football League and your independent counsel experiences.

**ORAL HISTORY OF
JAMES C. McKAY, ESQUIRE
THIRD INTERVIEW - October 16,2004**

Ms. DeRosa: We're starting with Jim McKay. It's the 16th of October and our third session. Jim, I thought maybe we would talk about NFL cases first. How did that come about and what were those cases about?

Mr. McKay: All right, I'll do that. The firm first began representing the National Football League prior to the time that the American Football League merged with the NFL. There had been two separate leagues. The AFL came along quite a few years after the NFL had been well established. There was a tremendous amount of competition for players between the AFL and the NFL. Lamar Hunt was one of the principle movers in forming the AFL.

Ms. DeRosa: He was a lawyer?

Mr. McKay: No. Lamar Hunt was the owner of the Kansas City Chiefs and still is. He's one of the very wealthy Hunts from Texas. There was Jerry Phipps who was one of the owners of the Denver Broncos. There were other AFL owners that I did not know until later. The NFL commissioner at that time was Pete Rozelle, who was in his late 20s. Rozelle and the NFL teams had a lot of problems with the competition between the AFL and the NFL, particularly for quarterbacks. The AFL people were very clever. They would concentrate their efforts on outstanding NFL quarterbacks. They offered those players large sums of money to sign contracts with AFL clubs. And they were successful to the point where it became a substantial problem for the NFL. Also, the AFL tried to obtain franchises in some of the cities in which there were NFL franchises. When the NFL tried to block those efforts, the AFL sued the

NFL. Pete Rozelle selected as the NFL's lawyer Gerhard Gesell, who, as you know, later became a district court judge in the District of Columbia. Gesell was a partner at Covington & Burling. I had had the good fortune of working with him in a number of trials prior to that time.

The AFL complaint was filed in the District of Columbia. The first court proceeding was before Judge Holtzoff. He transferred it to the district court in Baltimore, where it was assigned to be tried by Judge Roselle Thomsen. After I got to know Lamar Hunt, he told me that when he heard the judge's first name, he felt that the case was lost. Of course, he was joking. The case went to trial in Baltimore and after a very lengthy trial, was won by the National Football League. That lawsuit led to the merger of the AFL with the NFL.

Ms. DeRosa: What were they suing for?

Mr. McKay: It was an antitrust suit. The AFL argued that the NFL had illegal monopolies over certain parts of the country and that the NFL had illegally blocked the entrance of the AFL into certain cities. It was a restraint of trade and monopoly case. There was no jury. I don't know now why the AFL did not request a jury, but it was tried by Judge Thomsen. Judge Thomsen decided in favor of the NFL. After that, merger discussions began. The two leagues were formally merged in 1970. There were two conferences: the NFL conference and the AFL conference.

The merger gave rise to some antitrust problems. My recollection is that the NFL representatives went to Congress and were able to persuade Congress to pass a statute exempting the merger from the antitrust laws. The NFL, unlike professional baseball, is not completely exempt from the antitrust laws, but the merger was exempted. I was not involved with the NFL at the time of the merger. I became involved when Gesell asked me to take over a case that he

had been asked by the league to handle. Perhaps I shouldn't say this, but Gesell had become impatient with the club owners. He described them to me as a bunch of children fighting in a sandbox. He was getting a little jaded.

The case he asked me to handle involved a group of people who had tried to get an AFL franchise prior to the merger, but had been rejected. They had applied for a franchise in the District of Columbia. The only available stadium was the RFK Stadium. The Redskins had a lease with the D.C. Armory Board allowing the team to play in RFK Stadium. The lease contained a provision giving the Redskins the right to deny the use of the stadium by any other professional football league. When that clause was invoked, the AFL refused to award the group a franchise in the District of Columbia. The lawsuit was filed by a group of individuals, headed by a man named Norman Hecht. Mr. Hecht worked for a bank in Washington. And several others had joined with him to try to obtain an AFL franchise. They also joined him in the lawsuit.

Gesell called me to his office and asked me to take over the case. I was thrilled. Our firm represented the league in this suit, and Bernard Nordlinger of King and Nordlinger represented the Redskins. I had Paul Tagliabue as the number two lawyer on the case for the NFL. He is now the NFL commissioner. He went through his first trial with me. The case was assigned to Judge William B. Jones, who later became Chief Judge of our district court. It was a jury trial. Our position was that the clause in the contract was not illegal because its invocation constituted a reasonable restraint of trade. The action of the Redskins was reasonable under all the circumstances and did not violate the Sherman Act. We had a terrific trial and we enjoyed it very much, especially when the jury found in our favor. That was the first case that I had—

Ms. DeRosa: Do you remember when that was?

Mr. McKay: The complaint was filed sometime in 1966. The trial didn't start until the early 1970s. The delay was caused by the fact that we had obtained a summary judgment from Judge Jones. However, the court of appeals reversed and remanded the case back for a trial on the merits. Do you like anecdotes?

Ms. DeRosa: Absolutely.

Mr. McKay: The name of the plaintiffs lawyer was William Joseph H. Smith. He was a very nice guy and a very good lawyer. We had a good relationship, which makes trying cases more fun than they are if you have lawyers on the other side you don't particularly like. Joe called as an expert witness an eminent professor from the University of Pennsylvania. I can't remember his name. During his testimony, he gave his expert opinion as to why he believed the contract clause constituted a restraint of trade and that its invocation by the Redskins damaged the plaintiffs. There is a truism, which I don't think is a truism at all, that a lawyer should never ask a question on cross-examination to which he or she does not know the answer. I disagree. Anyway, as the professor was testifying, I thought to myself, "I wonder if he read the entire contract," which was at least 50 pages in length. The allegedly restrictive clause only took up one or two pages. There were many other provisions in the contract that affected the Redskins. I didn't know whether he had read the entire contract or not. When I was nearly finished my cross-examination, I asked, "By the way, doctor, have you read the entire contract?" He said, "No." Since trial lawyer should do some acting, a look of astonishment came over my face and I asked in an amazed tone of voice, "You haven't read the entire contract?" He said, "No." I then asked, "Well, what parts have you read?" He answered, "Well, I read only the restrictive clause

that Mr. Smith sent me.” Then I began asking questions, the first being, “Did you know that the Redskins are required to stay in that Stadium for 30 years?” I went on from there, listing the various provisions that affected the Redskins and asking him whether he ~~was~~ aware of them. His answers were, “No, no, no.” That was one of the great fun points in the case. It’s one of those situations that lawyers dream about, but seldom happen. My guess is that the professor never made that mistake again. His dereliction was very helpful to us, I think. That was a high point in the trial.

