



MORTON HOLLANDER

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

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The Historical Society of the
District of Columbia Circuit**

**United States Courts
District of Columbia Circuit**



MORTON HOLLANDER

**Interviews conducted by:
Judith S. Feigin
July 31, August 9, September 4,
October 9, 2007**

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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 Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Interviews are conducted by volunteers, trained by the Society, who are members of the Bar of the District of Columbia.

Indexed transcripts of these interviews and related documents are available in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C., the Library of Congress, and the library of the Historical Society of the District of Columbia. With the permission of the person being interviewed, oral histories are also available on the internet through the Society's web site, www.dcchs.org.

Such original audio tapes of the interviews as exist, as well as the original diskettes of the transcripts (in WordPerfect format) are in the custody of the Society.

Historical Society of the District of Columbia Circuit

Oral History Agreement of Morton Hollander

1. In consideration of the recording and preservation of the oral history memoir of my brother Morton Hollander by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Seymour Hollander, as executor of the Estate of Morton Hollander, do hereby grant and convey to the Society and its successors and assigns all of the Estate's rights, title, and interest in the digital recordings, transcripts and computer diskettes of interviews of Morton Hollander, as described in Schedule A hereto, including literary rights and copyrights. All copies of the digital recordings, transcripts and computer diskettes are subject to the same restrictions herein provided,

2. I also reserve for Estate and heirs of Morton Hollander the right to use the tapes, transcripts and computer diskette and their content as a resource for any book, pamphlet, article or other writing.

3. I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said digital recordings, transcripts and computer diskettes in any manner that the Society considers appropriate, and I waive any claims the Estate or heirs of Morton Hollander may have or acquire to any royalties from such use.

Seymour Hollander 7/9/08
Seymour Hollander Date

SWORN TO AND SUBSCRIBED before me this
9th day of July, 2008.

Elizabeth F. Baldwin
Notary Public

My Commission expires 4/11/13

Elizabeth F. Baldwin
Notary Public State of New Jersey
Commission Number: 2372141
My Commission Expires: April 11, 2013

ACCEPTED this 17th day of July, 2008, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
Stephen J. Pollak

Schedule A

Interviews of Morton Hollander:

<u>Date (Month, Day, Year)</u>	<u>Pages of Transcript</u>
July 31, 2007 First Interview	36
August 9, 2007 Second Interview	27
September 4, 2007 Third Interview	26
October 9, 2007 Fourth Interview	19

The digital recordings of the four interviews are contained on one computer diskette. The transcripts of the four interviews are contained on a second computer diskette.

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ORAL HISTORY OF MORTON HOLLANDER

First Interview

July 31, 2007

This is the first interview of Morton Hollander as part of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Judith S. Feigin. The interview took place at Mr. Hollander's home in Northwest Washington on July 31, 2007.

Ms. Feigin: Mr. Hollander, thank you so much for doing this.

Mr. Hollander: You certainly are very, very welcome.

Ms. Feigin: And let's just start at the beginning. Tell us where and when you were born.

Mr. Hollander: I was born in 1918, three weeks after Armistice Day. The date of my birth was December 2, 1918. I was born in Brooklyn, New York. And actually, I, as well as my older brother before me, and in addition all of my other four siblings, were born at home. At home in Brooklyn. There was no shortage of doctors in Brooklyn, that I know (both laugh). And I remember the name of the obstetrician who delivered all of us.

Ms. Feigin: Which is?

Mr. Hollander: His name, his last name is Brenner. I don't remember the first name. And I have to interject here that my wife Ruth was born at a hospital in Brooklyn. She was born in 1920. July 4, 1920. And my daughter Nancy, who was the first of our two children, who died in '71, my daughter Nancy was born in the same hospital, and delivered by the same obstetrician who delivered my wife Ruth.

Ms. Feigin: That's wonderful!

Mr. Hollander: I think so.

Ms. Feigin: Now was Brooklyn part of New York then?

Mr. Hollander: Oh sure.

Ms. Feigin: When was it annexed? I don't remember.

Mr. Hollander: There is no New York City without Brooklyn! (both laugh)

Ms. Feigin: There was. There was a time.

Mr. Hollander: Must have been a crazy mayor who allowed that to go on! (both laugh)

Brooklyn is the heartthrob of New York City. Manhattan's got a lot of financial offices but the real life goes on in Brooklyn.

Ms. Feigin: What part of Brooklyn were you born in?

Mr. Hollander: The part of Brooklyn I was born in was known as East New York. It's adjacent to a much better-known part of New York, which is called Brownsville. The reason Brownsville is far more famous is because the Jewish Mafia congregated in Brownsville which was adjacent to East New York. Abe Relis and his gang all operated out of Brownsville. My principal contact with Brownsville, while I was a kid, was attending Boy Scout troop meetings. Boy Scout Troop 182, at Sutter and Hopkinson, which was a Hebrew Educational Society building in Brownsville. And I picked up a lot there.

Ms. Feigin: Like what?

Mr. Hollander: Well, how actually to deal. Norman, my older brother, and myself were the

only two Jewish people in the troop. The others were mostly Catholic, Italian or Polish Catholics. So I learned early on how really to get along with them.

I hate to interject this. There was one sour note, because I must have been about eleven years old and I was on my way to getting a Star merit badge. That's the least difficult. Today most of the kids go for Eagle, which means they earn the Star merit badge and then they get another six or seven merit badges that qualify them for life recognition. Eagle is the top honor you can get in the Boy Scouts. I never got beyond Star, although it bothered me particularly because my uncle Joe, the husband of my mother's sister Lil, he was pushing me to come up with that Eagle. And, in fact, he took me aside, he was a biology teacher. He took me aside. He took me out to a park. Highland Park. He lived across the street from it. Highland Park is in Brooklyn but it borders on Queens. And he made me learn, at first I objected to it. But I had to know the name of every tree and every bush. Not only in English but I had to know the Latin equivalents. But it stuck (both laugh).

He taught biology and he taught botany too. So he was really up to it. And my Uncle Joe also taught me to play tennis so that my brother Norman would be willing to play with me. At first he felt I was not really capable of being a worthy opponent. But Uncle Joe, who lived for quite a while opposite Highland Park in an apartment house, took me under his

wing for tennis and I would go there every Sunday afternoon for a three-hour session. And I did play tennis quite a bit as a kid, although my son Robert was a tennis champion at Walter Johnson, and in fact was offered three tennis scholarships, including one at Colgate, which had a very good team. But he actually wound up at Columbia for his undergraduate degree. I have a feeling he resented that. He wanted to keep on continuing to improve his tennis but he had no time at Columbia for that. He had a fairly good record at Columbia.

Ms. Feigin: Well let's start with your childhood and we'll work up to his. Now did most of your family live in Brooklyn? It sounds like you had lots of relatives there.

Mr. Hollander: Yes, there was an extended family that was living in Brooklyn. One of my father's sisters came over after he had become better established in Brooklyn and she had four children. She had three boys and a girl. And they were about fifteen blocks away from where we lived. So some of their kids would come over and play games, mostly cowboys and Indians (Feigin laughs). They did not like the idea of going to the park, which was, again, less than a mile away, so we played around the house. And fortunately the house was large enough so that it accommodated all six siblings. It accommodated my mother's sister, my aunt Lil. It accommodated a niece of my father's. One of my father's sisters had a daughter whose name was Esther. Really a wonderful woman who my

father got to come over from Austria-Hungary. That's where my father was born. But actually the area involved, the immediate area where my father was born, was Krakow, which is a couple of miles from Auschwitz.

Ms. Feigin: So your father was born in Austria-Hungary?

Mr. Hollander: My father was born in Austria-Hungary; he was naturalized in 1912. That means he had been here five years already.

Ms. Feigin: So he came over in 1907?

Mr. Hollander: Yes. And my grandfather, my maternal grandfather and my maternal grandmother, were born in Kiev, and they both came over about ten years before my father did. But my father left his family. He had a batch of siblings too. He had, I think, three sisters and four brothers. I'm going to have to supply you with the genealogical chart. Marilyn has one that traces the different countries they went to, that is my father's siblings, because I think he had at least seven or eight siblings.

Ms. Feigin: So they didn't all come to America?

Mr. Hollander: Oh no. Three of them I know went to Israel. One to France. But the others I'm not really sure where they went. But Marilyn has this all set out.

Ms. Feigin: Your sister Marilyn?

Mr. Hollander: My sister Marilyn.

Ms. Feigin: So if we start chronologically, it sounds as if your maternal grandparents came over first.

Mr. Hollander: Right. I never did meet my paternal grandparents. They stayed over. One of them perished in the Holocaust and I really don't know what happened to the other one.

Ms. Feigin: So your maternal grandparents came over and then was your mother born in the United States?

Mr. Hollander: Oh yeah. In fact, she did not go to college but she was a graduate of Washington Irving High School which is on the East Side in New York. And at that time they really weren't considering women for college, at least at their socioeconomic level.

Ms. Feigin: When was your mom born, do you know?

Mr. Hollander: I can trace it back. She was seventeen when she was married and she was married in 1915. So it was at the end of the 1800s she was born.

Ms. Feigin: Right, 1898.

Mr. Hollander: Yes, and she had six children, all delivered in the same house.

Ms. Feigin: What led your father to come over, do you know?

Mr. Hollander: Oh sure. Even though it was under Austria-Hungary domination, he was literally in Polish areas. Austria-Hungary had seized it from Poland at the end of World War I, which ended in November of 1918, and there was so much anti-Semitism there that he felt he could do a lot better here. And he did. For a couple of years after he came over he was running a candy store. He invested in a candy store. That is how he made his livelihood.

Ms. Feigin: How did he get over? Do you know anything about the circumstances of

his coming over?

Mr. Hollander: Well I know he came over by boat because I did check the census records showing the steamship that he arrived on. It was the 1920 census so he had been here already from 1907 to 1920. But they had the name of the ship that he came over on.

Ms. Feigin: And what was the name?

Mr. Hollander: I don't remember. But I can probably supply that because I think I have some notes on the 1920 census. But then after he left the candy store, I guess kids started to come along, he joined up with my grandfather, whose picture you have with me. That picture was taken about '42 or '43. But my grandfather had been running a business in which he handled two main products. The first, he was an intermediary between some of the large glass manufacturing companies and people who wanted – I don't know if you ever heard the name Fortunoff. Fortunoff's sold everything from kitchen utensils to diamonds. It was one of my grandfather's, and when my father joined up with him, one of my father's best customers. Do you know what they would supply them with? They would get these, I think they called them sterilizers. Four-ounce or maybe eight-ounce baby nursing bottles. And they would get them from Owens-Illinois Glass Company and ship them to Fortunoff.

Ms. Feigin: And your grandfather had come over after your father?

Mr. Hollander: No. He was already here. He came over. He was naturalized, I guess,

about five or ten years before my father.

Ms. Feigin: And what had he done in the old country?

Mr. Hollander: I don't know. But here they acted actually as a broker between people who needed glassware. After the Volstead Act, in '34, they were big on 3.2 beer bottles (Feigin laughs) and the same Owens-Illinois glass manufacturing company, that I think still produces nursing bottles, used them as their agent for selling the 3.2 beer bottles, which was all that was allowed. Things got very tough during the '30s. Both my father and my grandfather started to handle scrap metal. And I fooled around a lot with that because the factory that they used was less than a block away from where we lived. I mean the building, the factory building. And I enjoyed it. I enjoyed learning the difference between copper, lead, and zinc and, as is true today, there was a very, very heavy market for that. For scrap metals, particularly copper.

Ms. Feigin: That is certainly true now.

Mr. Hollander: Which, you know I'm thinking of tearing out all the copper piping I have downstairs in the basement (both laugh) and cashing in on it. Because when they first did the plumbing for the house, they extended the copper lines along all the walls and the basement. And now they don't use that anymore.

Ms. Feigin: So they moved from glass to scrap metal?

Mr. Hollander: Well, they did both.

Ms. Feigin: So it sounds like you had a comfortable childhood financially.

Mr. Hollander: Well, I can't complain about that. The only time I was ever consulted, or my father drew me into a discussion of finances, was to tell me that I'm going to Brooklyn College, which has no tuition fees. Brooklyn College is part of the college of the City University of New York. At that time, there wasn't even a library fee. But I had my eyes as a kid, because I graduated from high school when I was fifteen and a half –

Ms. Feigin: What high school was that?

Mr. Hollander: That was Boys' High School in Brooklyn. I still know the school song, (both laugh) which briefly is: "We are the boys of BHS you hear so much about. The people stop to stare at us whenever we go out. We are noted" – get this – "for our winsomeness (Feigin laughs) and other clever things we do. Everybody likes us. We hope you do too."

Ms. Feigin: Now was it only boys that attended Boys' High School?

Mr. Hollander: Yes. It was a very nice school. It was in Brooklyn, on Marcy and Putnam Avenues in Brooklyn. And it was not a neighborhood school for me. So for the most part I had to take a train.

Ms. Feigin: You had to compete to get into this high school, or how did you get in?

Mr. Hollander: No. I don't think there was any competition. But the reason I went to Boys' High was because, again, Lil, my aunt, my mother's sister, prevailed on my father and mother to have me go there. I don't really know whether the standards were any higher or more rigorous than the high school in the

neighborhood that my siblings went to.

Ms. Feigin: So you were the only one of the six?

Mr. Hollander: I was the only one that went there. The others all went to a school that was seven blocks away, Thomas Jefferson High School. And there was a very famous poet who was a principal of that school. You probably won't remember the name, but Elias Lieberman. There were many anthologies, poetry anthologies that he had written. Anyway, I wound up at Boys' High.

The first day that I had to report to Boys' High, I told my dad that I'm going to take the train. He said no you're not, you're not old enough to take the train (Feigin laughs); you'll get lost. So he drove me down in one of the trucks that he had and I didn't like that at all. I mean, I didn't mind being driven, but I think he took a ten- or twelve-ton Mack truck to drop me at school. I don't know. Alfred A. Tausk was the principal at the school. I don't know what he thought about that because he dropped me right in front of the principal's office to make sure that I was at the right place. So after that we agreed that I could use the Fulton Street line, which was the Lefferts Avenue line, which went from Queens by the house, and which went to Marcy and Putnam.

Ms. Feigin: Did the family have a car also?

Mr. Hollander: My father used to drive an old Packard. And actually the last car that I remember was a 1937 DeSoto. 1937 DeSoto and I went with my father to

pick it up. And it sold for \$650 with everything in it. In fact, that's the car that I learned to drive on.

Ms. Feigin: Now in your house. Let's talk a little about what it was like growing up there.

Mr. Hollander: We had, fortunately, a full house. There were the six kids.

Ms. Feigin: Was English the language that was spoken?

Mr. Hollander: Well, by my father. My mother of course was born here, went to school here. My grandfather and grandmother, when they did not want me or my siblings to know what the hell they were talking about, they spoke Yiddish. So I picked up a good smattering of Yiddish. That happened to be true with Ruth's parents. In fact, they spoke only Yiddish. When she entered kindergarten, they were wondering whether, the school authorities thought that they were pushing her too much because she really hadn't acquired enough of the English language at that point.

Oh, and I mentioned the fact that one of my father's nieces, Esther, lived with us in that house, along with Aunt Lil, until they were each married, so it coincided with most of the time I lived there that they were in the house. Because I think they both were in their late thirties when they got married, and Lil married Uncle Joe who was my leaf knowledge sponsor (Feigin laughs) and who was very disappointed that I never wound up with any award beyond the Star. Very disappointed in me.

But the house also had – I must say this about Aunt Lil and my

cousin Esther, they were both sterling cooks. They really were. So most of the cooking, I mean when we sat down at the dinner table, there was at least ten people. Most of the cooking before had been done by my mother, who was bringing up six children at the time, and also by my grandmother, who would actually churn her own butter. She never went out for butter. She was busy with that butter churner or whatever they call it. So it worked out all right.