Another interesting aspect was that we had Joe Foss as a witness. Joe Foss had been the commissioner of the AFL. He referred to Hecht as a busybody who continuously pestered him to obtain an AFL. Foss testified that the AFL would not have awarded Hecht’s group a franchise even if they had been able to lease the stadium. Foss was one of the great heroes of World War II. He was a Marine pilot who had won the Congressional Medal of Honor. I remember when I put him on the stand, I asked, “Are you the Joe Foss that we’ve heard so much about?” He said, “Well, yes.” I asked, “You received the Congressional Medal of Honor?” “That’s right.” The judge and jury were very interested in that witness.

I handled a number of other cases for the NFL. Three of them went to trial. Several were disposed of on motions. One of the more interesting cases that did not involve a trial was a suit filed in the D.C. Circuit Court of Appeals, challenging the rule that blacked out a game on television if the stadium was not sold out or nearly sold out. The Redskins were to play the Cowboys on an upcoming Sunday. The stadium was not sold out. It was announced that the game would not be shown on television. The plaintiffs lawyer and the lawyers for the NFL and the Redskins were ordered by the court to appear on the Saturday preceding the game to argue

the validity of the blackout rule. The fact is that the rule was authorized by statute.

And so we all showed up in court on a Saturday morning. The plaintiffs lawyer huffed and puffed as to what a terrible thing it was that no one in the D.C. area could watch the game on television. My argument was that Congress had authorized the rule and it was up to Congress to eliminate the rule. I remember one of the judges asking in an angry voice, “Do you mean to say that I won’t be able to watch this game on my television at home?” I replied that he could not and that a new statute would have to be enacted to change the rule. The court ruled in our favor. It had no other choice.

Another important case I handled for the NFL was brought in the U.S. District Court in Philadelphia by members of an organization known as the Mid-South Grizzlies, which had applied for a franchise in Memphis. The plaintiffs claimed that the refusal by the NFL to award the franchise constituted a violation of Sections 1 and 2 of the Sherman Act. After a lot of consideration by the NFL, the application had been denied. At that time, the league was not interested in expanding. There was a great deal of discovery. The plaintiffs took a lot of depositions, and we took depositions of the Mid-South Grizzlies organizers. We then filed a motion for summary judgment, which, after oral argument, was granted. The judge was an avid football fan, and his opinion reflected his interest. It was divided into sections, with the first titled “The Plaintiffs’ Game Plan,” the next, “The Defensive Strategy,” followed by “The Rules of the Game,” “The First Half,” “The Second Half,” and, finally, “Post Game Analysis.” The plaintiffs appealed the decision to the Third Circuit. The appellate court affirmed the district court’s decision. And so, there was no trial in that case.

Three other cases in which I was involved and which went to trial were the *Joe Kapp* case

which was tried in San Francisco, the Mackey case which was tried in Minneapolis, and the *Yazoo Smith* case which was tried in the District of Columbia.

Joe Kapp had been a star quarterback at the University of California. He was drafted by the Washington Redskins in the late 1950s. He refused to play for the Redskins, opting to join the Canadian Football League, where he played for six or seven years. Meanwhile, the Redskins kept Kapp on their reserve list, so that no other NFL team could negotiate with him under the rules of the league. After his Canadian Football League contract expired, Kapp signed a contract with Houston, one of the AFL teams. This was before the merger. However, it was determined that the contract was invalid under the rules of the NFL, the AFL, and the Canadian Football League. Kapp then signed a contract with Minneapolis in the NFL. After playing for two years, Kapp decided he did not want to continue playing for Minneapolis. He was able to enter into an agreement with the New England Patriots which would have paid him \$600,000. That was a high football salary in those days. However, Kapp refused to sign a player's contract. Commissioner Rozelle ruled that he could not play for the Patriots unless he signed the player's contract. And so, Kapp walked out of training camp and filed a lawsuit in San Francisco against all of the NFL clubs and Commissioner Rozelle, claiming that the rules of the league had restricted his ability to play for any team he wished to play with and that the rules violated the antitrust laws. There were no free agency rules in those days.

By the time I was asked to take over the case, the district court in San Francisco had issued a summary judgment against the defendants, holding that the defendants had violated the antitrust laws. The only issue remaining was whether or not Kapp had been injured or damaged, and, if so, the extent of his damages in dollars.

Ms. DeRosa: Do you remember why the case was in San Francisco?

Mr. McKay: The NFL could be sued in any city where there was a franchise or where the league did business. Kapp, having attended the University of California, probably thought that San Francisco was the most favorable venue for him. He also had an agent named Cook, who lived in San Francisco. It was Mr. Cook who had advised Kapp to walk out of the Patriot's training camp, which was stupid advice. They hired the law firm of Brobeck, Phleger and Harrison to represent Kapp, in particular, a lawyer named Moses Lasky.

And so, we started the trial with two strikes on us, the court having already ruled that the defendants had violated the antitrust laws. The only issue left for trial was damages. Ham Carothers, who was a partner in our firm and Pete Rozelle's lawyer, asked me if I would try the case. I said, of course, I would. And so, Paul Tagliabue and I, along with a lawyer named Ted Voorhees, went out to San Francisco to try the case. Our firm represented Pete Rozelle and all of the clubs in the league except the Oakland Raiders and the San Francisco Giants. The owner of the Oakland Raiders was constantly feuding with the rest of the clubs in the league. He wanted another lawyer. And so he retained Joe Alioto, who had been Mayor of San Francisco up until a couple of months before. Bill Willis of Sullivan & Cromwell represented the Patriots. Covington & Burling represented all the other defendants. Bill and I were very concerned when Joe Alioto was brought into the case about a week before the trial was to start. We were concerned about coping with him, worrying that he might be a difficult prima donna. As things turned out, he couldn't have been more terrific, and couldn't have been more fun to work with. He had a Rolls Royce he drove around town and we often rode with him. He would pull up in

front of a hotel and say, "Watch the car for me, will you?" The doorman would say, "Okay, Joe, I'll take care of it." Or we'd be riding along and cabs would pull up next to us at a red light, and the drivers would shout, "We miss you, Joe." Jumping ahead, during the trial whenever a witness was to be cross-examined, Alioto would say, "Jim, why don't you go first, and Bill, you second, and I'll be clean-up man." He was always very constructive and helpful. It turned out to be a wonderful relationship.

And so we went to trial. We had some great witnesses. We had George Halas, known as Poppa Bear, who founded the Chicago Bears. Other owner or managerial witnesses were Lamar Hunt, Tex Schramm, Don Shula, and Art Modell, former owner of the Cleveland Browns and now the owner of the Baltimore Ravens. We also had Jim Finks, who had played for the Pittsburgh Steelers and had been general manager of the Minnesota club. Pete Rozelle was a witness, of course. And we had a number of former players as witnesses. One of our witnesses was John Madden, who had played for the Oakland Raiders and who now is a prominent sportscaster on television. We also called Lou Groza, known as "The Toe," who was a place kicker for the Cleveland Browns. He's in the Hall of Fame. There were other former great players who testified for us. The players union actively supported the plaintiffs case, as it always did back in those days.

The **Kapp** case was given a lot of publicity in the San Francisco newspapers and television. A bunch of sports reporters came to court every day. They mingled with Joe Kapp and his lawyers, as well as players who were in court as plaintiffs witnesses or observers. We were mostly ignored by the reporters, which was fine with us. Joe Alioto did get some attention from the press.

The trial lasted for three weeks. The jury was out for only about four hours. I knew we had won when the jury announced it had a verdict in such a short period of time. The jury came in with a verdict of zero damages for Kapp. It was a huge victory, particularly considering that liability had been determined against us. After that, the plaintiffs lawyer filed a motion for a new trial, which the judge denied. It was then appealed to the Ninth Circuit, which affirmed the judgment.

The next case I tried for the NFL was the *Mackey* case. There was no jury in this case. That was a suit brought by the players union. There were a number of individual plaintiffs, the lead individual on the caption being John Mackey. The plaintiffs were challenging the legality of the so-called Rozelle rule which they claimed unreasonably restricted the movement of players from team to team. If Team A wanted to sign a player from Team B, Team A, under the rule, would have to give Team B “compensation” in the form of another player or a draft choice, or both. Team A could not sign player X unless Team A gave compensation to Team B. The union and the players referred to the rule as the “ransom” rule. The trial started in Minneapolis in February. As an aside, on the weekend we got there, the wind chill factor was 65 degrees below zero. I thought I was in a white hell. It was incredible. The judge was Earl Larson. The plaintiffs lawyer was named Ed Glennon. We learned, among other things, that Larson had been a partner in Glennon’s firm and regularly played golf with the senior partner of that firm. Larson should have recused himself from the case. Perhaps I’m building up my excuses for the fact that Larson held against us after 55 days of trial. We had witnesses from all over the country. We had many owners as witnesses, and quite a few famous former players, including Bart Starr. It was fun to walk to the courthouse with Bart Starr at your side. We would be stopped every few

minutes by fans, calling, "Hi Bart," and shaking his hand. And so the *Mackey* case went on and on.

Ms. DeRosa: Can I just interrupt for a second? I don't think you identified Mackey. Who was he?

Mr. McKay: Mackey was a tremendous tight end for the Baltimore Colts. He was number 88. It was called the *Mackey* case because his name was the first on the list of plaintiffs in the caption of the case. Incidentally, practically the entire Minnesota team appeared in court either as witnesses or to watch the proceedings. They were called the purple people eaters. I remember that Alan Page, who had been a great player for the Minnesota Vikings, carried a purse. Nobody made fun of him for that, I'll tell you. And to jump ahead, Page went to law school after his NFL career ended. He became a justice, and is today, a justice of the Supreme Court of Minnesota. That is quite a story. Page was only one of dozens of witnesses for the plaintiffs. All of them told the Judge how terribly restrictive the Rozelle rule was. We argued that the rule was reasonable under the circumstances.

After five or six weeks in Minneapolis, Paul and I went to Washington to try the *Yazoo Smith* case, which was a non-jury case before Judge Bryant. The *Mackey* case was recessed. James McCoy (Yazoo) Smith was a first-round draft choice of the Redskins in 1968. During his first season, while playing in a meaningless last game of the season against the Detroit Lions, Smith unfortunately suffered a broken neck. His lawyer, Ken Mundy, filed a personal injury complaint for damages, even though Smith was an employee of the Redskins and was covered by the workman's compensation laws. Then a lawyer named Stewart Johnson, who was an antitrust lawyer, got involved and the complaint was amended to assert an antitrust claim alleging

that Smith's ability to sign with any team he wished to sign with was illegally precluded by the player's draft. They alleged that the draft was an unlawful restraint of trade in violation of the Sherman Act. At the time when Smith was drafted by the Redskins, there was no collective bargaining agreement. Had there been a collective bargaining agreement which included the draft, there would have been no basis for the claim. There is a labor exemption rule which provides that a provision which ordinarily might violate the antitrust laws is exempt from those laws if the provision is contained in a collective bargaining agreement. In this instance, there was no collective bargaining agreement because there had been unrest between the union and the owners. There may have been a strike.

Before the trial started, the case had gone up to the D.C. Circuit, where the court had held that the personal injury claim should be dismissed because the claim should have been heard under the workman's compensation laws. That left the antitrust claim, which, as I said, went to trial. The trial lasted two or three weeks. We had our usual great witnesses. The plaintiffs brought in witnesses to testify as to how the draft restricted players from playing for the team they wished to play with. Judge Bryant, to our surprise, found that the draft was a per se violation of the antitrust laws, that is to say it didn't matter whether it was "reasonable" or not. The draft was as bad as price-fixing, as far as Judge Bryant was concerned.

We appealed and were able to persuade the District of Columbia Circuit to rule that the draft was not a per se violation of the antitrust laws. However, the court of appeals ruled that the draft was an unreasonable restraint of trade. And so, we lost that case. The *Mackey* case had ended by the time the court of appeals issued its decision in the *Yazoo Smith* case. The next step in the *Yazoo Smith* case was for Judge Bryant to determine the amount of damages. The issues

before the court at that point were the amount of damages and the amount of legal fees the plaintiffs counsel should be awarded. Under the statute, the amount of damages was trebled and the lawyers would be entitled to receive a reasonable fee. A lot of argument ensued. Judge Bryant awarded Smith the amount of \$4,000 in damages. That amount was trebled to \$12,000. That did not stop the plaintiffs lawyers from seeking hundreds of thousands of dollars in legal fees.