We had enough bedrooms so that – But in that sense too, I know I was preferred, because I was allowed to have my own bedroom. It was a room about one-third the size of this dining room. It was a very small room but it was right in front of the house. Second floor. I had a huge picture window in the bedroom overlooking the street and my brothers and sisters all shared rooms. There were two girls and three boys.

And for a while, when I was, the last three years of college, I had a cousin from – I forget the name of the town, but from northeastern Pennsylvania, who later became William Randolph Hearst's principal horse artist. William Randolph Hearst, I am sure you remember that name, he had a string of farms for horses. And he retained a cousin of mine, whose name was Sam Savitz, S-a-v-i-t-z, who came from Pennsylvania. He retained him, on a full-time basis, to make paintings of Hearst's horses.

I remember one night when, I think it was the last year or two of

college, I was up pretty late studying, and Sam was already living in our house, and I stopped at the room that he was in, and asked him if he wanted something to drink. It was pretty late, and he said no, he's got to finish this. And what was this? It was a picture that he was making, that showed the names, in Latin, of all of the bones of a mature horse. He said you can't really paint a horse unless you know what its skeleton or bone structure is (both laugh). And that's what he was working on. So he was very, very careful in his paintings.

Ms. Feigin: Do you have any of them?

Mr. Hollander: No, I don't. I don't know what happened with them, but I'm sure that they're available in the library, because Hearst, I'm sure, had some of them published.

Ms. Feigin: So you lived home through college?

Mr. Hollander: Yes. Well, through law school.

Ms. Feigin: Okay. Well before we get to that end, let's go back to —

Mr. Hollander: I graduated from high school in May of '34.

Ms. Feigin: So you were young during the Depression years. How did that impact the family?

Mr. Hollander: Well, as I say, the first time I felt any financial considerations having an impact, when I was told that I was going to wind up at Brooklyn College. And I never regretted that because, well, frankly what I was concerned with, was that the standards at Boys' High were very, very high. I mean in

order to make your way through Boys' High, you really had to do more work than I know my siblings did at Thomas Jefferson. And I was concerned that there would be a letdown in the standards at a Brooklyn College or any other City-College-related facility. It didn't turn out to be that way though, because the first paper that I submitted at Brooklyn College, this was, I guess in '31 – that was my first year at Brooklyn College – I got back from my European History teacher with no grade, but two words in the upper right hand corner in red. And those two words were “Woefully Inadequate” (both laugh).

Mr. Hollander: I'll never forget that. And I thought I had done a pretty good job. But she was hard to please.

Ms. Feigin: Let's go back a little bit before college because I see that you gave me a wonderful picture of your Bar Mitzvah which was in 1931. And it occurs to me, well, first of all, where was your Bar Mitzvah?

Mr. Hollander: It was at a synagogue a block and a half away from the house where we lived.

Ms. Feigin: Was the family observant?

Mr. Hollander: My father was not. My mother had a strictly Orthodox upbringing with my maternal grandparents. My grandfather and grandmother both were very observant. In fact, I always felt it was a big privilege because my grandfather would go to services every day of the week. And the first service he went to started at six o'clock in the morning so that he would be

ready for a full workday. And I always felt that it was a big honor when he would ask me the night before if I'd be willing to go with him to services. So of course I did; I jumped at the opportunity. I myself, I guess I would consider myself quasi-observant. But I go if I have a chance, and I don't go to services frequently, but unfortunately I do attend a number of yezzeit services for my parents, my cousins, nephews, siblings. I spoke to a rabbi about this. I have a choice of going either to an evening service, the evening of the yezzeit, which starts at eight o'clock in the evening and is over by twenty after eight in the evening, or the next day, which is actually the yezzeit day, to get there at six o'clock in the morning and actually have breakfast with that service. I don't mind getting up and spending an hour or an hour and a half.

Ms. Feigin: For anybody who wouldn't know listening to this interview, the yezzeit is to mark the anniversary of –

Mr. Hollander: Commemorate the death, right.

Ms. Feigin: Let's go back to your Bar Mitzvah. Can you tell me what it was like to have a Bar Mitzvah in 1931? It was during Prohibition, I would note. But what was a Bar Mitzvah like back then? What did it involve?

Mr. Hollander: There was no, what do they call those trips where kids go to Israel or Europe? There was none of that stuff. It was very simple. My mother had arranged for the Bar Mitzvah party to take place at the shul, so the shul did the catering. And we came back at two o'clock for the lunch that was

catered at the shul.

Ms. Feigin: Was this an Orthodox shul?

Mr. Hollander: Yeah, it was. My grandfather had been a member I guess for about thirty or forty years.

Ms. Feigin: So you had the reception afterwards?

Mr. Hollander: Just the lunch and everyone said their good-byes.

Ms. Feigin: I notice the picture you gave me has you not with a yarmulke, but with a fedora. Is that the way people dressed then at Bar Mitzvahs?

Mr. Hollander: I don't know. I guess my mother thought that I would be understating it (both laugh) with a black – I don't know. But I still wear the yarmulke, when I go in for yerzheit services or for, well in the middle of September we're going to have Rosh Hashanah and Yom Kippur services.

Ms. Feigin: So you were telling me a little bit about the games you played when you were young. You said cowboys and Indians, but that would be, I guess, very young. What kind of stuff did people play as they were growing up? Were there board games?

Mr. Hollander: Oh yes. The equivalent of Scrabble. We had a lot of that as kids. I remember my mother at one point being forced to buy one of those old Oxford dictionaries. It must be about seven or eight inches deep, because there were so many arguments over was that really a word (both laugh). And she felt it would be easier to find the word which was being challenged or questioned in that very, very heavy dictionary.

Ms. Feigin: And when you grew up in Brooklyn in that era, did you go into the city, Manhattan, a lot, or did you mostly spend your time in Brooklyn?

Mr. Hollander: There were some shows that we all went to but they were in Brooklyn. I forget the name of the theaters, but there were some shows that we went to. I think Fox was the name of one of the big movies. They would have guys like Sinatra come in.

I must say this, and this dates back to my junior high days. I went to a junior high school before I joined Boys' High so I guess that must have been about '29, and they had those Rapid Advance classes, some of those junior highs, and I remember the name of the particular junior high that I went to which was within walking distance of my house. It was called Lew Wallace Junior High School. I think he was a Confederate general during the Civil War. And what I enjoyed most about Lou Wallace Junior High School was the fact that every afternoon at lunchtime, somebody from the Dubin's Cafeteria, which was on Eastern Parkway, a couple of blocks away from Lou Wallace Junior High School, would come around with a wagon that had some facilities for keeping things warm, food warm, and he would start yelling so that I could hear him on the second floor of the school. He would start yelling (chants): "Dubin's knishes, they're hot and delicious" (both laugh). And then he would start to enumerate the different kinds of knishes. Apple, kasha, potato. I forget the other two, but he had five different kinds that he kept

hot. And I was always given a quarter a day to buy lunch at the Wallace Junior High School. But I didn't like the cafeteria. You had to stand in order to eat at some bar that they had stretched out across the cafeteria. With Dubin's knishes, I could sit on the curb right next to the place where he parked his wagon, his heated wagon, and enjoy five different knishes for a quarter.

Ms. Feigin: They were a nickel each?

Mr. Hollander: Yes. So that worked out well. Except in the sense that I really did become very roly-poly by the time I got finished with junior high school (both laugh). Literally, we lived on a hill. The house was on a hill. I could get down on my arms and legs in the middle of the street and I was so round that I could roll down the hill to the street (both laugh).

Ms. Feigin: And did you?

Mr. Hollander: Yes. My mother didn't like that. Those are the only recollections I have of my junior high days.

Ms. Feigin: When you went to Brooklyn College, what did you major in?

Mr. Hollander: Government courses. And the reason I did that, was in my first year I had elected to take a course with a teacher whose name was Professor Louie Warsoff, W-a-r-s-o-f-f. First-year students were allowed to take a course in constitutional law. And I enjoyed that tremendously. So I pretty much decided by the time Warsoff got finished with me that that's what I'd like to do. He was a member of the bar but he never practiced. But he was a

very good teacher. He had very interesting commentaries on all of the Supreme Court decisions that we read dating back to I think *Sanford v. Gitlow*, which upheld the constitutionality of the Sedition Acts. I found that course very illuminating.

Ms. Feigin: So was he one of your mentors?

Mr. Hollander: Well, he wrote a very strong letter of introduction when I later applied to – I wouldn't say he was my mentor because I never saw him outside the class. But I would hang on eagerly to every word of his in the class.

Ms. Feigin: And are there any other professors that you think had a significant influence on you?

Mr. Hollander: Well, this Isabel Whittier, the European History teacher who told me that my paper was woefully inadequate. I tried, I really tried to measure up to her standards. Not that I was obsessed with European History. I really didn't like it. But I had from her the feeling that it would really be worth my while to take Brooklyn College courses more seriously. So she undoubtedly had a tremendous influence. I had another teacher who was a French teacher. Her name was Mabel C. Daggett, D-a-g-g-e-t-t. She made the students, both boys and girls were at Brooklyn College, toe their mark. I think I remember her because she had a peg leg. She walked around with a prosthesis. She managed to get around quickly. Not as fast as some of the Hebrew school teachers I had. I think I may have told you how skillful one of them was in taking aim and firing a chalk-laden eraser at someone

he felt was not toeing the mark.

Ms. Feigin: When did you go to Hebrew school, after school?

Mr. Hollander: Well, no, I stopped going to Hebrew school after I became Bar Mitzvahed.

Ms. Feigin: But before that, how often did you have to go?

Mr. Hollander: Twice a week. That was in addition to those mornings when my grandfather would invite me to attend services at six o'clock. And I always went with him to Saturday and Friday night services.

Ms. Feigin: Did all your siblings go to college?

Mr. Hollander: All but my brother Lawrence. Norman, who passed away in '78, went to Columbia undergraduate and then left immediately for World War II.

Ms. Feigin: He was a couple of years older than you?

Mr. Hollander: Yes, two years older. He was born in '15 or '16. '15. Now, then I came next. Let me see that family group. I don't want to miss out on anyone. Evelyn was born in 1920.

Ms. Feigin: And where did she go to college?

Mr. Hollander: She went to Hunter. She got a master's in some sort of educational course.

Ms. Feigin: And Hunter is also part of the City College system.

Mr. Hollander: Yes.

Ms. Feigin: In those days was Hunter a female college?

Mr. Hollander: Oh yes, exclusively. In fact, even when my daughter Nancy went to the University of Pennsylvania, which was 1968 to, I'm pretty sure that's when she started, to '71, when she graduated. No, she graduated in 1970, and

that's when she had that airplane accident, in '71. She was already, at that time, with her husband in New Haven. She had come home alone to spend the weekend with us because Ruth was not feeling well. Her husband Reid was going to Yale Law School at the time. She had already graduated from the University of Pennsylvania. When she was admitted to the University of Pennsylvania in 1966 women were not allowed into the regular University of Pennsylvania classes. They had a separate Women's College, they called it, for females. It was just the Women's College of the University of Pennsylvania. And her degree shows it was awarded by the Women's College of the University of Pennsylvania.

Ms. Feigin: So Evelyn went to Hunter. What about Larry?

Mr. Hollander: He left immediately for World War II. I think by 1940 he had already enlisted in the Navy.

Ms. Feigin: And he was born in 1924 I think you had said.

Mr. Hollander: He was born in 1924. It was on the leap year. Maybe he entered in '41. I mean the service. But there was a lot of discussion about that at home. My mother and father wanted him to get a college deferment.

Ms. Feigin: You could get a deferment even during the war?

Mr. Hollander: Yes. I don't remember what all the requirements were, but once you were in school they would let you finish out the school. Now Seymour also was caught in that bind. Seymour was born in 1927 so when the war started in '41, he was only fourteen years old. And what he did, well he actually later

graduated from NYU, but what he did at that time, he entered the New York State Maritime Academy which is up in Great Neck at Kings Point. They also have a United States Merchant Marine Academy up there. And he saw a lot of the world while he was at NYSMA, New York State Maritime Academy, because he shipped out a number of times. But Seymour was able to start college at age fourteen, in effect. He was able to use most of the credits that he earned at NYSMA when he started at NYU. So he had more than half of his credits already done, and he had a regular degree from NYU a couple of years later.

Ms. Feigin: And then the last one born, Marilyn, in 1930, she went to college as well?

Mr. Hollander: Oh yes. She's the only Ph.D. in the family, Marilyn. Well, first with Seymour, he later went on to NYU Law School and studied patent law. He turned eighty a couple of months ago and he still handles patent cases. Of course he handles them either as an arbitrator or a mediator. But he had been one of the top people in AT&T's patent legal division for about thirty years. And then they asked him to leave because he reached age seventy.

Ms. Feigin: Mandatory retirement?

Mr. Hollander: Well, the law, the Age Discrimination Act does have provisions that allow an employer to fire someone because of his age so long as his pension is going to be over a certain level. If his monetary pension will be over a certain level, that's what they did. But Seymour was able to pick up a comparable job at Lucent, which was a subsidiary, I don't know if it still is,

of AT&T. And then he did give up Lucent because he did want some more time for himself. But I know he spends a hell of a lot of time on these mediation and arbitration cases. He travels all over the country now. Well, by that time they were awarding only JDs, not LLBs, so by the time he got out of NYU Law he got a JD.

Marilyn is the only Ph.D. degree, the only one in the family to have a Ph.D. degree. She got her undergraduate degree at the University of Pennsylvania. Then she got a Ph.D. at the same university. Not immediately after the undergraduate degree. But she had already been working at a hospital on the Island as a medical geneticist. In fact, I think she is the only medical geneticist who does not have an M.D. degree but who does have a Ph.D. degree, who is listed in the directory of the society. What is that society for specialists, medical specialists? I forget what they call it, but there's a huge volume that covers all the specialities, whether it is eye, ear and nose or cardiology, or nephrology. There's one large volume that covers all the specialties. And also x-ray, roentgenology. She has a son and a daughter, Marilyn. Her son has been with Massachusetts General, I guess ever since he – He graduated from Harvard Medical and taught there as a fellow for two years and then went into anesthesiology. And he's been at it, he must be about fifty-two or fifty-three, he's been at it for a long time. But recently he started to have trouble with his back, I think principally resulting from having to be on his feet whenever he works as an

anesthesiologist. So I've been kidding him because when this volume came out with my sister's name in it as a medical geneticist, her name is Marilyn. His first name is Michael, so they list Marilyn ahead of Michael (both laugh). And then they point out that Mike is an anesthesiologist, but that's besides the point.

Ms. Feigin: No, it's all to the point. But before we get to the last part of your education, which will be law school, let me just ask you one more thing that occurs to me about your growing up years. Did the family travel?

Mr. Hollander: No. No. Well, I shouldn't say no. But my father considered a vacation to Delaware Water Gap, which is maybe about an hour and fifteen minutes from New York City, he considered that to be going to the end of the world.

Ms. Feigin: And how would you get there?

Mr. Hollander: Drive.

Ms. Feigin: In a car that was big enough for eight of you?

Mr. Hollander: Well the Packard would accommodate seven. We managed. We managed. But those vacations never lasted more than five days. Most of the people would be going up to the Catskills for their vacations. I never got up to the Catskills until I was married. And Ruth and I did manage to get up there. But even around here, there was a Hotel Tannenbaum which was run like a Catskill operation. And Tannenbaums, I don't think it exists yet, but it was near Cascade, Maryland, which is about an hour-and-a-half drive. And I became very familiar with that area. Not because of Tannenbaums, but

because during World War II, I was stationed at Fort Ritchie, which is actually about three or four blocks walking distance from the Tannenbaums and also about two or three blocks walking distance from two Jewish boys and girls camps. Camp Airy for boys and Camp Louise for girls. And would you believe this, that during World War II, while I was stationed for two three-month stretches at Cascade Fort Ritchie, that the girls and boys at those two camps would be allowed to come down to Camp Ritchie and swim in that ritzy pool, because they didn't have one. And it was a military intelligence center!