Judge Bryant was very angry with Smith's lawyers. He was not about to award a substantial amount of legal fees. We felt sorry for Smith. It may sound strange, but we did. So we said to his lawyers, "Look, we'll pay \$50,000 if you promise that Yazoo Smith will get it. We will pay a reasonable amount of attorneys fees." And so the case was settled on that basis.

To get back to the *Mackey* case, after the *Yazoo Smith* trial, Paul and I had returned to Minneapolis to complete the *Mackey* trial. By then it was June or July. It was 65 degrees below wind chill when we had arrived in February. It was about 90 degrees with the humidity about 150 when we returned. It is the worst climate I have ever experienced. The trial ended and Judge Larson took the case under advisement. Many months later he issued an opinion declaring that the Rozelle Rule was a per se violation of the antitrust laws. The case was appealed to the Eighth Circuit. That court held that the Rozelle rule should be tested under the rule of reason, and went on to hold that the rule was an unreasonable restraint of trade under the circumstances of the case.

A tremendous amount of time and money had been expended by the owners and the unions in litigating these cases. There was a change in the leadership of the union. The players and owners began to negotiate for labor peace, which finally was achieved.

The NFL cases were exciting. They got a lot of publicity, especially in the sports pages. It was a very interesting part of my life. For a time, I continued to pitch in and help out with NFL cases. For example, I took and defended a number of depositions. I was not lead counsel. I was doing other things that I also enjoyed. I had a very good relationship with Paul Tagliabue. I enjoyed meeting many prominent sports people. Frank Gifford was one of our main witnesses in the *Mackey* case. He had been a great running back for the Giants and is in the Hall of Fame. He later was on Monday Night Football with Howard Cosell and someone who played for the Dallas Cowboys. Cosell called him Dandy Don.

Ms. DeRosa: Don Meredith.

Mr. McKay: Don Meredith. Right. So it was fun. We never used Cosell as a witness.

Ms. DeRosa: I wondered about that.

Mr. McKay: But we did use Frank Gifford and a number of other old-timers, like Gino Marchetti. We also used as a witness the owner of the Baltimore Colts, Carroll Rosenbloom, who later switched teams with the owner of the Los Angeles team. He was a very generous man. He was generous to his players. He set Gino Marchetti and another player up in Gino's, which, as you may know, was a fast food operation like McDonalds. Those players became very wealthy. Jack Kemp was a witness in the *Mackey* case. He had been a quarterback for the Buffalo team of the AFL. Kemp also was the head of the AFL players union. Paul was going to put him on the witness stand. We learned he was in Las Vegas, gambling. He told us by telephone he would meet with us the afternoon before he would testify. However, he gambled all night, then took an early morning plane to Minneapolis. Paul and I were only able to meet with

him for breakfast, after he had been up all night. He took the witness stand that afternoon. As it turned out, he was a very good witness.

Ms. DeRosa: Who was this again?

Mr. McKay: Jack Kemp.

Ms. DeRosa: Oh, this was Jack Kemp?

Mr. McKay: Who, later—what did he do? Did he run for president?

Ms. DeRosa: He did, but I think he was in the House of Representatives.

Mr. McKay: Right, he was. I well remember that he showed up to testify after gambling all night in Las Vegas. And so, representing the NFL was a great experience. As a result of his working with the NFL people at our firm, Paul Tagliabue succeeded Ham Carothers as Pete Rozelle's lawyer. When Rozelle decided to retire, the question was, who was going to be the next commissioner? Rozelle and Paul had become very close. He recommended that Paul be appointed to replace him. There was one other man, Jim Finks, who was under serious consideration for the job. Finks was a great guy. He and Paul were the finalists, so to speak. Paul was selected to become the next commissioner of the NFL. That was in 1989. The firm continues to have a good relationship with the NFL. We don't do all their legal work, but we handle a lot of their trial work and advisory work. The latest suit against the NFL was filed recently by the Ohio State student, who was put on probation by Ohio State, and cannot play this year. He has sued the league in an effort to get into the National Football League. The league has a rule that a player must have completed three years of college in order to be eligible to enter the NFL. This person claims that the rule constitutes a violation of the antitrust laws. My belief is that the rule comes under the labor exemption to the antitrust laws, and that he will not prevail

in his law suit.

Ms. DeRosa: Perhaps at this point, you can talk about your independent counsel experience.

Mr. McKay: I was appointed twice. I'll explain that if you'd like me to.

Ms. DeRosa: Why don't you start talking about how that came about.

Mr. McKay: All right. Of course, I had heard about the independent counsel statute, and knew that appointments had been made under the statute. But that was about it until sometime in the spring of 1986. I was on the telephone, when my secretary handed me a note saying that Judge McKenna was on my other line. Recently a friend of mine, Jim McKenna, had been appointed as a circuit court judge of Montgomery County. I ended my conversation, and switched to the other line and said, "Jim, how the hell are you? I've been thinking about you, wondering how you are getting along." A voice said, "Well I'm not so good now. I'm home with an infected leg." I then said, "I saw so-and-so the other day (naming someone I thought was a mutual friend) and we wondered if you are staying out of trouble." The strange voice said, "Well, I guess so. But, I'm in bed now." I thought, "This doesn't sound like Jim McKenna." I then said, "I'm sorry, but are you a judge, or is your name Judge?" He said, "This is Judge MacKinnon of the United States Court of Appeals for the District of Columbia Circuit." I began to babble and stumble around. I told him I was sorry and started to explain my mistake. He interrupted and said, "I'd like to talk to you. Can you come see me this evening at my home?" I said, "Yes sir." He gave me his address. I think it was out in Kensington. I hung up the phone in kind of a daze. I had to talk to someone. I went to see John Douglas. John said, "He's probably thinking of appointing you as independent counsel to investigate Ted Olson." I rushed

down to the library and read the independent counsel statute. That evening, I drove to Judge MacKinnon's home. I met him and his charming wife. Judge MacKinnon and I went to his study. I had not actually met him before, but I had argued several cases in which he was one of the presiding judges. It turned out that Judge MacKinnon was born and raised in Nova Scotia. My father also was born and raised in Nova Scotia. I had heard that Judge MacKinnon was quite a passionate Scotsman. One of the lawyers at Covington & Burling, who had clerked at the D.C. Circuit court, told me that Judge MacKinnon often was heard whistling "Scotland the Brave," as he came down the corridor. We spent an hour talking about Scotland and Nova Scotia and Pictou and River John, where he and my dad were both raised. It was an interesting coincidence. He told me the MacKinnons originally came from Skye. Some years later, when my wife and I visited Scotland, we went to the Isle of Skye and found the MacKinnon burial ground. I sent him a postcard, showing the burial ground. We finally got around to business. He said, "I'd like you to find out whether you would have a problem with your firm if you are appointed as independent counsel to investigate Ted Olson for possible violations of criminal laws having to do with conflicts of interest." Mr. Olson had been head of the Office of Legal Counsel under President Reagan. There had been news in the media about testimony that Mr. Olson and a couple of other Department of Justice officials had given before Congressman Rodino's committee about the Iran/Contra matter. The issue was whether or not those individuals had told the truth. The Rodino committee had issued a voluminous report, which had concluded that false testimony may have been given by those officials. Congressman Rodino had requested that the independent counsel panel appoint an independent counsel to investigate those issues. I told him I would be very interested in the appointment, but would have to clear it with my law firm. After the firm

approved my taking the position, I was sworn in by Judge MacKinnon. After meeting with Judge Webster, who was the Director of the FBI, I started to pull a staff together. I selected as my deputy Alexia Morrison, who had just started practicing with Swidler & Berlin. She'd had distinguished careers in the U.S. Attorney's Office in the District and with the SEC. She was a very able lawyer. Chuck Ruff recommended her to me. Several other lawyers also joined our staff, as well as a couple of FBI agents and an administrator. Then the blow fell. Chuck contacted me. He said there might be a problem because, prior to the issuance of the Rodino report, Chuck had given unofficial advice to the Rodino committee. The committee was not a paying client. He had been advising the committee on procedures relating to procedures involved in the issuance of subpoenas, the handling of witnesses, and other matters relating to the court system. Chuck was very apologetic. I contacted Mr. Olson's attorney. Neither he nor Mr. Olson had a problem. They would not object to my serving as independent counsel. I then met with Judge MacKinnon. He said, "Look, Jim." He called me Jim. I didn't call him by his first name. He said. "We've got to be like Caesar's wife. We can't take a chance on there being even an appearance of a conflict." I was very unhappy, but of course agreed with him. He telephoned the other two panel members while I was in his office. I remember one of them said, "Well, maybe we can give Mr. McKay the next appointment." And so I resigned in late May of 1986, about one month after I had been appointed. I suggested to Judge MacKinnon that the panel appoint Alexia Morrison as my replacement. The panel agreed and she was appointed to conduct the Ted Olson investigation. Before resigning, I had read the Rodino report. There were many lawyers arguing that the statute was unconstitutional because they believed it violated the separation of powers clause of the U.S. Constitution. I had done enough research to realize that

the constitutionality of the independent counsel statute would be challenged and had hired a woman, who had retired from the general counsel's office of the FAA, to research that issue.

Ms. DeRosa: And what was that woman's name?

Mr. McKay: Her last name was Brown. It was Mrs. Brown. She was a Yale Law School graduate. She was an excellent lawyer. She continued with Lex Morrison until Lex's report was completed. The constitutionality of the statute was challenged. The case went to the Supreme Court after the D.C. Circuit had ruled the statute was unconstitutional. The name of the case is *Morrison v. Olson*. Lex argued the case in the Supreme Court. She won in a seven to one decision, with Justice Scalia dissenting. That was something that I missed, but I don't regret it because in February of 1987, I was appointed as independent counsel to investigate Lyn Nofziger.

I again began to assemble a staff. I ended up with a terrific staff. It included Rob Weiner from Arnold & Porter. He later was president of the D.C. Bar. He had clerked for Judge Friendly on the Second Circuit and also for a Supreme Court Justice.

Ms. DeRosa: Marshall?

Mr. McKay: Justice Marshall. And then I was lucky enough to get Merrick Garland, who also had clerked for Judge Friendly and for Justice Brennan. Merrick also was at Arnold & Porter. He now is a D.C. Circuit court judge. I also had Steve Pollak, which was a huge break for me. I remember sitting at my desk when the phone rang. It was Steve. We had worked together at Covington on a number of cases. He said, "Look, I read in the paper this morning about your appointment. If I can help you, please let me know." I said, "Well, Steve, thanks, but I don't think the investigation will take much time." I hung up. I immediately thought, "I've just

lost my mind.” I called him back immediately. I said “What’s the matter with me? Of course I’d like to have you work with me.” As it turned out, he was my lawyer, so to speak. We had a great relationship. He was very helpful. Two other partners from his firm were also enormously helpful to us. Steve was with the firm of— Ms. DeRosa: Shea & Gardner?

Mr. McKay: Shea & Gardner. I had Thor Halvorson, who is a wonderful lawyer and a partner at Covington. I had Carol Fortine. She had worked with me on a death-row case in Mississippi. She became an Assistant U.S. Attorney in D.C. after her independent counsel experience. She now has a top position in the Department of Justice Inspector General’s Office. I had Susan Bender, who was extremely helpful. She’s now an attorney for the World Bank. I had a great group of people. We leased offices in the 1800 block of 18th Street. It was a dump. I remember some of the tiles in the ceiling were broken or missing. We were very crowded. Our staff included several FBI agents, an administrator, and secretarial assistance, in addition to the attorneys. We then began to investigate whether or not Mr. Nofziger violated any conflict of interest statutes when he had dealings with Wedtech, which was a manufacturer located in the South Bronx. It was operated by Hispanics. There were laws which required the U.S. Government to enter into non-competitive contracts with minority-owned companies. The contract involved in our investigation was for the manufacture of small engines and tools for the Department of the Army. I selected Lovida H. Coleman, Jr., as my deputy. Her father, William Coleman, had been Secretary of Transportation in President Ford’s administration. Lovida did a wonderful job, pulling our office together and getting us organized. I recall being interviewed by a woman from the *New York Times*. I told her that Lovida Coleman was the heart and soul of our

investigation. We had the use of a regular grand jury. We gave them most of their work.