Ms. Feigin: Was that after law school that you were in the military?

Mr. Hollander: Yes. I graduated from law school in the summer of '41.

Ms. Feigin: So if we just take it a little more chronologically, one other question I want to ask about growing up. Was the family political, politically active?

Mr. Hollander: Well, no I don't think so. My father was very interested I remember when Hoover was president. Hoover had actually, in fact FDR did too as soon as he got into office in '32, he had vetoed the World War I veterans' bonus. I mean I wasn't surprised that Hoover had done that. But my father was outraged that after FDR was elected, he was very strong – He detested Hoover, my father, and he was always gung-ho for FDR.

Ms. Feigin: Was your father a veteran?

Mr. Hollander: No, my father was not. But my father-in-law was. And my father-in-law spent a full two years in the service during World War I. And he was not

too excited about it. He did, fortunately, he did have a fairly decent job.

Most of the fights for the bonus occurred really during the worst days of the Depression, so that the veterans who marched on Washington really wanted a job, not a handout from the government in the form of a bonus. In fact, they called that march on Washington the Bonus Expeditionary Force because the guys who went overseas during World War I from America were called the AEF, American Expeditionary Force. But my father-in-law didn't take an active role. He was glad that he had a job and that he could get along.

Ms. Feigin: Did you know anybody who came down to march?

Mr. Hollander: No. Well, I know my father-in-law didn't. A lot of his cronies were asking him to go with them. He declined. It was really a march on Washington to find employment. They could do without – I think the bonus itself did not amount to more than seven or eight hundred dollars if it had been awarded. Because even when FDR came in, he vetoed two attempts to have the legislation enacted, which I think was disgustingly unfair.

Ms. Feigin: So your father was involved in that issue, or cared about that as an issue?

Mr. Hollander: No, but he cared very, very much about FDR succeeding and trouncing Hoover, as he did. I think the first time they opposed each other was in '32. Yes, because Roosevelt was in office from '32 until Harry Truman took over during the World War. Hoover was in office up until '32. That's when FDR took over and he stayed in office until Truman took over. After V-J

Day, after V-E Day. As a sideline, so far as V-J Day is concerned, my daughter Nancy was born exactly 270 days after V-J day (Feigin laughs) because Ruth was with me at the time. I mean I still was in the service.

Ms. Feigin: Well, we'll get to your service, but you graduated from Brooklyn College –

Mr. Hollander: I graduated from Brooklyn College and my father knew some lawyer in town. His name was actually Robert Moers, M-o-e-r-s. It was the summer that I graduated from Brooklyn College, which was '38 and I was working for Robert Moers.

Ms. Feigin: Doing what?

Mr. Hollander: Really answering the phone. That's all he let me do. For which I was paid \$7 for a five-and-a-half-day week.

Ms. Feigin: Had you worked through college? Had you worked at other jobs during college?

Mr. Hollander: No, I did not. I did take on a job after I got to law school at La Maison Francaise, which was really a French library, and I knew a little French. But Moers is a cut-off actually between my starting at law school. One of the problems I had in law school, I spent many hours talking with my observant grandfather about it, was that there were classes every Saturday morning. I was taught as a kid, you don't ride on trains on Saturday. You don't work, and that includes study.

Ms. Feigin: You must have worked for Mr. Moers on Saturday if you say it was five and a half days.

Mr. Hollander: Yes, I did, with my grandfather's not too eager permission. I explained to him that – We were allowed to use the telephone at home on Saturdays. Many observant households you're not allowed to pick up the phone. Just like they have hotels in Miami where the elevators stop at every floor so you don't have to summon one. Anyway, he finally relented on that, my grandfather did. When I started, actually there were three hour classes scheduled for Saturday. The competition was very intense at the law school.

Ms. Feigin: You went to Columbia?

Mr. Hollander: Yes.

Ms. Feigin: Tell me how you came to go to Columbia. Did you want to stay in New York, or what?

Mr. Hollander: Not particularly. But I applied to the big three. I applied to Harvard, Yale and Columbia. And Columbia reluctantly asked me to come in for an interview.

Ms. Feigin: Why do you say reluctantly?

Mr. Hollander: Because during the course of the interview, and I remember the interview was with what later turned out to be my professor in the equity course, Professor Jervey. He was all business. He starts out by saying, you know if you're going to go to law school, and you want to become a member of the bar, you have to remember that it's a very exclusive club (laughter). The New York State Bar is a very exclusive club. I was sure by the time the interview was over that he had turned me down. But as it was, I guess there

were others that he interviewed who were even less qualified for the club (Feigin laughs). But I was not certain at all that I was going to go there. But I applied to Harvard, Yale and Columbia. Columbia was the only one that invited me in.

Ms. Feigin: How large was your class?

Mr. Hollander: The class was 110 students.

Ms. Feigin: And how many were women?

Mr. Hollander: Two. One was Alison Bruere whose father was the president of a number of big banks in the city, including the Immigrant Savings Bank which had twenty offices, including two on 42nd Street. The Robert Moers law firm was not too far from that. And there was another girl in the class who was blind and I used to read some of the cases to her because none of those reports are in Braille.

Ms. Feigin: Maybe not even today. I don't know.

Mr. Hollander: Today they must have some other technological device that enables them to transfer an opinion.

Ms. Feigin: Were any of your classmates minorities?

Mr. Hollander: I think there was one black guy in the class. I don't remember. I would say, and I know this because the Jewish kids would actually go up to the Jewish Theological Seminary, which was six blocks away, for a cafeteria. There were about six or seven of us who would go up together.

Ms. Feigin: Were you kosher?

Mr. Hollander: At home I certainly was, but not when I went outside. But we went up there. We were all members of the so-called Jewish Graduate Society, which was a society for Jewish students at that time.

Ms. Feigin: So how many Jewish students were in your class?

Mr. Hollander: There were less than ten. The emphasis, according to Jervey, Professor Jervey, who interviewed me, was already on diversity. They wanted to get people from all over the country. They didn't want to be stuck with the Jewish kids from New York City. And that was really – You know I felt that as far back as when I was going to elementary school. P.S. 63, a couple of blocks from my house. There was one day when a couple of Italian kids stopped me and planted about twenty different balls of gum in my hair. I remember how it was Esther who was given the task at home, my cousin Esther who was living with us, who was somehow able to get the gumballs out of my hair. But that obviously was a reflection of their anti-Semitic inclination.

Ms. Feigin: The neighborhood where you grew up wasn't predominantly Jewish?

Mr. Hollander: No. Although across the street from us there was a synagogue, which apparently wasn't kosher enough, or observant enough, for my grandfather. So he regularly went about a block and a half away, and it was a synagogue that had been converted from a church. But that was more observant.

Ms. Feigin: And you said that the neighborhood next to you had the Jewish Mafia.

Mr. Hollander: That was in Brownsville.

Ms. Feigin: Did you ever get to meet any of the Jewish Mafia?

Mr. Hollander: No, although I've read up on several. Abe Relis was the chief honcho there. The Jewish leader of the Mafia..

Ms. Feigin: Getting back to law school, what was law school like at that time?

Mr. Hollander: Well I enjoyed it.

Ms. Feigin: In terms of actually going to law school, did you have to dress?

Mr. Hollander: Oh yes. Tie, shirt, jacket. Everybody did. First, there was a transportation problem. I lived at home and Columbia is a good one-hour ride from Brooklyn to 116th Street and Broadway. But I did put that time to good use. I actually was able to get an hour-and-a-half study time in a two-hour trip back and forth.

Ms. Feigin: Do you remember what the subway cost then?

Mr. Hollander: Sure. I mean they overcharged; it was five cents (both laugh). And what's more, for five cents, you could make as many changes as you wanted to if you weren't going to school. You could go all the way up to 242nd Street and Van Cortlandt Park on the train that I took which stopped at 116th and Broadway.

Ms. Feigin: Were classes all day?

Mr. Hollander: No. I was home by four o'clock or four-thirty in the afternoon.

Ms. Feigin: Do you remember any of the professors that particularly stand out?

Mr. Hollander: Yes. The ones that I liked and the ones that I hated. The guy that I hated was, I forget his first name, but his last name was Medina, M-e-d-i-n-a. I

think that's a Spanish word for market. And he later became a chief judge on the Court of Appeals for the Second Circuit. I did not like Medina because he would spend too much time, as I sometimes am guilty of, on his war stories. And he had a lot of fascinating war stories involving multi-million dollar cases. And he would digress. Of course he taught me civil procedure, which I thought was a pretty difficult course. And I didn't like to hear all his personal stories and not get down to the Civil Practice Act, which I found difficult to master. But, also, I think he resented me because I refused to take his bar preparatory course. He had a monopoly on the bar preparation courses. It was either Medina or there was Berkman and Sainer, which was a couple of younger lawyers who offered a bar preparation course at one-third Medina's asking price (Feigin laughs).

Ms. Feigin: Do you remember what it cost in those days?

Mr. Hollander: No, I really don't. But there was a big difference between the two. Anyway, I wound up not taking either course. I did get the Berkman and Sainer materials though.

Ms. Feigin: And what other professors were remarkable one way or another?

Mr. Hollander: Well Walter Gellhorn, who did a lot of work on administrative law. It was a delight to be in his class although I felt that he really should be teaching a course that had more meat to it than legislative interpretation. That was the course he taught. A course on legislation. How to interpret a statute. Another very, very good professor that I had was Herbert Wechsler who

taught criminal law. And it was a fascinating course because he'd spend half the term on the law of homicide. I don't know how he was able to spend that much time on it, but it was a course that I enjoyed attending. I don't remember even the names of the other law school teachers. Outstanding were Gellhorn and Wechsler.

I took some courses with Young Berryman Smith. He was the dean. He taught torts, as did his assistant dean, James Parsons Gifford, who was just too tight. I thought Smith was very good. Smith was really a learned professor. Oh, and another very good professor I had was Noel Dowling, D-o-w-l-i-n-g, who taught constitutional law. I took two courses in constitutional law. He was very good.

Ms. Feigin: And you told me earlier that you had been on law review. What was that experience like?

Mr. Hollander: Well, it was a lot of extra work. A lot of extra work. I felt that if I'm going to try to get a decent job that that was one of the things that I had to add to my CV, my resumé, so I stuck it out.

Ms. Feigin: And in those days, how did one become a member of law review?

Mr. Hollander: Well, you had to be in the top ten percent of your class and you had to have been elected by the existing board. And the existing board consisted of twenty or thirty people who were in the grade ahead of you.

Ms. Feigin: When you were in law school, what did you envision you were going to do with your legal career?

Mr. Hollander: I had no idea; I had no idea. I knew that it would be tough to find a job because I had been fortunate enough at the end of my first year of law school to get a summer job with an outfit called Moses & Singer. Moses & Singer owned two or three of the largest banks in the city or in the state. And I had tried to get into the not-Jewish law firms for a summer job. This was after I knew that I had already been elected to the law review.

At the end of the first year they select students for law review. They're called editors. I resented very much that I had applied to at least a dozen of the non-Jewish law firms. I couldn't even get an interview even though I had the law review credential. And my grades were not bad either. But Moses & Singer called me in for an interview.

Ms. Feigin: And in this day when so much is paid to summer associates, do you remember what summer associates got in those days?

Mr. Hollander: I sure do. Because I resented the fact that at the Jewish law firms, and there were about a half dozen good firms, some of them having as many as forty or fifty lawyers, as did Moses & Singer, the Jewish law firms paid \$20 a week. The non-Jewish law firms paid \$26 a week. It really wasn't the \$6 a week difference, although I was already dating Ruth at the time and I felt that we would probably get married as soon as I finished law school, but the same discrepancy existed so far as the so-called permanent jobs, not only summer work. The Jewish law firms paid \$2000 and the others paid \$2600.

When I was looking for a job I found Professor James Parsons

Gifford was the link between students who were looking for jobs and the school. He was of no help at all. But I finally wound up with an offer from a friend of Walter Gellhorn's, who at that time was general counsel to an agency you probably never heard of, although it is still in existence today: The United States Railroad Retirement Board. That was the one agency that had a Social Security system. Social Security came along a few years later, generally nationwide. But the railroad workers had their own Social Security retirement system, as they do today. And Gellhorn, I told Gellhorn that I had had no luck in getting a job with the non-Jewish firms, that the most I could get was a \$2000 job with either Moses & Singer or some of the other Jewish firms, and Moses & Singer had a very good reputation. So I said I was going to try my luck in Washington and he said he didn't think I'd have any problem. While I was in his office he called up Lester Schoene, S-c-h-o-e-n-e, who was general counsel at the Railroad Retirement Board. And apparently he had been a classmate of Gellhorn's. And I got a letter the next day from Schoene, saying that when I'm in Washington to drop by his office.

Ms. Feigin: Did you work for the Moses law firm the two summers of law school?

Mr. Hollander: Yes. The summer of '39 and the summer of '40, and I graduated in '41. By August 4th, before I had been admitted to the bar, Schoene offered me a job at his office.

Ms. Feigin: Did you take the New York bar? Which bar did you take?

Mr. Hollander: I took the New York bar. I have a big certificate downstairs. There are two certificates I have downstairs. I don't cherish them as much as I do the one that has your signature on it.

Ms. Feigin: Mine?

Mr. Hollander: Yes. When I finished my thirtieth year of service with the appellate staff, you may or may not remember, but there was a luncheon celebration and they probably forced you to sign (both laugh).

Ms. Feigin: I don't think I would have been forced.

Mr. Hollander: But you were there in the 70s I think. I think I remember not only that you signed but that girl who went out to Arizona, Susan Ehrlich. Did she wind up on the Arizona Supreme Court?

Ms. Feigin: I think that you may be right. I have completely lost contact.

Mr. Hollander: Your name is right there with hers.

Ms. Feigin: This is probably a good point to stop.

Mr. Hollander: I'm very sorry that I held you up.

Ms. Feigin: No, no, no, this is wonderful!

ORAL HISTORY OF MORTON HOLLANDER

Second Interview

August 9, 2007

This is the second interview of Morton Hollander as part of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Judith S. Feigin. The interview took place at Mr. Hollander's home in Northwest Washington on August 9, 2007.

Ms. Feigin: Mr. Hollander, when we left off last time, you had just been speaking with Professor Gellhorn, who was going to help you get a job with the Railroad Retirement Board. So I would like to pick up there.

Mr. Hollander: Okay. Actually, I think I may have misled you by saying that Gellhorn called Lester Schoene. What actually happened was Gellhorn, apparently after speaking with Schoene, got for me the names of his four assistant general counsels. I remember there was Joe Freehill and Joe Fanelli and Milt Kramer. And after speaking with them, they arranged for me to have an interview with Milt Kramer. It turns out that Milt Kramer lived a couple of blocks away from me in Brooklyn at one time (laughs) so I had a very good interview with him.

Ms. Feigin: When was this?

Mr. Hollander: It was in the spring of '41. I was trying to line up a job after I had no success at all getting into one of the large Gentile firms so I went down to Washington and saw Kramer. He apologized for my starting pay being \$1800 until I became a member of the bar which did not happen until October of '41.

Ms. Feigin: And then it went up to?

Mr. Hollander: \$2000

Ms. Feigin: Could you put that in context? Was that a good salary?