An investigation into Mr. Nofziger's activities had been initiated by Mr. Giuliani, who was the United States Attorney in Manhattan.

Ms. DeRosa: Just to interrupt you, do you mean Rudolph Giuliani?

Mr. McKay: Yes, Rudolph Giuliani.

Ms. DeRosa: Okay.

Mr. McKay: The first thing we did in connection with the Nofziger investigation was to visit Giuliani's office. I'd heard gloomy predictions that, "Oh, Giuliani's not going to cooperate with you. He'll want to keep this investigation in his office." It was the opposite. As soon as I entered his office, he said, "Boy, do I have something for you guys. I'm going to give you my entire file and I wish you the best of luck." So we spent considerable time in New York, talking to him and getting the background information on his investigation of Mr. Nofziger. His office transferred the entire investigation to us. It couldn't have been a more pleasant relationship. We then began to interview potential witnesses. We had lots of meetings with the Secretary of the Army because it was his department that had issued the contracts that Mr. Nofziger had been embroiled with. The issue was whether Mr. Nofziger had dealings with the White House on behalf of Wedtech within less than a year from leaving his position as a senior advisor to President Reagan. If so, that activity would be in violation of federal conflict of interest statutes.

We had many meetings with William Weld, the Chief of the Criminal Division, and his staff. Mr. Weld later became Governor of Massachusetts. Although some of the independent counsels maintained they had great problems with the Justice Department, we had great

cooperation.

Shortly after our investigation of Mr. Nofziger started, we began having meetings with officials of the Department of Justice on the question of whether our office should take over the investigation of Mr. Meese, who also had had dealings with Wedtech in connection with the government contract. The result was that our investigation was expanded in May of 1987 to include Mr. Meese's activities. With respect to our relationship with the Department of Justice officials in the Meese investigation, it couldn't have been more cordial and cooperative. I think they were delighted to have an independent counsel investigate their boss. If I don't forget, I can tell you later about Weld's views of Meese. In any case, all of the Department of Justice officials were delighted not to have the Meese investigation on their backs and couldn't have been more cooperative.

We began to present our *Nofziger* case to the grand jury through witnesses and documents. We subpoenaed many documents. We had many meetings with people at the Defense Department who had been involved with the Wedtech contract. We would come back to our office and regale each other about the sizes of the offices we had visited. The largest office by far was Weinberger's, who was Secretary of Defense. He had a major general in the Air Force as his aide, sitting there with his two stars. I felt so sorry for that poor guy. He probably would like to be flying airplanes, but he was stuck in that gigantic office.

After we were asked by the Department of Justice to expand our investigation to include Mr. Meese's activities, I needed a deputy for that investigation because Lovida was primarily involved with Nofziger. We were preparing for trial in that case, having obtained a four-count indictment from the grand jury against Nofziger. The grand jury also indicted Mark Bragg for

allegedly aiding and abetting Mr. Nofziger in his representation of Wedtech in its efforts to obtain the small engine contract. All of the counts charged the defendants with violations of the conflicts of interest statutes.

I asked Carol Elder Bruce to be my deputy in the Meese investigation. She had been in the U.S. Attorney's Office in the District of Columbia for about ten years. Chuck Ruff and others highly recommended Carol, who had retired when her third child was born. She literally weaned her new baby so that she could start with us in May of 1987. She did a terrific job, doing everything that needed to be done to launch the investigation. It was a great help to me, because, as I said, we were focusing on the *Nofziger* case. I had selected the trial team. In addition to myself, there were Lovida Coleman, Memck Garland, and Thor Halvorson.

I wanted Lovida to take a prominent role in the trial and so I asked her to make the opening statement. I parceled out witnesses, both on direct and cross-examination. I took the key witnesses and planned to make the closing argument. Mr. Nofziger was represented by Larry Barcella, who is a very able trial lawyer. Mr. Bragg was represented by Richard Ben-Veniste, also very experienced. The trial started in January of 1988 before Judge Flannery. It was a jury trial that lasted for about three weeks. It was very hard fought because we were up against two very able lawyers. The trial ended with a jury verdict against Mr. Nofziger on three of the four counts. Mr. Bragg was acquitted.

We had a number of discussions with Larry Barcella as to whether we would recommend that the judge not impose a jail sentence. We said we would leave that decision up to the judge. Judge Flannery sentenced Nofziger to serve 30 days. The conviction was appealed. I had one of my staff, a lawyer named Richard Friedman, argue the appeal. He had clerked for Chief Justice

Warren. He was a very good appellate lawyer. We were reversed in a two to one opinion. It was a terrible opinion. Judge MacKinnon was so angry that he made a number of very critical remarks to me about the majority opinion. I agreed. Most lawyers who lose cases believe they shouldn't lose them, but in this case, the majority opinion was obviously a political opinion. A ludicrous aspect of the appeal was that the ACLU filed an amicus brief in Nofziger's behalf, arguing that his civil rights had been violated somehow. That was incredible. My opinion of the ACLU went to the bottom at that point.

We filed a petition for certiorari with the Supreme Court, but we didn't have a chance. The statute under which Mr. Nofziger had been convicted had been amended subsequently. Our case was the only one that would ever arise under this particular statute. And so, the petition was denied. Under the D.C. Circuit court's ruling, we could have retried Nofziger on one of the four counts. However, I decided that our point had been made. The trial and conviction should be a deterrent to officials tempted to violate the conflict of interest laws, even though there had been a reversal of the jury's verdict.

In the meantime, we were actively working on the Meese case. As I said, the company involved in the investigation was the Wedtech Corporation, a minority-owned company in the South Bronx in New York. The company had obtained a non-competitive contract from the Department of the Army to manufacture small engines under a Small Business Administration pilot program which was designed to help minority-owned enterprises. The question was whether Mr. Meese had used his influence with the United States Government within a year of his having left his White House position to help the company obtain the contract. That was the principal issue involved at the beginning of our investigation. However, as we continued our

investigation, it expanded to cover other issues, including an issue involving the Telecommunications Act, which had been enacted into law. Mr. Meese owned stock in the Baby Bell companies at a time he was supporting enactment of the Telecommunications Act. We were investigating whether there was a conflict of interest. There was an issue as to whether Mr. Meese had violated federal income tax statutes. There was an issue relating to the fact that Mr. Meese's wife had been given a job by the Bender Foundation at a time when the Benders were trying to renew a lease on a building occupied by the Justice Department. There was an issue as to whether Mr. Meese had violated the Foreign Corrupt Practices Act when he had dealings with Prime Minister Peres of Israel relating to the proposed construction of an oil pipeline from Kirkuk, Iraq to the Jordanian Port of Aqaba. The Iraqis were wowed because the pipeline would cross through Israel. They feared that the Israelis would destroy it.