Mr. Hollander: The best firms in the district, the Cadwaladers and the other large firms, all were paying \$2600. That's why I started out with that. But I guess I considered it a good salary. Actually, it was enough for both of us. Ruth hadn't taken a paying job. She was actually working for the Greeting section of the White House, as a volunteer. If somebody turned seventy, or eighty or a hundred, she would send out a card with the president's signature and the president's wife's signature.

Ms. Feigin: Was it really their signatures?

Mr. Hollander: I think so.

Ms. Feigin: They actually signed them in those days?

Mr. Hollander: They used a machine for it, I'm sure.

Ms. Feigin: Since you came down with Ruth, were you married at that point?

Mr. Hollander: I got married in November of '41. The first time I came to Washington, I came alone, of course, to take the interview with Kramer.

Ms. Feigin: And then when did you start working?

Mr. Hollander: I started to work in August of that year. I graduated in May or June, I don't remember. And then I started working that summer.

Ms. Feigin: So you took the bar exam in the interim?

Mr. Hollander: I took the bar exam actually before I left Brooklyn. The New York State bar

exam.

Ms. Feigin: When you moved to Washington, where did you move to?

Mr. Hollander: Ruth was up in Brooklyn until November of '41. She got a job with a bank. When I came down alone, I roomed with Melvin Richter. He actually was working at the Railroad Retirement Board too. He was an attorney and he later came over to the Justice Department and he said I've got to move over there. He would speak to Paul Sweeney. And that's what happened although I had to wait about a year because I was at the Interior Department.

Ms. Feigin: Let's start with the first job at the Railroad Retirement Board. What did you do there?

Mr. Hollander: Actually, I wrote district court briefs. They were involved in a lot of litigation. It was the first Social Security program in the nation and there were all sorts of constitutional questions.

Ms. Feigin: Like what?

Mr. Hollander: I don't remember.

Ms. Feigin: And did you argue the cases?

Mr. Hollander: No. Actually, I was admitted to the bar in New York in October of that year. I never argued the cases. I would brief them either for Kramer or Fanelli or Joe Freehill. It was a big deal at that time to argue a case even at the federal district court.

Ms. Feigin: And these were all cases in the D.C. district court, or around the country?

Mr. Hollander: There were a couple of cases that were not in D.C. But most of the litigation

that the office's attorneys handled were cases that were filed in the United States District Court for the District of Columbia.

Ms. Feigin: And do you remember some of the issues?

Mr. Hollander: No. I was with them for about a year. You know the Railroad Retirement Board, the Social Security organization, had nothing really to do with the war effort so they packed up the Railroad Retirement Board and shipped them off to Chicago. And they're still there.

D.C. needed war space for outfits like the War Production Board. They obviously were taking millions into the military service. When they moved to Chicago, I took an agency job, a wartime-created agency, which was the Office of Price Administration.

Ms. Feigin: And who was the head of that?

Mr. Hollander: Porter, Paul Porter. My immediate boss was a very good Wisconsin lawyer named Carl Auerbach. My assignment there was to prepare maximum price regulations freezing products like a lead bullet rod. The bullet rod was manufactured and cut into bullet size. The rod itself is. And the prices of that lead bullet when the hundreds of thousands or millions of soldiers were being inducted, the price shot up about 300 percent. So my job was to roll back the prices to March of '41. I was there in '42. I had to roll back the prices by regulation, roll back the prices to March of '41, and freeze them as of the March '41 price level.

Ms. Feigin: So did you draft the regulations?

Mr. Hollander: Yes. There were so many regulations being drafted. It was just filling in the names of the products that were involved. And make sure that you're not too far off in setting the price, which at that point became the only price that the product could be sold for. In other words, it was the maximum selling price, the price that was fixed in the regulation.

Ms. Feigin: Is Paul Porter the one who went on to Arnold and Porter?

Mr. Hollander: Yes. The two largest agencies were OPA, which controlled the maximum permissible selling price, not only for war materials, but even for sugar and gasoline.

Ms. Feigin: How large was this agency?

Mr. Hollander: I'm sure we had hundreds of lawyers there. That's why I wasn't concerned when the RRB moved to Chicago. But the other giant agency that was created was the War Production Board, WPB. They did whatever was humanly possible to expand production facilities that would be used in the war effort.

Ms. Feigin: So this all started in '42 and by this time you were married.

Mr. Hollander: Yes. I was married in November of '41.

Ms. Feigin: And where did you get married?

Mr. Hollander: The wedding took place in a rabbi's study in Brooklyn.

Ms. Feigin: And when Ruth moved down here, where did you live then?

Mr. Hollander: Well, first I had a lot of trouble getting an apartment. It wasn't a question of discrimination, although I think that may have entered into it in part. Certainly that was true when I got back out of the service. But there were so

many people flooding Washington looking for apartments that it was very difficult to get an apartment. And I got one actually, I think, through a guy by the name of Samuel Magazine who, among other activities, was president of the congregation that's known as Ohr Kodesh today, and that's on the East-West Highway and Meadowbrook Drive in Chevy Chase. At that time it was called The Montgomery County Jewish Center.

Initially, he found a place in Southeast. Barnaby Terrace. With the baby we needed a two-bedroom apartment, so that worked out satisfactorily. Of course I had to take a bus. It was about a forty-minute bus ride because I remember having to change at Georgia and New Hampshire.

Ms. Feigin: Can you tell me what D.C. was like at the time?

Mr. Hollander: D.C. was segregated, not probably as badly as Jackson, Mississippi. But the buses themselves – First there was no Metro of course. And the buses themselves allocated the last two rows for black people. And there were some hassles because sometimes a black person would try to board the bus when the two rows that had been reserved for them were already fully occupied. So the bus driver usually told them to stand.

Ms. Feigin: Even if there were empty seats.

Mr. Hollander: Yes. They had to stand towards the back of the bus. That was true in Washington, not only insofar as buses were concerned, but the precursor to CVS, the drug store chain, was People's drugstores. They would serve blacks but they were not allowed to sit down at a table in the drugstore. They

generally had about four or five small tables. So if you stopped there for breakfast or lunch you could pick up your stuff at the counter and then sit down. The black people had to take whatever food they brought out with them. And I think that persisted until Lyndon Johnson's time, in the 60s.

A related story, so far as discrimination is concerned – When Bobby Kennedy was attorney general, I was in his office with about seven or eight other people. Actually, I think we were discussing a case in which a district judge in Mississippi had ordered FBI agents to testify in a certain matter involving voting rights by blacks. This must have been during Johnson's administration. And during the course of our meeting, this was, as I say, when Bobby Kennedy was attorney general, he says, "Dammit," and he picks up a phone that's directly wired to Edgar Hoover's office because Hoover was calling him. And he listens to Hoover for about five minutes.

Ms. Feigin: Hoover the head of the FBI?

Mr. Hollander: Yes. And he tells us what the substance of the phone call was. And as Kennedy described it, the substance of the phone call is that they're rioting in the state capital in Jackson, Mississippi, which also houses the Supreme Court of Mississippi. They were rioting because blacks were not allowed to be in white latrines in the building. They had segregated the white and black bathrooms. I thought it was – The way Bobby Kennedy put it, I lost a lot of respect for him. Because this was a cavalier statement by him and not really appreciating what was at that time going on in Washington and Lyndon

Johnson's efforts to curb that.

The case that we were discussing was *Hauberg*. The United States Attorney had been told by this federal judge in Mississippi that he was going to be held in contempt because of his refusal to give the judge his full cooperation in this voting rights case that the blacks had filed, claiming that they were being discriminated against and turned away from the polls, that the questions that were asked of them went far beyond the literacy questions that they were allowed to ask.

Ms. Feigin: And what was the outcome of that discussion?

Mr. Hollander: I think what happened was that after – and there were people there from the Civil Rights Division and from the Criminal Division – nothing was decided by Kennedy. But we went back to our offices and by telephone we decided to have my section file an application for a writ of mandamus against the district judge.

Ms. Feigin: The Civil Division Appellate section?

Mr. Hollander: Yes. To prevent him from holding Hauberg in contempt. And we did. We got the writ of mandamus from the Court of Appeals for the Fifth Circuit and the judge got himself, I think it was an Atlanta – maybe it was a Jackson, Mississippi law firm – but I don't know why I feel they went to Atlanta to see if they could get someone to petition for *certiorari* in order to overturn the Fifth Circuit Court of Appeals decision awarding us the writ of mandamus we sought against the district judge filing contempt charges. So the petition was

filed; we filed an opposition and the Supreme Court denied *cert.*

The guy I credited most with good work in that case was Dave Rose. He later started to specialize in discrimination cases. Among his clients, and not a bad client to have, were a host of professional football players, so he didn't have to worry who was going to pay the lawyer fees.

Ms. Feigin: Let's go back to the war years. You came down to a segregated Washington. How urbanized was Washington then?

Mr. Hollander: I don't remember when we got to an apartment on Wayne Avenue in Silver Spring. It may have been even before we got to that apartment that Magazine had suggested in Southeast Washington. But not all the streets in Silver Spring were paved. Including Wayne Avenue. And there were actually cows parading down the street. But it was livable. The buses were running okay.

Ms. Feigin: So you started working for the OPA –

Mr. Hollander: I was with them only about six months. I was told that it's probably going to take about a year before I get into Sweeney's section at Justice. Mel Richter was keeping me advised of the progress. So I signed up with the Interior Department and was assigned, for the most part, to the Bureau of Land Management.

Ms. Feigin: Why did you leave OPA before you got into Justice?

Mr. Hollander: I felt that I'd gotten everything I wanted out of OPA in a sense. I was eager to stay in Washington after the Board moved to Chicago. And I wasn't really sure how long Sweeney would keep me waiting before he offered me a

definite job in appellate at the Civil Division, or the Claims Division, as it was known at that time. I just thought it would be a safer place to be at. And I was working on cases I found a lot more interesting than writing regulations on lead bullet rods, which just meant changing the name of the product and picking up some regulation that was close to it.

What I did at the Interior Department, particularly in the Bureau of Land Management, was analyze cases that the Interior Department was going to bring in court, and try to outline some of the arguments that we were suggesting to the Justice Department that should be used in order to accomplish the work we had to do in those cases. This was months before the cases were filed.

Ms. Feigin: So the litigation was done by the Justice Department?

Mr. Hollander: Oh yes. Interior had no role in litigation at all.

Ms. Feigin: Did you work on any cases that you recall now?

Mr. Hollander: I had some contact with the *Tidelands* controversy, the claim being that the states, rather than the federal government, owned the rights to the ocean waters. I forget whether it's up to six or seven miles from the shore. States of course hotly contested the federal government's claim, but that was one area that I was working on. Ultimately, the Supreme Court decided that they're federal lands and that the federal government not only owned them, but had the right to lease them to private parties.

Ms. Feigin: How long were you with Interior?

Mr. Hollander: About a year. I must have that backwards because this was after the War already. Immediately after OPA, I entered the service. I was in the service from November '42 to April '46.

Ms. Feigin: And where were you stationed?

Mr. Hollander: I was stationed at probably about ten different posts in the States. The one post that I spent the most time at, because I was there for two summers, was Cornell.

Ms. Feigin: Tell me what you did at Cornell.

Mr. Hollander: That was not a soldier's life. It was better than the average student's life. We still had to get up at seven o'clock in the morning and do our calisthenics exercises. But then a bus would take us over to Willard Straight Hall, that's S-t-r-a-i-g-h-t, which was our mess hall, a beautiful building where we had our meals. I think I may have told you that what I remember most about that cuisine was Sundays. They would prepare Baked Alaska, which they would serve.

Ms. Feigin: What were you studying at Cornell?

Mr. Hollander: I was studying Russian. It was a very intensive course because they wanted us to know not only the language, but they taught us the Russian Army marching songs. We had courses in Russian geography, in English, and in Russian political history. It was intensive not only as far as the language was concerned. Classes would end after five o'clock in the afternoon.

Ms. Feigin: What were you expected to do with the Russian?

Mr. Hollander:: Their plan, one that obviously did not materialize, was to prepare us to work alongside Russian soldiers who were already stationed in Teheran and in charge of administering the United States Government's Lend-Lease program. So the soldiers already there would be working on whatever the Lend-Lease program covered, whether it was a B-17 bomber or something a lot smaller. And supposedly the proficiency we were expected to acquire in the language would enable us to work alongside the Russian soldiers. But that never materialized. The code name for the project was FAH but I never was able to find out what that meant or stood for.

Ms. Feigin: Classified?

Mr. Hollander: Probably.

Ms. Feigin: You said last week that you had been at Camp Ritchie. Can you tell me a little bit about that?

Mr. Hollander: I was at Ritchie actually in '45 to '46, the last year of my military service.

Ms. Feigin:: And what did you do there?

Mr. Hollander: We took courses in the makeup of the Japanese Army. It was not only a Russian school. The camp itself was an intelligence school and we learned a lot about Russian capabilities. We already knew what songs they sang. But we also studied the makeup of the Japanese Army, I guess to fill in the time, because nobody had ever suggested that we'd have anything to do with that.

Ms. Feigin: Did you learn the Japanese language?

Mr. Hollander: No. I'm glad I didn't have to, because my sister Marilyn tried to. She took

some courses at Sarah Lawrence in Japanese. She said they have so many different languages, the Japanese themselves, and dialects, that even though she generally sticks to it, she gave that up. (**Indistinguishable**) her daughter studied Japanese; it's a challenge.

Ms. Feigin: So you were in the intelligence service?

Mr. Hollander: Well, actually that's what my discharge certificate shows but I didn't know it until then. Every few months they would send us to a different post. Some of the posts would just not bother with us. Some of the posts we had to undertake advanced infantry replacement training. One of the posts that I wound up at was Lowry Field, an Air Force installation in Denver, Colorado. And they were teaching us to become B-17, that's the name of one of the main bombers, B-17 or B-24 is another, how to work as bombardiers on the B-17.

Ms. Feigin: And did you ever serve in that capacity?

Mr. Hollander: (laughs) No. The whole thing was so silly. I was kicking myself. I really shouldn't complain I suppose because Ruth was with me all the time. She was able to – up at Cornell in particular – we were able to rent a place for eight or nine months at a time. And I would spend nights there even though I was supposed to stay in the quarters provided by the service (Feigin laughs) which was, I think, in Chi Psi fraternity.

Ms. Feigin: You snuck out?

Mr. Hollander: Yes (Feigin laughs). But nobody checked what time I came back.

I'm familiar with most of the gorges around there. Cascadilla Gorge.

Ruth and I both learned to ice skate at Lake Beebe, which is a huge – it's not as large as Cayuga – but it's a huge lake. It was, as far as I can remember the winters, always frozen over, so it was very good skating.

Oh, I think you should know this. The reason I was selected, as one of this group of thirty who would study Russian, was because in forms that I filled out at the time I entered the military service, I said that I speak French fluently.

Ms. Feigin: And did you?

Mr. Hollander: At that time I had four years of college French and I could hold my own. My former son-in-law Reid Feldman – I used to marvel at his ability to speak French, as he does every day, because ever since Nancy died, he's been working in Paris as a French avocat, they call them. He knew by the time he was finished with high school, he loved that language so, that he was very, very fluent.

Ms. Feigin: So the fact that you could speak French led them to think you would be able to speak Russian?

Mr. Hollander: I don't know. I can't see the transfer there at all.

Ms. Feigin: And the people in your group –

Mr. Hollander: Nobody in the group came from a Russian-speaking home. There were thirty of us. I don't remember my co-soldiers too well, but I do remember one guy who had his wife up there too. His name is David Starr, S-t-a-r-r. His father owns a chain of newspapers, and he himself I know is connected with that

chain. I forget the name of the chain.

Ms. Feigin: Did this group of thirty go together –

Mr. Hollander: Yes. From post to post.

Ms. Feigin: But nobody ever saw action, none of the thirty?