The bottom line of the Meese investigation was that we believed a jury would reasonably find beyond a reasonable doubt that Meese had violated certain criminal acts. But after many discussions and much soul searching, I made the decision that we would not recommend that the grand jury return an indictment. We informed Mr. Meese's attorney that we would not recommend prosecution. Mr. Meese immediately resigned, announcing to the public that he had been vindicated. However, when our report was issued, Mr. Meese screamed and hollered that our report was an outrage. Other supporters of Meese, Mr. Civiletti for one, raised the roof, hollering that we should not have issued the report, that it was terrible that we had expressed our belief regarding his violations of felony statutes, and so on. There were a number of reasons why I decided not to recommend prosecution. Mr. Meese had resigned. We felt that the point had been made. None of his conduct involved venality. His handling of his tax affairs, although we

believed to be illegal, was the result more of carelessness than criminal intent. I felt we had carried out our mandate under the independent counsel statute. The report was more than 800 pages in length. It explained everything. As I said, we were criticized by Meese's friends for issuing the report. However, the statute in effect at that time required us to explain the reasons for the actions we took or did not take. All hell would have broken loose if we had simply announced that we were not recommending prosecution. Neither Congress nor the public would have stood for that. In any case, that ended the Meese investigation. And I'd like to say that our two major investigations have been said by responsible people to have been among the most professional and responsible independent counsel investigations that have been conducted. Both of them were completed expeditiously and at reasonable costs to the taxpayers.

Unfortunately, the independent counsel statute was badly abused by several independent counsels who believed even before they accepted their appointments that the statute was unconstitutional. Nevertheless, they went haywire in their investigations, wasting millions of dollars. Those people who had accepted independent counsel appointments even had the gall to testify in Congress that the statute was unconstitutional, despite the fact that the Supreme Court had held by a large majority that the statute was in fact constitutional. I felt, and I so testified before a Congressional committee, that the statute should be amended to prevent the kind of abuse imposed by some of the independent counsel and that it should not be allowed to expire. We stuck to our guns in the Meese investigation. As an example, there was great sentiment in our office that a certain individual should become a target of our investigation. I said repeatedly, "Our mandate is to investigate Mr. Meese and we're going to stick to that. I'm not going to broaden the investigation." That is exactly what those other independent counsels did, resulting

in the wrecking of reputations and lives of their victims. In view of those abuses, it was not surprising that Congress refused to renew the statute. It had a sunset provision and died after five years. It had been previously renewed three times, as I recall.

Another thing about the statute is that the ins hate it and the outs love it. It became a political football. When Reagan was President, the Democrats loved the independent counsel statute and the Republicans hated it. When Clinton was President, the Republicans loved it and the Democrats hated it. It was too bad that an excellent idea and principle were wrecked by politics. Now, as we sit here today, there is talk about appointing an independent prosecutor to investigate leaks from the Bush administration. Human nature never changes. I think there will come a time when it will be wished that there was an independent counsel statute, somewhat modified from the way the original statute was written. Okay?

Ms. DeRosa: Okay.

Mr. McKay: There was a discussion among our staff, and there was some disagreement, but I think—

Ms. DeRosa: This is about whether — Mr. McKay: About whether to recommend that the grand jury return an indictment against Mr. Meese. After we had talked it over, there was no vigorous dissent. No one said this is the worst mistake we've made or anything like that. It was pretty much of a consensus to not recommend prosecution. None of the grand jurors questioned the decision.

Ms. DeRosa: About your knowledge of the independent counsel statute and how it has been used, how common was it not to seek prosecution?

Mr. McKay: The majority of independent counsels did not recommend prosecution. I

testified a couple of times about that before Congressional committees. One of the committees was chaired by the Representative from Massachusetts, who is Barney— Ms. DeRosa: Frank.

Mr. McKay: Barney Frank, one of the smartest men I have ever seen. At the start of the hearing, the Justice Department attorneys marched in. I think there were six of them. One of their representatives testified first. He told Mr. Frank how shameful and insulting it was to the Department of Justice lawyers that they were not permitted to conduct these investigations. It was really a laugh. I told Mr. Frank what I said earlier. I said it was totally incorrect to say that the Justice Department felt that way. In fact, the Justice Department officials were delighted that I was handling the Meese investigation. I had tremendous cooperation from Mr. Weld and other Department of Justice officials. I named the people in the Public Integrity Section, and said how helpful they had been, and complimented their professional approach. One of them is now the head of OPR. They were great. I remember Barney Frank saying how refreshing it was to hear names of people below the big shots being given credit for the work they did. In any case, we did have great cooperation.

I should back up and tell you about the telephone call from Mr. Weld after we had made the decision not to recommend prosecution, but before our report was made public. He asked to meet with me privately in my home. I refused and told him I would meet in our office with other people present. And so he came to our office with the number two official in the Department of Justice. I can't remember his name. I recall that he said it was like Alice in Wonderland at the Justice Department. Black was white and white was black. That official was convinced of his boss's derelictions. Weld later testified in Congress that he would have recommended a 22-

count indictment against Mr. Meese for gratuities that he had received from his friend, Robert Wallach. My position was that it's one thing to talk big, but another thing to indict the Attorney General of the United States. You would have a huge battle on your hands. Not that we were afraid of huge battles, but the point was it was easy to make that kind of a statement and something entirely different to prove their truth. We had looked carefully into the relationship between Mr. Wallach and Mr. Meese. They were very close friends. But we never found any substantial evidence that illegal gratuities had passed between Wallach and Meese. Mr. Weld and the number two official were 100 percent of a different view. After we told the two officials that we were not going to recommend prosecution, Mr. Weld resigned.

The investigation received an enormous amount of publicity. Our report also received a massive amount of publicity. Some was unfavorable. Most of it was favorable. I recall in particular an article in the *New Yorker* in August 1988. I think it was August 11. I still have it. The author said he had stayed up all night reading the report. Quite frankly, it is very, very complimentary about how even-handed and thorough we were, and concluded that justice was done. Editorials from most newspapers, including the *Washington Post*, were favorable. I have a large file of newspaper articles and editorials. I hope my children read through the file some day.

Ms. DeRosa: In the August 11th article, maybe you said in '88. Where was that?

Mr. McKay: In the *New Yorker*. I have it downstairs. I'm sure I could find it. So, we felt very good. Our two major investigations were relatively inexpensive. We set up shop from scratch. We had to hire the entire staff. Our total cost of both investigations was around \$3 million. I think the government got its money's worth from these investigations, which included a lengthy trial and appeals to the D.C. Circuit and the Supreme Court. We came out looking

pretty good compared with some of the other independent counsels.

I will say that there are substantial reasons why Judge Walsh's investigation cost many millions of dollars. Terrible roadblocks were thrown up by the government. I would like to express my resentment with respect to the first George Bush's pardoning of the officials indicted by Judge Walsh. It was incredible that he took that action, I have no doubt that they would have been convicted. I will always believe that President Reagan knew full well what was going on. How could he not have known?

Ms. DeRosa: I think that we've concluded. Thank you Mr. McKay for taking these hours to talk through this.

Mr. McKay: Okay. Thank you. I've enjoyed it.

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- o Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (Dec. 19, 1977), 95
- o Marketing Agreement Act of 1936, 2
- o Robinson-Patman Anti-Discrimination Act, ch. 592, 49 Stat. 1526 (June 19, 1936), 61
- o Sherman Anti-Trust Act, 15 U.S.C. § 1 *et seq.*, 57, 73, 76, 82
- o Telecommunications Act, 95

RESUME OF JAMES C. MCKAY

Jim McKay was born in South Pasadena, California. Except for the periods when he was in college and in the United States Navy, he has been a resident of the District of Columbia metropolitan area. He is a senior counsel at the Washington, D.C. law firm of Covington & Burling.

He attended several grammar schools in Washington, D.C., and also attended Gordon Junior High School and Western High School in that city. He graduated from the Agriculture College at Cornell University in 1938 with a BS degree. After working for several years in various agricultural jobs, including that of Assistant Marketing Specialist, U.S. Department of Agriculture, he served for four years as a reserve officer on active duty with the United States Navy during World War II. His service included sea duty in the Atlantic as executive officer of two submarine chasers. From June of 1944 until the end of World War II he was the commanding officer of a 175-foot patrol craft, the USS PC 1596, operating in the Mediterranean theatre. He resigned his commission after attaining the rank of lieutenant commander.

While employed as a law clerk by the Covington firm, Jim attended night classes at the Georgetown University Law Center, receiving an LLB in 1947. He received an honorary LLD from the Georgetown University Law Center in 1989. He was an Assistant United States Attorney in the District of Columbia in the late 1940s. As an independent counsel from 1987 to 1990, he conducted the investigations of Lyn Nofziger, a senior advisor to President Reagan, and Edwin Meese, the Attorney General of the United States during the Reagan administration.

For most of his legal career, Jim has been a trial lawyer at Covington & Burling, first as an associate and later as a partner in that firm. He participated in many trials and appellate oral arguments, involving civil and criminal cases, in a number of jurisdictions in the United States. For the past eight years, he has represented veterans on a pro bono basis before the United States Court of Appeals for Veterans Claims. He also has represented parties in adoption, child abuse and neglect, and custody proceedings in the Superior Court of the District of Columbia. For a period of one year in 2001 and 2002, he was a special government employee of the U.S. Department of Justice, serving as a Legal Advisor with the Professional Responsibility Advisory Office.

Jim was Vice President and a member of the Board of Directors of the voluntary Bar Association of the District of Columbia, as well as a member of numerous committees of that Association. More recently, he served for six years as a member of the Board On Professional Responsibility of the D.C. Bar. Prior to that, he served as Chair of a Hearing Committee of the Board.

He has served since the early 1970s as a court-appointed trustee of the George Preston Marshall Trust, and as president of the George Preston Marshall Foundation, a charitable organization which, over the years, has made many millions of dollars of grants

to organizations concerned with the health, education and welfare of children in the District of Columbia, Maryland, and Virginia.

Jim resides with his wife, Mary Anne McKay, in Chevy Chase, Maryland. They have three grown children and three grandchildren.

Mary B. DeRosa
Center for Strategic and International Studies

Senior Fellow

Center for Strategic and International Studies (CSIS), 2002 – Present
CSIS is a non-partisan, not-for-profit research institute (think tank). Areas of special interest include national security, intelligence, civil liberties and privacy, and homeland security.

Special Assistant to the President and Legal Adviser, 2000 - Jan 2001

Deputy Legal Adviser, 1997 – 2000

National Security Council, White House

Provided legal advice to the President, the National Security Advisor, the Deputy National Security Advisors, and the White House staff on national security legal issues, including intelligence, law enforcement, terrorism, immigration, sanctions, human rights, war crimes, and law of armed conflict, as well as ethics, personnel, litigation, and fiscal law matters.

Special Counsel to the General Counsel

Department of Defense, 1995 - 1997

Assisted the General Counsel in handling litigation, congressional investigations, legislative matters, sensitive personnel matters, and special projects involving, for example, the structure of the Department's investigative capability, information security, and terrorism.

Attorney, Advisory Board on the Investigative Capability of the Department

Department of Defense, 1994

Advisory Board's mandate was to assess all aspects of Department of Defense criminal and administrative investigations and to report its findings and recommendations to the Secretary of Defense and Congress.

Associate, Washington, DC and Los Angeles offices

Arnold & Porter, 1986 - 1993

Adjunct Professor, Research and Writing

George Washington University National Law Center, 1989 - 1990

Law Clerk, Chambers of the Honorable Richard J. Cardamone

United States Court of Appeals for the Second Circuit, 1984 - 1985

George Washington University National Law Center

JD (with high honors) 1984

Notes Editor, George Washington Law Review
Order of the Coif

University of Virginia, College of Arts and Sciences,

BA (with honors) 1981