Mr. Hollander: No. We mustered out and nobody had any war stories to tell. But they were very slow in releasing us. Very slow. Because V-J Day was the first week in August of '45, and I was not discharged from the service until April of '46. And I was upset about that, because I had a wife. I felt that I could be doing a hell of a lot more.

Ms. Feigin: Do you remember where you were when you learned that President Roosevelt had died?

Mr. Hollander: No, I don't remember.

Ms. Feigin: Or when the bombs dropped, do you remember the reaction then?

Mr. Hollander: Oh yes. That's what we all were waiting for.

Ms. Feigin: So what did you do while you were still in the military but after the War was over?

Mr. Hollander: In April of '46, I must have started looking for a job. I had a wife and a year-old baby. That's when, of course, I put in a year with the Interior Department.

Ms. Feigin: So when you were released in April of '46 is when you came to the Interior Department?

Mr. Hollander: A couple of months after that I guess.

Ms. Feigin: And is that when Ruth was working at the White House?

Mr. Hollander: She was working then at the White House and then she went back when the kids were a bit older. She continued to work in the same Greetings section.

Ms. Feigin: Can you tell me anything about life at the White House before we get on with your legal career?

Mr. Hollander: Well, I was invited once over to the White House. In fact I think I have a picture of Ruth in the Oval Office,

Ms. Feigin: With the president?

Mr. Hollander: No, herself. But I probably was confusing you as well as myself before, because my stint with the Interior Department did not antedate my military service; it was subsequent to it. And the OPA, that did antedate military service because I was with OPA until November of '42. And in November of '42, I entered the service. I had been writing to people at the Interior Department while I was still in the service.

Ms. Feigin: And how long did you stay at the Interior Department?

Mr. Hollander: I think it was less than a year before Sweeney came through.

Ms. Feigin: Can you explain how you got in touch with Sweeney and how you got to be on his radar screen?

Mr. Hollander: There wasn't much that I had to do. This guy Melvin Richter was very helpful. He was very eager for me to come over there. He thought I would like the work and I certainly did. And he paved the way. He would keep on pestering Sweeney's office.

Ms. Feigin: And what office was that?

Mr. Hollander: At that time, it was called the Supreme Court section of the Claims Division because its principal purpose at that time was to write briefs and briefs in opposition to the grant of *certiorari* in cases filed by the government's opponents in the Supreme Court. Sweeney at first was opposed to the notion of his people handling arguments even in courts of appeals. He felt that they should concentrate on being an adjunct to the Solicitor General's Office, and he wanted to limit the staff's work to writing briefs, not arguing cases in the Supreme Court. Preparing briefs for the solicitor general's staff to argue in the Supreme Court.

Another function of the solicitor general, vis-à-vis the Supreme Court section of the Claims Division, was that every time we took an appeal, or that the division itself wanted to take an appeal from an adverse trial court decision to a federal court of appeals, we had to get permission from the solicitor general. And that of course was doubly true when we wanted to seek *certiorari* after the court of appeals had done us in.

Ms. Feigin: How large was this section?

Mr. Hollander: No more than six or seven people.

Ms. Feigin: And was it in proximity to the Solicitor General's Office?

Mr. Hollander: No, it was still down on the third floor in the main Justice Building, which is where it still is, I think. It was a very small section. Richter was one of the mainstays. There was a guy named Morton Liftin, L-i-f-t-i-n, who actually was probably even of more assistance to me than Richter himself. Richter was

too tied up generally on his cases. And Oscar Davis, who later moved up to the Solicitor General's Office, was in the original Supreme Court section.

Ms. Feigin: Was it a new section at the time you joined it?

Mr. Hollander: No. When Kreeger ran it, and Sweeney ran it, it was small. Five, maybe six attorneys. It underwent a tremendous expansion when Burger came in as assistant attorney general.

Ms. Feigin: Let's go back for a minute. Who was Kreeger and when did he run it?

Mr. Hollander: Kreeger ran it before Sweeney did. I don't know just what period of time Kreeger was there. But most of his life was spent as general counsel and probably senior vice president at GEICO.

Ms. Feigin: That followed his time at the Justice Department?

Mr. Hollander: Yes.

Ms. Feigin: Is that the same Kreeger who endowed the Art Museum in Maryland?

Mr. Hollander: Yes. That's his home. David Lloyd Kreeger. He spelled his last name, if he's no longer around, K-r-e-e-g-e-r.

Ms. Feigin: But he was not there when you came?

Mr. Hollander: He left before I got there in '48. Very nice guy. I met him only once. I think I mentioned to you that he came down to speak to one of our alumni meetings.

Ms. Feigin: Is he also the Kreeger of the theater, the Arena Stage Kreeger Theater?

Mr. Hollander: Yes.

Ms. Feigin: So did you get to argue cases?

Mr. Hollander: I got there in '48 and I was arguing Supreme Court cases by '52.

I think when Burger got in, he didn't want any of this Claims Division characterization of the division he was heading up. When he came in, the division he was assigned to as assistant attorney general was called the Claims Division.

Ms. Feigin: This is Warren Burger?

Mr. Hollander: Yes. He said we had to change that to Civil. He didn't like that idea. He was, incidentally, a very nice guy.

Ms. Feigin: So there was a Criminal Division and a Claims Division, but there was no Civil Division?

Mr. Hollander: There was a Criminal Division, which had its own appellate staff. Does the name Bea Rosenberg mean anything to you?

Ms. Feigin: Yes it does, but tell us who she was.

Mr. Hollander: She and a guy by the name of Bob Erdahl, E-r-d-a-h-l, headed up what was in effect the Supreme Court section of the Criminal Division, which also acted as an adjunct to the Solicitor General's Office, like our Supreme Court section did in the Claims Division. Bea was a very powerful attorney. She was very good.

Ms. Feigin: So within four years of your getting there you were arguing cases in the Supreme Court?

Mr. Hollander: That's right. I don't have the dates here. The first case I argued was at 338 U.S. so that was probably 1950.

Ms. Feigin: What can you tell me about some of your arguments? What would you

consider your most significant?

Mr. Hollander: Actually, the case that I was excited about happened to be a workmen's compensation case. There is a federal statute on the books, known as the Longshoremen's and Harbor Workers' Compensation Act. And, as its name implies, longshoremen and harbor workers are the principal beneficiaries of that compensation system. But in *O'Leary v. Brown-Pacific Maxon*, which is in 340 U.S., it started out with this peculiar set of facts. You know basically, workmen's compensation cases provide for compensation awards for people who've been injured or killed in connection with some activity arising out of, or in the course of, their employment. Every state has a workmen's compensation statute and they all carry that language. The federal government has at least three compensation schemes. Longshoremen's, and then the Civil Service Employees Compensation Act. The injury has to be tied down to some connection with employment in order for it to qualify for benefits under the Longshoremen's Act or any other compensation act.

O'Leary is the name of the deputy commissioner for the Department of Labor which administers the Longshoremen's and Harbor Workers' Compensation Act, and he awarded compensation benefits in a situation which at that time, fifty or sixty years ago, was considered to be an extraordinary award. The decedent was a worker at Brown-Pacific Maxon, which had a contract to rebuild the Guam naval base. The employees of Brown-Pacific Maxon were considered eligible for Longshoremen's and

Harbor Workers' Compensation Act. I don't remember the details, but there was a sufficient tie-in between their work on the Guam base to make them eligible for compensation benefits.

On a beautiful Sunday, when there was no work at all being done for Brown-Pacific Maxon, one of the employees, the decedent, went down to the ocean, there probably being no other recreational activity in which he could participate on the base itself or in the Brown-Pacific Maxon quarters. He went down to the ocean and one of his associate workers was already swimming. But he was having trouble fighting the tides, the guy who was already in the water, so the decedent stripped himself of whatever clothing he had and went out to rescue him. And he died in that attempt. The other guy got back to shore. The guy he went out to rescue got back to shore.

O'Leary had to make a decision. Was the guy's death, had it arisen out of or in the course of employment? O'Leary argued that there really was no other place for them to take on any work or recreational activities. It was isolated and they were pretty much limited to swimming or bathing in the ocean. So he awarded death compensation benefits to the survivors on the theory that the activity that the guy was engaged in, even though it was recreational, had arisen out of or in the course of employment.

There was some precedent for that because there were many cases on the books, before the Supreme Court ruled, where an employee is playing in a baseball game sponsored by his employer and is seriously injured. Almost

invariably, the courts say, well he was where he was because of his employment. And they don't have too much trouble connecting that up with an act arising out of or in the course of employment. So based on those cases, and taking a very liberal approach, O'Leary awarded benefits to the survivors of the family of the employee who died while he was trying to rescue his co-worker.

O'Leary's decision was appealed by Brown-Pacific Maxon or the insurance company for Brown-Pacific Maxon. It was appealed to the local district court in Guam and the district court affirmed O'Leary's award. But then the insurer for Brown-Pacific Maxon decided to take the case up to the Ninth Circuit Court of Appeals. And there they won, the court of appeals holding in effect, that's stretching it too far. This guy, acting like a Good Samaritan, decided to go in after his co-worker, but there's no tangible connection between that Samaritan act, or act of heroism, and any incident connected with, or arising out of or in course of his employment for Brown-Pacific Maxon.

Sweeney asked me if I would like to brief the case for the Supreme Court because we had sought, and got permission from the solicitor general to petition for *certiorari* from the Ninth Circuit's decision adverse to *O'Leary*. I did that, and I got sufficiently interested in it, so I told Sweeney if there are no other calls for arguing this case in the Supreme Court, I'd like to argue it too. It was fine with him, and at that time, as I pointed out before, and as you'll see

from this list here (holding list of colleagues), there were probably more cases being handled by our division lawyers than there were by the solicitor general's staff in the Supreme Court.

Ms. Feigin: Why is that?

Mr. Hollander: They were short-handed. You can see all these blank spaces here. These represent not only people in the Supreme Court section, or the Appellate section, but people elsewhere in the division.

Ms. Feigin: This is a list of cases and who argued them.

Mr. Hollander: Yes. Richter was of course in my section. McGinnis was not; he led up the General Litigation section. Colby was an Admiralty lawyer, working in the Admiralty section. Jayson was in my office, Leslie Jayson. We called Leslie the King of Torts because he wrote a several-volume work on Torts, not only the Federal Tort Claims Act. And also Doub, who was the head of our division. He was Eisenhower's assistant AG. And Slade was a long-time member of the Supreme Court section. Samuel Slade.

Ms. Feigin: So just by asking you got the argument?

Mr. Hollander: Yes. Two days afterward I got that blue slip. You know that blue memo slip that they use at the Justice Department. Signed by Philip Pearlman, who was solicitor general, saying that you are assigned the oral argument. I was thrilled.

Ms. Feigin: Was this your first?

Mr. Hollander: I'm not sure. Because *Wisner* I argued but I really didn't like that argument.

Ms. Feigin: What was preparation like for an oral argument?

Mr. Hollander: We had to have two moot courts with the rest of the group, five or six lawyers. We had at least two, sometimes three, moot courts. And they did cover every aspect of the case. And we also followed that, not with two, but all court of appeals cases we moot-courted once.

Ms. Feigin: Were you in a mourning coat when you argued?

Mr. Hollander: For the first few cases, yes. I resented that because I had to rent it (both laugh), although as I remember, back in the early 50s, you could rent formal mourning wear for four-and-a-half or five-and-a-half dollars. They also supplied the shirt and the tie.

Ms. Feigin: And do you remember who you argued in front of? Was there anything dramatic about the argument itself?

Mr. Hollander: I don't remember anything about the argument itself, other than the fact that Frankfurter wrote the opinion in our favor. I don't remember who else was on the bench, but Warren I'm sure was there. I felt I would get his vote, but I don't really remember it. Anyway, it was nice to win because I felt, and this is true of all cases that I've handled, or at least argued, I felt that it was an important question. You might not think so. A guy goes in, exposes himself to suicide, in effect, this other guy was having so much trouble, and winds up with his family being awarded compensation for benefits until the survivors die. But I thought there was an important issue, and that's the way I tried to present it, of administrative law. Here the deputy commissioner, who

supposedly is the brilliant guy so far as figuring out what is or is not an act arising out of or in the course of employment. He had come down very heavily in favor of it meeting that test. And then the district court had no problem in affirming the administrative award by Commissioner O'Leary. And then the court of appeals takes it upon itself – And the basic question in most of these administrative law cases was: was there substantial evidence? Was there substantial evidence to support the deputy commissioner's conclusion that this drowning, this death, had arisen out of, or in the course of, his employment for Brown-Pacific?

Now one thing the courts have been very careful with, is most of them recognize that that decision as to whether or not there's substantial evidence sufficient to support the administrative determination or conclusion, the right to make that determination is reserved to the administrator, the deputy commissioner. And the cases had already made clear at that time that if there is a challenge to the administrative determination, on the grounds of lack of substantial evidence, the cases made clear that the higher courts are not allowed to second-guess the commissioner and decide for themselves whether there was sufficient or substantial evidence to justify the administrative determination. Put another way, the cases seem to agree that, number one, that kind of determination, substantiality of evidence sufficient to support the administrative determination, that's a test assigned by Congress in these federal compensation acts to the administrative agency, in this case

Commissioner O'Leary. And the cases also are clear that the courts, in looking into that question, are not allowed to reweigh the evidence which O'Leary felt established that the act had arisen out of or in the course of employment. They're not allowed to reweigh the evidence in order to come to a conclusion that there was no substantial evidence, the commissioner having found to the contrary. Not only is the reweighing of evidence prohibited, but the court is also prohibited to determine the credibility of the witnesses who testified before the deputy commissioner. If the deputy commissioner was satisfied that these guys' testimony was credible, it's not open to the courts to come to a different conclusion.

Actually, *O'Leary v. Brown-Pacific* was decided the same morning that a case involving similar questions, as to the integrity of administrative determinations, was handed down. Another government case. It was argued by Robert Stern. The name of that case, which was decided along with *O'Leary*, was *Universal Camera Corp. v. NLRB*. But I was obviously very pleased with the result.

Ms. Feigin: This is probably a good place to stop. With a significant case that had a huge impact.

Mr. Hollander: It did; it did. At least on me (both laugh). I was delighted!

Ms. Feigin: Well beyond you.

Mr. Hollander: It has been cited very, very frequently of course. But you would expect that of any case that's been on the books for fifty or sixty years! Particularly if it's a

Supreme Court Frankfurter opinion.

Ms. Feigin: Thank you very much.

Mr. Hollander: Thank you for listening to me.

ORAL HISTORY OF MORTON HOLLANDER

Third Interview September 4, 2007

This is the third interview of Morton Hollander as part of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Judith S. Feigin. The interview took place at Mr. Hollander's home in Northwest Washington on September 4, 2007.

Ms. Feigin: Mr. Hollander, I know you wanted today, rather than continuing chronologically, which we will get back to in the next interview, to discuss some of the cases that you thought were significant and mattered a lot to you. So let's just reserve today for that and I think you would like to begin with *U.S. v. Western Pacific*, if I am correct.

Mr. Hollander: Yes, even though we ultimately lost after the Supreme Court directed that the basic issue in that case, namely the appropriate freight rate for transportation by a freight company of napalm gel which was used literally in thousands of napalm bombs during World War II be determined by the ICC. It seemed to me that after we lost the case in the Court of Claims – and the reason that I had handled the case in the Court of Claims was because there was so much reluctance on the part of the Court of Claims section to undertake that fight, which they were certain would result in a loss of the case.

Ms. Feigin: You were still in Mr. Sweeney's section at that point?

Mr. Hollander: Yes, but nobody in the Court of Claims section wanted to handle the case. They were sure it was a 100 percent loser and they turned out to be right. But I figured that I could somehow inject into the case, knowing that I was

going to lose the case too, some issue which might possibly have interested the Supreme Court in taking on for decision a railroad freight rate case. That doesn't sound very appealing even though it involved a lot of money because there were so many hundreds of thousands of pounds of gelatinized gasoline. That's what napalm really is. They liquify the gasoline, put them in fifty-gallon tanks, and then transport them in their semi-frozen form.

After losing the case in the Court of Claims, I prepared a petition for *cert.* The railroads were charging the government freight rate based on the freight rate that applied to shipments of liquid gasoline, and liquid gasoline is very volatile. The liquid very frequently breaks down. Its volatility causes it to break down so that if someone snaps a match within fifty or sixty feet of a tank that carries liquid volatile gasoline, you would have an immediate explosion.

The government used the semi-frozen and gelatinized gasoline in the napalm bombs itself. When they released them through the bomb hatch, the bomb was accompanied by a charge of white phosphorous, which is a chemical that on exposure to the air will immediately explode itself. Since the white phosphorous charge was carried along with the gelatinized gasoline, it would set the bomb on fire.

The railroad said that the only appropriate rate is the rate we charge for liquid gasoline, which was considerably higher than the rate they charged for an item that's far safer than liquid gasoline because the material

being transported had no volatility. In fact, that was the purpose for their being gelatinized. And everybody knew that the only way the napalm or the gelatinized gasoline could do its work was to have it accompanied by a small charge of white phosphorous, which ignites spontaneously on exposure to the air. And the white phosphorous would accompany the napalm bomb when it is released through the hatch in the airplane. The railroads had persisted in their insistence that the higher rate, the rate applicable to liquid gasoline, was the appropriate rate.

As it turned out, before the Court of Claims got the *Western Pacific* case, they had decided another case involving the identical question. It was called the *Union Pacific* case. The Court of Claims had held in that case that the higher rate applied, the rate that's prescribed by the freight rules for highly volatile liquid gasoline. That was the reason that the Court of Claims people felt that they'd be spinning their wheels if they tried to raise the identical issue.

No *certiorari* had been sought from the *Union Pacific* adverse decision. After I lost the same issue in the *Western Pacific* case, we did get authorization from the solicitor general to file a petition for *cert.* and then to brief the cases for petitioner after *cert.* had been granted.

The argument I made included the notion that if the Supreme Court agrees with the railroads, then the necessary alternative is that they send the case under the primary jurisdiction rule to the ICC for decision. The ICC,

ever since 1887, had been handling cases involving disputes between rail carriers and the people who use the rail lines for transportation of goods and commodities. The ICC had always retained jurisdiction to make those decisions themselves. And that was the part of the case that the *Western Pacific* decision agreed with the United States. So the case was remanded by the Supreme Court without decision, other than to direct that the ICC be given a crack at determining what the appropriate rate is, or was, for gelatinized napalm gel. I was very happy with that result.

Ms. Feigin: Was this the argument where one of the justices was haranguing your opponent?

Mr. Hollander: Yes, it was. I think it was actually Stanley Reed who was upset by the rail counsel's statement at the very beginning of his argument. He tried to, I think, drum up the Court's interest in what otherwise would have been a very dry case by telling the Court that you know, Your Honor, there are many cases involving the government, but in this case you've got to know that we're here before this bench only because the government has reneged on a stipulation it solemnly entered into in the court below. And he was really pummeled with questions, so that he had to devote twenty minutes to trying to explain his charge of the government reneging on a stipulation.

After the case got back to the ICC under the primary jurisdiction rule because the ICC was the expert, I felt very good that we had salvaged at least part of the case (laughs). So I told the people in the Court of

Claims section that if they wanted me to, I would be happy to handle the case before the ICC (laughs). Which was a big mistake on my part because I lost before the ICC and the ICC directed that the higher rate for volatile liquid gasoline be applied.

But the primary jurisdiction rule was intact before *Western Pacific*, as it is today. If there's a case which actually calls for the administrative expertise of a government agency, and that's the focal point of the litigation, you've got to give the administrative agency a chance to pass on it. Well we did, but we lost.

Ms. Feigin: It sounds as if the argument, unlike most, was a very personal one, since there was an attack on you, basically.

Mr. Hollander: He must have been attacking me, including everybody else who had anything to do with the case in the Court of Claims. I was working with other people who were regular Court of Claims staff at the time.

Ms. Feigin: So it's nice to have a justice come to your rescue.

Mr. Hollander: Oh, there's no question about that! And my opponent, Colonel Wiener, was really getting hot under the collar, because they would not let him proceed with his defense of the decision he had won in the Court of Claims.

Ms. Feigin: Did you know Justice Reed from his days in the Solicitor General's Office?

Mr. Hollander: I never had any personal contact with him. He actually, I think, was solicitor general before I entered the department. Obviously, I knew of him. I knew he was a staunch defender of the government because of his

prior exposure as solicitor general. But I did have occasion to meet with several of his successors.

Ms. Feigin: You served under a lot of solicitors general.

Mr. Hollander: Oh yes. I think I served under fifteen attorneys general, and all of the attorneys general had their own solicitor general.

Ms. Feigin: Which solicitor general stands out most in your mind?

Mr. Hollander: Sobeloff was the best. He had a lot of appellate experience before he came to the department. He had been chief judge of the Court of Appeals of Maryland, which is the highest appellate court in Maryland. In fact, he called me once to suggest that I should look at the qualifications of someone who had served as his law clerk while Sobeloff was chief judge of the Court of Appeals of the State of Maryland, with a view to determining whether or not he would be useful on the appellate staff. Apparently this lawyer, his name is Jack Eldridge, he was really a hotshot. He was very good. I used to assign to him really the most difficult cases that we had and he always did a beautiful job.

Ms. Feigin: When you say that Sobeloff stands out as premier in your mind, what is it in your experience working with them, that makes for a great solicitor general?

Mr. Hollander: So far as most legal issues were concerned, he was able to cut through really to the basics. I remember one of the first discussions I had with him, while he was already on the bench of the Fourth Circuit Court of Appeals.

They were hoping that they might be able to get him a seat on the Supreme Court but it never worked out that way. So he did settle for a seat on the Court of Appeals for the Fourth Circuit. I remember after an argument, he had opened up a discussion on another case earlier decided by the Court of Appeals for the Fourth Circuit that I had argued. It involved the absolute liability theory issue as to whether or not that liability theory is available to claimants under the Federal Tort Claims Act, the same issue that later surfaced in the *Dalehite* litigation. And I told him that Judge Parker, who I think in the '20s ran for either president or vice-president of the United States, had written the opinion for the court in this prelude case, in which they threw out a claim by the parents of a child who had been killed when an Air Force plane hit the play area of the school. I do remember very distinctly that when I told him that Judge Parker had written the opinion holding that there was no liability on the part of the United States government under the Tort Claims Act because of the nonapplicability of the absolute liability theory as a basis for recovery of damages, Sobeloff's remark was that no judge worth his salt would have reached that conclusion (both laugh). He was very, very blunt in his appraisal of some of his colleagues.

Ms. Feigin: Where were you having this discussion with him?

Mr. Hollander: At the court. He had asked me to stop by his office. You know in the Fourth Circuit they have that custom where the judges come down from the

bench at the end of the argument. In that connection, on another occasion when I was arguing before the Fourth Circuit, Haynsworth was on the bench. Haynsworth was one of the nominees who had been rejected by the Senate for a Supreme Court position. Haynsworth came down from the bench. He started to talk to me about the beer parties we went to (both laugh). And he was talking about the wrong Hollander (Feigin laughs).

Ms. Feigin: Did you tell him that?

Mr. Hollander: No, I certainly did not; the case had not yet been decided! I knew that I was not the Hollander that he was involved with because the beer parties had taken place up in Boston. And there happens to be another guy whose name is Morton Hollander who's been a long-time – I don't know if he is still living – lawyer in Baltimore. He has the same name. Unlike myself, he does have a middle initial, because I was eager to trace it down (laughs). Like myself, he also had applied, at the same time that I did, for a Justice Department job. So many of the papers that are his were in my file. And also many of my papers were in his file.

Anyway, I felt that it would be a better idea for me not to straighten Haynsworth out (Feigin laughs). But I enjoyed those meetings with the judges. Sometimes they would last five minutes, but sometimes they would last half an hour. They would invite the attorney to discuss some of the cases.

Ms. Feigin: You mean to come back to chambers after the argument?

Mr. Hollander: Yes. Haynsworth later was nominated by Nixon and Carswell was nominated at the same time. Carswell I think was a district judge in the Carolinas, I forget which one. Haynsworth was a long-time Court of Appeals for the Fourth Circuit judge. What his opponents were stressing was the fact that he sat on a case involving Brunswick-Balke-Collender, C-o-l-l-e-n-d-e-r. They're the largest billiards pool table manufacturing company. His wife had a substantial share of stock in that company and he did not recuse himself.

As for Carswell, does the name Norman Knopf, K-n-o-p-f, strike any familiar chord? He was in the office for about six years. When Norman heard that the name of Carswell had been sent to the Senate Judiciary Committee, to decide whether he should get the Supreme Court nomination, Norman was very, very upset. He had been a student at Columbia Law during the big splurge in Voting Rights legislation. Norman came in with the story that papers had been prepared by Columbia law students who had tried to handle the litigation in Carswell's court. They stuck by the rules of the district court. But when they came down to South Carolina to file the papers, they were told by the clerk that the rules had changed so that the clerk would not accept any of the briefs or other memos that Knopf and his associates, the other students, wanted to file in court. And they were getting a rough time, the law students at Columbia, including Norman. So he wanted to testify against Carswell's nomination.

It turned out though that Joe Tydings, a former United States Attorney from Baltimore, pretty much felt the same way about Carswell and Carswell's court and Carswell changing his own court's rules so as to try to justify not accepting government briefs and memos of law on the ground that the rules had changed by the time they got down to Carolina. I don't know if Tydings was head of the Judiciary Committee, but he must have been on it. He issued a subpoena when he found out what Norman's story was. He issued a subpoena to Norman to come and testify.

An attorney in the Justice Department needs the permission of either the attorney general or an associate attorney general to testify in Congress, particularly when they're testifying against a nomination that the president has sent forth to the Congress. I do remember of course that his name was never referred out of Committee.

Ms. Feigin: So there was no need to testify?

Mr. Hollander: Norman did testify.

Ms. Feigin: He got approval to testify?

Mr. Hollander: No. This was where Rehnquist entered into the situation. Rehnquist was actually the hatchet man for the administration on nominations to the United States Supreme Court. Indeed, on nominations to all federal appellate courts. Rehnquist was a stickler on that. Actually Rehnquist was the guy in the Department of Justice who did all of the legwork to make sure that the president's nominees would not have any problems.

When Rehnquist found out that Norman had testified against Carswell, he called me up to his office and said, “Weren’t you aware that you’re not allowed to testify against a presidential nomination to the Supreme Court?” I said, “I was aware of it, Mr. Rehnquist, but I did not think that really applied where he’s testifying under the compulsion of a subpoena.” So it worked out okay although I was, as was Norman, nervous about the episode.

Ms. Feigin: Was there any repercussion for you?

Mr. Hollander: No, none at all. I really never had any direct contact with Rehnquist after that because Rehnquist’s official position in the department had always been assistant attorney general in charge of the Office of Legal Counsel. Actually what the Office of Legal Counsel did, their principal responsibility, was to resolve conflicts between, let’s say the Interior Department and the Environmental Protection Administration, where two cabinet departments were at odds with each other and they wanted to get the attorney general’s blessing for their respective view. That was his official position, but actually Rehnquist spent most of his time in analyzing the backgrounds of prospective judicial nominees so that he would be in a position to advise the president whether or not this is the sort of guy we want to put on the Supreme Court.

Ms. Feigin: I know this is not the only time you’ve been called to come to bat for one of your charges who allegedly ran afoul of the rules. I know there was one

time with Michael Stein, if you could tell me that story.

Mr. Hollander: As I remember it, it was probably in connection with some Vietnam protest. There were thousands of protestors that the police had rounded up and penned into one of the large fields. I forget whether it was a football stadium or what. The police realized that in order for any of the arrests that they were making for these protestors, they had to have the name of the police officer who arrested the particular protestor. That was of the essence so far as the charges were concerned.

Ms. Feigin: I believe this was May Day in 1971.

Mr. Hollander: Seventy-one, of course, we were still in Vietnam and there was also a lot of effort on the part of the more liberal groups to bring the boys back. As I remember it, and it's pretty vague, the assistant attorney general of the Criminal Division sent out calls to the other divisions and said that we need your help. You have to supply us with ten names of lawyers in your respective division who can help us out in associating a particular arrest with identifying the particular police officer who made the arrest. Of course nobody could do that because there had been no attempt at the time of arrest to try to link a particular arrest with a particular policeman.

I think the Civil Division had to supply either five or ten lawyers to that project that was being run by the assistant attorney general for the Criminal Division. Mike was in that group of five or ten who had been designated to help out the Criminal Division and to link names. But there

was no basis at all; they had no way of knowing which police officer arrested which of the protestors. So if my memory serves me correctly, Mike was the only one of the five or ten Civil Division attorneys who said he can't put up with that. He just did not want to be part of what was going to be a fictitious link with an until-that-time unknown police officer. It was such a massive operation that they had no way of knowing. He begged off and said that he couldn't cooperate with them. I really don't remember the names of any of the others, but I think there was maybe one, maybe two other people on the appellate staff who had been summoned to help the assistant attorney general in charge of the Criminal Division.

I did have occasion to speak with Harold Greene, the district judge before whom the people who had been arrested appeared. He was going to try their cases. He told me point-blank – because I had known him very well – I had known him since his days in the late '40s as an assistant U.S. Attorney in the District of Columbia. He acknowledged that the government's case was really too thin.

Ms. Feigin: Were you called on the carpet for Mike's not cooperating further?

Mr. Hollander: No. I never had any repercussions so far as Mike was concerned. I was called into Assistant Attorney General L. Patrick Gray's office once, in connection with an entirely different matter that had nothing to do with the roundup of protestors. It had to do more with one of our attorneys having earlier been charged with marijuana or some other kind of dope possession.

Gray told me that he had to go. I mean the guy was too valuable to go.

Ms. Feigin: So they hadn't known it when he was hired and they discovered it later?

Mr. Hollander: Yes. Gray was reluctant. He later went on to become F.B.I. director. I told him that if he insists on this guy being fired, that I would go along with him. I don't know if that really made any difference to Gray. Probably could get rid of two bums at the same time (both laugh).

Ms. Feigin: But he didn't! (Feigin laughs)

Mr. Hollander: No. There were no repercussions against us. He was really a very valuable assistant, and I worked with him actually on some other cases after I got out of the department myself.

Ms. Feigin: Does he know you saved him?

Mr. Hollander: I really don't know. He knows he did not have to leave the department at that time. I think he left the department years after I did. I left the department in '79 because that's when Civiletti asked me to go over to London and Paris on the claims of the Iranian government to the effect that it was unconstitutional for Carter to extend his freeze order against Iranian government-owned assets, to those assets owned by the Iranian government but on deposit in banks in France and in England. Indeed, those banks were branches of United States-owned banks.

That was interesting. I certainly enjoyed my stay in London and Paris but we never had a chance. I hired, while I was there, one of the leading barristers in London. A guy who actually headed up one of the

schools at Oxford, who worked with me on the cases in the British courts. But I could tell from the outset that we weren't going to get anywhere because the notion that the United States Government could reach out and try to meddle with issues involving – even if it was Iranian government money – to try to tell the courts in England and in France that the Iranians had no right to their own assets because of Carter's freeze order – The notion of French sovereignty and British sovereignty made it impossible to make that pitch. We never did get an opinion from any of the courts in which we made that argument.

Ms. Feigin: The case is still under submission?

Mr. Hollander: No. What happened was that during the period of time that we were arguing, the Ayatollah Khomeini replaced the deposed Shah. The hostages who had been seized by the Iranian government were all staff members of the American Embassy in Teheran at the time of the revolution and at the time of the imposition of the Carter freeze. When they were seized, a number of them were really roughed up so there were literally hundreds of lawsuits that were filed in United States courts after they were released. And the reason they were released was because Reagan had been elected in '80; he took office in January of 1981. The Iranians had no desire to have any discussion about any of the issues raised by the extension of the Carter freeze order to American-owned banks in London and Paris while Carter was in office. So right after the election, they were able to enter into a

hostage-release agreement which was part of the overall settlement. I don't remember the figures, but I did notice that one of the briefs that Appellate sent to me a couple of weeks ago is still talking about some of the issues that were involved.

Ms. Feigin: You still get all the briefs that Civil Appeals files?

Mr. Hollander: Yes. Some of them I pay very close attention to, as I did that one, particularly because I was familiar with the background of the arrangements leading to the release of the hostages.

Ms. Feigin: Let's go back a little to some of the cases that you wanted to discuss. I know you wanted to talk about the *New Haven and Hartford* case. And I also want to talk about *Feres*. So let's see if we can discuss those two cases. Which would you rather do first?

Mr. Hollander: Let's take care of *Feres* first because the implications of *Feres*, insofar as potential claimants against the United States Treasury, is far more significant than the ten or twelve million dollars that was involved in the *New Haven* case.

Ms. Feigin: *Feres* is untold billions probably at this point.

Mr. Hollander: Yes. Actually, I checked the *Oxford Companion* to Supreme Court decisions, and they make no bones about saying that the case was wrongly decided. There have been at least ten or twelve attempts in the United States Supreme Court for the Court to reconsider the decision in *Feres* and they are uniformly turned down.

Ms. Feigin: Let's go back to your role, because you were there in the court of appeals.

Mr. Hollander: I had *Feres* in the court of appeals. It was a run-of-the-mill case. Soldiers were stationed at some training camp up in New York state. The heater in the barracks malfunctioned so a couple of the soldiers suffered serious injuries as a result.

Sweeney, who was my boss at that time, asked me if I would be willing to handle the case. On the surface it seemed to me there was no reason to exclude a military serviceman from the jurisdiction of the provisions of the Federal Tort Claims Act. First of all, the Federal Tort Claims Act applies only in situations where you can establish that a negligent tortfeasor was acting within the scope of his employment for the United States. And I think Congress did have a *bona fide* reason in making sure that that language did not exclude military servicemen as tortfeasors acting within the scope of their employment.

The concept that a soldier is acting within the scope of his employment is somewhat strange because first of all, a serviceman, from the day he enters the service, is considered to be in line of duty unless he's guilty of some reprehensible misconduct. That's the only time that his action is not considered to be action by him on behalf of the United States. So they added in the definitional section a statement that so far as military servicemen are concerned, they are to be considered as acting within the scope of their employment. That language really doesn't fit a serviceman's

situation. They're on duty twenty-four hours a day. And they're in line of duty at all times except when they're doing really vile or bad things.

This definitional section says that so far as military servicemen are concerned, they are considered to be acting within the scope of their employment whenever they are acting in the line of duty. That really covers practically everything. Of course that's what the other side's been arguing for decades now. For that reason, it would seem that there really would be no problem.

If you're going to equate line of duty with acting within the scope of employment, there's no problem in covering a military serviceman's negligence as a tortfeasor as something triggering liability on the part of the United States if the essentials of the negligence action are there. But there had been a couple of cases, and there had been a guy in the office named Leavenworth Colby, who actually had had a similar problem under the Public Vessels Act and the Suits in Admiralty Act. Both of those involved naval servicemen who had been injured in the course of carrying out their responsibilities onboard ship. I spoke to Colby when Sweeney asked me to handle the case. And Colby did not play his cards close to the chest. He said that's always been the law so far as naval personnel are concerned, that is the fact that they were servicemen does not exclude them from the coverage of the Suits in Admiralty Act or the Public Vessels Act.

In fact as I remember the two cases that he relied on – and this goes

back probably thirty or forty years – were *Dobson v. United States* and *Bradey v. United States*, in which, I think it was the Court of Appeals for the Second Circuit, had held that the fact that the plaintiffs were naval servicemen does not deny them the coverage provisions of the Suits in Admiralty Act or the Public Vessels Act. So it seemed to me that we could fashion some argument and point to the longstanding decisions under those two Admiralty statutes. That’s what we did and the Second Circuit was very receptive to our argument that Congress could not possibly contemplate giving servicemen the right to sue for combat injuries because they claim that their sergeant was exposing them to a risk greater than actually necessary to achieve their combat goals. There was a lot of support for the view that a serviceman’s injuries incident to his military service should not furnish him with the opportunity of hauling his sergeant into court to testify as to specific measures that the plaintiff serviceman thinks would have avoided the damage or the injuries suffered by the serviceman who was suing. The Second Circuit was wide open to receive arguments of that sort and they decided in the government’s favor.

Ms. Feigin: Were you involved in the case at the Supreme Court level?

Mr. Hollander: I wrote the brief for Newell Clapp who argued the case in the Supreme Court. At the time that I was handling this case in the Second Circuit, there was another case, I think the name of that case was *Griggs*. I think that was a malpractice case. I think in that case a soldier had an infected kidney and

he also had tuberculosis. He was in the service so they decided to remove the damaged kidney because apparently it is not uncommon for people to get along on one operational kidney. That case I had assigned to the United States Attorney's Office, I think it was in Colorado. I was keeping close tabs on it because the *Griggs* case before the Tenth Circuit and mine on the East Coast were both moving along at the same pace.

On the day of the operation in this *Griggs* case, the operating surgeon said to one of his assistants he wanted to find out which kidney had to be removed. He said to the assistant surgeon we've got to remove the left kidney, looking at the charts. His assistant said, "Right," meaning yes, the left kidney. But the operating surgeon thought that he was being corrected so he took out the wrong kidney and the soldier died.

Now the U.S. Attorney actually lost that case, the court finding that the negligence – They said that they at least should have had some markings on his body indicating which kidney was to go to; there should have been some backup.

Ms. Feigin: That's what they do now.

Mr. Hollander: They do now, I am sure. But the U.S. Attorney lost the case, so I knew immediately that the Supreme Court is going to get interested in the case, which they did. Newell Clapp was not an assistant attorney general, but he was the number two man. They used to call them deputy assistant attorneys general. He felt it would be a good case for him to argue in the Supreme

Court. And he did and he got a sweeping affirmance by the Supreme Court of the decision I had gotten from the Second Circuit in *Feres*.

Ms. Feigin: And your feeling about the *Feres* case now?

Mr. Hollander: Well, we were biting off more than we should have been allowed to chew. Some of the tort claims awards have really been outrageously high. In fact, many of the briefs I get from the office deal with the excessiveness of the award. These are not military cases, but it is not unusual for an award to be four million, ten million, twelve million. That's very frequent. I just see briefs in those cases in which the government is protesting the excessiveness of the judgment. There is no jury in a Tort Claims Act case; it's just between the judge and the parties. Many of the judges have taken advantage of it.

But on balance, I don't think anyone has ever made any study of how much money the federal treasury has saved because of *Feres*. But regardless of how high that figure is, it still is a very small percentage of the overall total liability of the United States under the Federal Tort Claims Act. What I'm trying to say is that if the Supreme Court had reversed *Feres*, and allowed suits to be maintained by soldiers even though the injuries occurred incident to military service, I don't know how many billions of dollars that would have entailed or added to the federal treasury's obligation. But it would be, I think, and this is really a guess on my part, a small part of the overall liability that the government has

suffered because of the Tort Claims Act. So in retrospect, I feel that the servicemen are getting a raw deal.

The compensating factor for servicemen is that they do have a catalogue of benefits available through the Veterans Administration if they have suffered injury as a result of service-connected incidents. And some of the VA compensation schemes are very, very substantial. I have noticed a tendency on the part of some courts who are willing to make an award in a service-connected military case, notwithstanding *Feres*, if the case is really such an atrocious one, to deduct the net value of any benefits available to the veteran under the VA compensation system from the total award, which may make sense. But *Feres* really should say we never had any intention of excluding servicemen from benefits of the Tort Claims Act. That's our position and they should in effect wipe out *Feres*.

Ms. Feigin: That leads to the question that government attorneys, and all attorneys, have sometimes, which is what do you do when you are on a case where the position you are asked to take is not the position that you think should be pursued. This must have happened to you.

Mr. Hollander: Yes.

Ms. Feigin: *Feres* may be one example. But how do you handle that question?

Mr. Hollander: I'm a good soldier. I get the orders to defend the case, I'm going to do the best to come up with a reasonable basis for the defense. I think in all my years with the Justice Department, there was one case where I felt that as a

matter of conscience that I could not work on the case. It must have been the late '60s or mid-'70s.

Up until about fifteen years ago, Annapolis had no synagogue or any other place of worship for Jewish midshipmen. They were required by law to attend services on Sunday, whether they were Jewish or whether they were nonbelievers. The military felt that there is no telling when a naval officer might be called on to be of some help to either a serviceman who was dying or who had just suffered some terrible loss.

The ACLU filed suit pointing out that it was unconstitutional to force agnostics or Jewish kids to go to services on Sunday. Instead they sought to leave the non-believers alone, not force them to attend any services. And they were putting pressure on Congress to build a chapel for the Jewish kids. In fact, that chapel was finally dedicated five years ago.

I became involved in that litigation when the ACLU had prevailed in the District of Columbia Court of Appeals, saying you have to leave the non-believers alone Sundays and don't force everybody else to attend services in the Christian chapel on Sundays. The military was very agitated about the decision by the Court of Appeals for the District of Columbia Circuit and insisted that we file a petition for *certiorari* to the Supreme Court from the decision, which in effect embraced and authorized that a Jewish chapel be built, and also that agnostics should be left alone and not force them to attend. That is the one case where I went in and spoke to my

assistant attorney general who at that time was Bill Ruckelshaus, who later became the first administrator of EPA. He had no trouble going along with me and we wound up with our telling the solicitor general that we don't want to go for *cert*.

Ms. Feigin: Did the solicitor general agree with you?

Mr. Hollander: Yes.

Ms. Feigin: Had the office defended it in the court of appeals?

Mr. Hollander: I don't know the answer to that question. I got involved in the case when the Navy wrote this screaming letter saying that they cannot conduct wars with that decision outstanding.

That one wound up okay. There may have been another case, but talking about thousands of cases that I had some connection with. Most of them, nearly all of them, I generally had no problem advancing a position that I did not agree with.

Ms. Feigin: This is another Ruckelshaus story, but I would like you to tell the story of when you went into Bill Ruckelshaus on the issue of part-time work for women. That is something that resonates today.

Mr. Hollander: It was Greer Goldman in connection with whom we had that problem. It seemed silly for the department to deny her work privileges at the Justice Department, where no matter how short the day, because she had to take care of the baby, she still was producing as much as the average attorney in the office. So that wasn't a difficult bill to sell.

Ms. Feigin: How did you pitch it to Mr. Ruckelshaus?

Mr. Hollander: His wife Jill had been very, very active in the women's movement and her name would appear very frequently in the newspaper. I don't remember what the time frame was; it must have been in the '70s.

Ms. Feigin: I think Greer's first child was born in about 1974.

Mr. Hollander: Is she in practice now?

Ms. Feigin: She is but not with the government.

Mr. Hollander: I know she left. She was with Wald Harkrader.

Ms. Feigin: She was, and then she came back to Justice in the Environmental Division. She is now with the Audubon Society.

What in essence did you say to Mr. Ruckelshaus?

Mr. Hollander: I told him that I don't think it would sit well with Jill (Feigin laughs). Ruckelshaus was a good guy.

Ms. Feigin: And so that argument carried the day?

Mr. Hollander: Yes. I knew I wouldn't have any real problem with it.

Ms. Feigin: So until then they did not allow part-time?

Mr. Hollander: No. This comes back to Sal Andretta who was the assistant attorney general in charge of administration. It was something on the books and he felt he had to enforce it even though I explained to him that it makes no sense.

Ms. Feigin: So was this the first time that an attorney had been allowed to work part-time at Justice?

Mr. Hollander: Yes.

Ms. Feigin: That's wonderful. Absolutely wonderful!

I know that there's one last case; you wanted to talk about the *New Haven and Hartford case*.

Mr. Hollander: The reason I wanted to talk about that was to focus on, and to emphasize, the need for attorneys on both sides to make sure that when they're invoking the jurisdiction of any court, at the trial level or the appellate level, make absolutely certain they're in the right court. That case wound up okay because a companion class-action suit had been filed by the derivative claim stockholders and they did okay in that case.

Ms. Feigin: I guess the essence of it was that it turned out late in the day that it was in the wrong court?

Mr. Hollander: It didn't take Frankfurter long to change his mind about the jurisdiction. Friendly, I don't know if he's still alive – I think he's still with Cleary Gottlieb. If he is alive, he's one of the best judges we have.

Ms. Feigin: I would like in another session to discuss the judges you think were best, because you appeared before so many. That would be a wonderful thing to discuss.

Mr. Hollander: Okay.

Ms. Feigin: Thank you very much.

ORAL HISTORY OF MORTON HOLLANDER

Fourth Interview

October 9, 2007

This is the fourth interview of Morton Hollander as part of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Judith S. Feigin. The interview took place at Mr. Hollander's home in Northwest Washington on October 9, 2007.

Ms. Feigin: Mr. Hollander. Great to see you again. When we left off you were still one of six line attorneys in Mr. Sweeney's office. That morphed into a big appellate section with you at the head. I'd like to get a little understanding of how that came about and when that came about.

Mr. Hollander: I joined the staff in '48 and there were, as you say, six attorneys in the office. Oscar Davis was the lead attorney. He was getting most of the worthwhile Supreme Court cases to argue even before he went upstairs to the SG's office. And a guy by the name of Morton Liftin, he was another very, very good attorney. But nobody could run a close second to Davis and everybody conceded that. When the SG's office needed someone in a rush, they would get Oscar on the phone immediately. And that's where he wound up of course. He preceded Dan Friedman as deputy solicitor general in the Solicitor General's Office.

There was Mel Richter. He was pushing for me to join Sweeney. He was very much upset when I told him that Sweeney said there was no chance for me to move over for a year from where I then was, at the Interior Department, after I had been at the Office of Price Administration at the

beginning of the war. I remember the names I think of some of the others but they never made any real impression on me.

Ms. Feigin: How did the office come to grow and when did you come to lead it?

Mr. Hollander: The big spurt came in 1953 when Eisenhower appointed Warren Burger as the head of the Claims Division. I think I probably said this before, maybe a couple of times. Burger was very frustrated by the fact that the division he had just been named to head was the Claims Division. So he righted that immediately, re-characterizing it as the Civil Division.

Ms. Feigin: Mr. Sweeney was still the head at that point?

Mr. Hollander: Oh yes, Sweeney was there so far as I know for years. Not only was it not known as the Civil Division appellate staff, it was known as the Supreme Court section of the Claims Division. That was the official name when Sweeney headed it up, and also when it was headed by his predecessor Lloyd Kreeger. Lloyd had worked very closely with Sweeney and Sweeney had learned a lot from Lloyd. But at that time I don't think there were more than four people, at the most five, in that Supreme Court section.

Sweeney at the beginning had the notion that the Supreme Court section of the Claims Division responsibilities should be limited to cases in the United States Supreme Court. He did not want us to waste our time on court of appeals cases.

Ms. Feigin: So who handled the court of appeals cases?

Mr. Hollander: They were shipped out to the field U.S. Attorneys' offices. Sometimes if

an especially interesting or difficult case came along Sweeney would assign one of the members of the Supreme Court staff of the Claims Division to work with the assistant U.S. Attorney who was on the case.

Ms. Feigin: Is that how you got *Feres*?

Mr. Hollander: No. I was a full-fledged member of the Supreme Court section. I was never assigned to handle any case that was actually authorized to be handled by the U.S. Attorney's Office. Sweeney did the authorization. Sweeney used to make the decision, but it was invariably in favor of the U.S. Attorney, for the U.S. Attorney's Office to handle the more important appellate cases. Most of the times he deferred to the U.S. Attorney's Office. He resolved all doubts in favor of letting the field attorneys handle the more important appellate cases and never let them participate at all in helping on the Supreme Court litigation.

That did change dramatically in '53 because Burger could not understand why, if we had the nucleus of an outfit that's ready to do initial brief writing for the Supreme Court – and by that time, because of the lack of an adequate number of attorneys in the Solicitor General's Office we were shipped many more Supreme Court briefing and oral argument assignments than the people on the appellate staff wanted to handle. The workload was too heavy.

I don't think that when Burger was in office that we had more than 26 or 27 attorneys doing both court of appeals work and Supreme Court

work, including the oral arguments. I think now they probably have about sixty attorneys. It was reaching the point, even before I left, which was in '78 or '79, I felt that the section just couldn't keep up with its work.

Ms. Feigin: When did you take over the section?

Mr. Hollander: In the beginning of 1960.

Ms. Feigin: Did Mr. Sweeney retire?

Mr. Hollander: Yes. Actually, he was appointed as a commissioner of the Federal Power Commission. That was one field where he had quite a few Supreme Court cases under his belt. He and Mel Richter actually – Mel Richter used to do the brief writing for him and he would argue the Supreme Court cases. In between Sweeney's heading up the outfit, and January of 1960, for about a six- or seven-month period, a guy by the name of Sam Slade, S-l-a-d-e, headed up the outfit. He was really a brilliant attorney. He quit the staff for Schnader Harrison Segal & Lewis, one of the biggest firms in Philadelphia.

Ms. Feigin: Had he been on the staff?

Mr. Hollander: Yes, he'd been on the staff for about two or three years. And there's one lawyer I remember in private practice in Philadelphia. His name is Bernie Segal. Slade hit it off well with this Bernie Segal, and from the very first time that Slade argued a case against Segal in the Supreme Court, Segal told Slade that he wanted him to join his staff. It took him about another year or year and a half to decide. It's a very well-known and very large

Philadelphia firm.

Ms. Feigin: So he left and they chose you?

Mr. Hollander: Yes, he left. George Cochran Doub was then assistant AG. There really wasn't much talk about it at the time. Doub called me and asked me if I'd like to take Sam's job. Obviously I jumped at it.

Ms. Feigin: How did you change the section? What did you do that might have been different from your predecessors?

Mr. Hollander: I went over far more carefully. Slade took over the head job in the middle of '59 so he didn't last long at it. I had the premonition that he was going to accept Segal's pleas and move over as soon as it was convenient for him. He actually married Sandra, an attorney in our office.

Ms. Feigin: So you lost two people?

Mr. Hollander: Yes, but it wasn't too difficult with Sandra's departure. A very nice girl. She did very, very good work, but her departure did not leave a dent in the personnel makeup.

Ms. Feigin: So when you took over, how did you change it?

Mr. Hollander: The first thing I did was to go over a lot more carefully those cases that we were still going to assign to the U.S. Attorney's Office on appeal. And also I did start to offer to make some of our attorneys available for big cases that had been assigned to the U.S. Attorneys offices to give them backup that they really needed. Those were the two principal areas.

Ms. Feigin: But it evolved, because ultimately it wasn't just backup your section was

doing. So how did that come about?

Mr. Hollander: There were some problems with that, too, because some of the U.S. Attorneys offices were highly independent (laughs). I don't know how many times I was reminded by the United States Attorney's Office in the Southern District of New York and in the Eastern District of New York in Brooklyn. They always would start parading the fact that one of their foremost assistants was named Felix Frankfurter and they thought that that was enough (Feigin laughs). But it worked out. There were some bitter conflicts as to some of the cases, like *Feres* for example.

I had lost a *Feres*-type case in the Tenth Circuit, the *Griggs* case. It would have been a natural for me to try to get the conflict with *Feres* which was still before the Second Circuit. The U.S. Attorney, Fiske I think his name was, F-i-s-k-e, and a delegation from the U.S. Attorney's Office, didn't even try to see me. They just marched right on up to Byron White and said that's a big mistake. They started with this Felix Frankfurter bit and this supposedly was the first time we had grabbed an important case bound for the Supreme Court.

Byron White was at that time deputy attorney general. He was really running the department while Bobby Kennedy was attorney general. Bobby Kennedy, the story is, would not have taken the job because of his lack of experience in litigation, unless his brother made him the number one man and Byron White the number two man in the AG's office.

Morgenthau, Jr., the former Secretary of Treasury's son, was U.S. Attorney at that time in the Southern District of New York. He then went on, and had a long career, as the New York State district attorney after he lost – .

Ms. Feigin: He may still be.

Mr. Hollander: It's possible.

Ms. Feigin: I think he is.

Mr. Hollander: He lost; he was running for governor on the Democratic ticket. Anyway, I forget what remarks were exchanged between Byron White and the U.S. Attorney from New York who were up there to make sure that they went back with a reassignment to them of the *Feres* case (laughs). In retrospect, I wish they had handled it and lost it (both laugh). Seriously. In fact, I was just looking yesterday at the *Oxford Companion* to the Supreme Court. They have some nasty things to say about the *Feres* opinion. Not only that, the fact that Congress never really got along, over the years. *Feres* came down in the late 40s. There were some feeble attempts to get a legislative reversal of the Supreme Court decision. But the Pentagon was happy with it and nobody else important enough seemed to care. But there were some nasty remarks exchanged between Byron White and Morgenthau, including an admonition to Morgenthau by Byron White. I forget how he put it. It wasn't very pleasant.

These two really were giants, Morgenthau and White. White was

powerful. White ran the Justice Department. It was not unusual for anybody who had a real problem to bypass Kennedy and run to White, as did the U.S. Attorney's Office at that time.

Ms. Feigin: As an aside about Kennedy, can you tell me the story about his paychecks?

Mr. Hollander: I was in a carpool with a guy named Jack Dabit(sp?), who used to live a couple of miles from here. I was fortunate enough to have a parking space in the basement right near the elevator bank near my office. That figures prominently in Justice Department jurisprudence (both laugh).

I remember there was a judge out in the Tenth Circuit, I forget his name, a real nut. He started a proceeding before the Judicial Council for the Circuit. The Judicial Council handles all administrative details and problems confronting the court of appeals for that Judicial Council or the district courts within that particular court of appeals area. This judge, this is while the Murrah building was being constructed, he had a parking space right next to the front entrance in the parking area at the new Murrah building. He actually filed a proceeding before the Judicial Council claiming that some new chief judge who had just come in had reassigned the parking spaces (both laugh). We got involved in it for some reason.

Ms. Feigin: Really? The appellate section had to handle it?

Mr. Hollander: Yes. I think this guy wanted a writ of mandamus to prevent this new chief judge from reassigning the parking spaces. Of course you know the terrible finish for the building and the area when they used all of those thousands of

pounds of what they called fertilizer, FGAN, fertilizer grade ammonium nitrate.

I came across fertilizer grade ammonium nitrate when I was working on *Texas City*, the *Dalehite* case. The *Grandcamp*, one of France's largest cargo ships, was loading up under the Marshall Plan with thousands of fifty-pound bags of this bagged fertilizer grade ammonium nitrate, the same kind you would use to fertilize flower beds. Used in the proper quantities, and stored properly, it is very beneficial. But they stored all this stuff destined to be used as fertilizer under the Marshall Plan in Europe, which had recently been devastated by World War II. When they started to use that stuff and stack them in the holds and hatches of the ship, they, according to the plaintiffs in the case, improperly stored them in the hatches of the ship without affording sufficient area for some space between the bags. As a result of which, the bags started to explode and leveled not only the ship and the docks, but they were about three blocks away from one of Dupont Chemical's huge factories. So they wiped out practically the whole city with that explosion. The estimated damages, not the value of the ship, but the estimated damages in the way of deaths and personal injuries, exceeded \$275 million.

Ms. Feigin: In those days!

Mr. Hollander: Yes. That was a terrible disaster.

Ms. Feigin: Did you work on that case?

Mr. Hollander: Yes. Everybody in the section at that time worked on the case. Everybody's name is in the Supreme Court Reporter. Covington & Burling handled the case for the plaintiffs. Sweeney also hired – the first time I had known of – an outside lawyer. He hired Eberhard Deutsch, who was a famous admiralty lawyer in New Orleans, to handle the case for the government before the Supreme Court.

Howard Westwood was at Covington & Burling. Eberhard Deutsch was a very good New Orleans lawyer. Both he and Westwood argued the case on behalf of the claimants before the United States Supreme Court. They lost the case in the Court of Appeals for the Fifth Circuit. But I think under Deutsch's prodding, and the help of this guy Morton Liftin, whom I referred to before, they were able to get a reversal. That case by far, it makes the *Feres* litigation look silly. It really does. They were very important principles.

What Sweeney had done, under Liftin's and Eberhard Deutsch's recommendations, was assign a different issue – there were about seven main issues in the case – I was assigned a relatively important, probably less controversial issue than the others on the staff were. The part of the case I dealt with was that under the terms of the Federal Tort Claims Act, no theory of absolute liability for engaging in businesses involving extra-hazardous instrumentality – that's what we labeled this particular disaster as resulting from – is available under the Tort Claims Act. I had had a couple

of victories on that issue in the federal appellate courts and the Supreme Court, really without analyzing it properly, went along with the government on that issue. And on a much more important issue, if the government – and this is crazy (laughs), how loosely Congress can fashion legislation that results in billions of dollars of government giveaways – the main issue, and the one that has really cost the government much more, is that if the government is engaged in the discharge of a discretionary function and that results in disaster or an accident, that the government cannot be held liable for negligence in the exercise of the discretionary function.

So we were arguing, successfully, that was not my part of the case, that Army personnel had the discretion to decide whether for 100 square feet of fertilizer grade ammonium nitrate that's being stored in the hatches of the vessel, I think it was called *Grandcamp*, you would have to show that it was negligent for them to assign such a large quota of cubic air space with each 50 or 100 bags of fertilizer grade ammonium. That too, of course, dates back over fifty years, and nothing has been done to even amend the Tort Claims Act.

Ms. Feigin: You disagree with that?

Mr. Hollander: Yes. They should change it. Not my part of the case (both laugh). I was convinced that we were absolutely right. I remember talking about the *Dalehite* decision with Simon Sobeloff who had initially been chief judge of the Court of Appeals of Maryland and later was finally nominated to the

Fourth Circuit Court of Appeals. He was really outraged. Judge Parker on the Fourth Circuit Court of Appeals had no problem at all with the government's position that I was advocating, that it's a theory of law based on strict liability for engaging in extra-hazardous activity. Parker could see no problem at all in excluding all of those torts from the coverage of the Tort Claims Act. I remember Sobeloff commenting to me once that Parker was just plain stupid in reaching that result.

Ms. Feigin: When you had those discussions with Sobeloff, those were after-argument discussions –

Mr. Hollander: Yes. Jack Eldridge was one of the best guys we ever had on the appellate staff. Before he joined the appellate staff, he had been Sobeloff's law clerk up in Annapolis. He also succeeded Sobeloff as not chief judge, but as one of the associate judges on Sobeloff's bench after Sobeloff left Annapolis. I had been over there a few times, not as a guest of Sobeloff's but as a guest of Eldridge's, and Sobeloff was there..

Ms. Feigin: To go back for a minute to the RFK story and the carpool and the paychecks.

Mr. Hollander: This guy Jack Dabit (sp?), who lives probably less than half a mile from here, had been a member of our carpool – we had four of us in the carpool – for about six or seven years. That covered the time that Robert Kennedy was attorney general. For a couple of years, Dabit was actually sharing an office with Kennedy. This was in his first incarnation. Before Robert Kennedy became attorney general, he was a staff attorney in the Criminal Division, put

there primarily by Joseph McCarthy, because Robert Kennedy, in his non-attorney general incarnation, detested Jimmy Hoffa. Robert Kennedy had been working as a staff attorney at the Justice Department, trying to hunt down Jimmy Hoffa and his cohorts.

Dabit shared an office with Robert, and Robert Kennedy finally turned up becoming a father eleven times. Dabit had also by that time become a father ten times. It really sent Dabit crazy when, waiting for the minute that the secretary came around with the paychecks every second week, and Robert Kennedy would never even open up his desk for months after the checks came in (laughs).

Ms. Feigin: This was before direct deposit, obviously (both laugh).

Mr. Hollander: Yes, definitely. Dabit once asked him about it. Bobby Kennedy was very genteel in his response. I think I would have been inclined to say, well that's my business, not yours, but Kennedy explained to him that he is the beneficiary of two or three big trusts so that he doesn't have to deposit a check (Feigin laughs).

Ms. Feigin: Obviously you dealt with a lot of attorneys general and a lot of AAGs and SGs and I wonder if we can go through some of them, the ones who stand out in your mind. And you worked with a lot of incredible people in your section.

Mr. Hollander: That's true. People like Oscar Davis, Liftin, Dan Friedman, Mel Richter. They really furnished me with the kind of help that I really needed. I think

for the first six months at Justice, they were throwing so many things at me that I felt at sea. All of those people really were very, very helpful.

Ms. Feigin: You dealt so much with the solicitors general, certainly in the early years. You've talked a little bit about Sobeloff. But the others under whom you served –

Mr. Hollander: Erwin Griswold was tops.

Ms. Feigin: Tell me why.

Mr. Hollander: First of all, if he called you up to his office, if he had some questions to ask, the conversation would never last more than ten or fifteen minutes. He would tell you just exactly what he wanted to find out and zero you in on potential solutions to the questions that he himself had already formulated in his own mind. He obviously was not looking for help. He was looking for help in selecting what seemed to him to be the necessary option that whomever he had called up would choose.

I've told you about going over to England in '79 when there was the outbreak of the Khomeini revolution and his deposing the Shah. When I went there, I was surprised to find that the ambassador to St. James was Erwin Griswold. What also astounded me, I was wondering why he was so knowledgeable about funds frozen by the United States Treasury Department and all of the legal ramifications where the funds being frozen, as they were by President Carter in 1979, whether those frozen funds, even though in the possession of a branch bank of an American bank – Let me back up a little.

Of the eight billion dollars seized by Carter, sixty percent of it, more than half, were funds that Carter had seized while physically they were in Parisian and London branches of American-owned banks.

The revolutionary party which had taken over got a number of law firms, at least six of them, working on the case. Their theory was that whatever is resting in branch banks of American corporations in vaults or deposits in branch banks owned by the United States in Paris or London, their theory was that the presidential executive power of Jimmy Carter had absolutely nothing to do with the disposition of those assets. And actually the case went up to the highest court in London and the highest court in Paris and they never even resolved that question. Instead, what happened was that the new government of Iran was eager to find some justification for it to release the seventy-five hostages that they still had locked up. These hostages were former employees at the United States Embassy in Teheran. That question was never really resolved. Instead, what the Iranians offered, because they knew that public pressure throughout the world was mounting because here was three-and-a-half months after the revolution, after the Ayatollah took over power, that the hostages were still languishing –

They weren't in jail exactly; they were really living it up in the embassy. They were having a good time. Many of them thought that, in addition, they had solid lawsuits against the Iranian government.

Ms. Feigin:

Hadn't some of them been abused while they were in custody?

Mr. Hollander: That's exactly right. Some of them claimed that their conditions were horrible but from the reports we were getting through the American Embassy in London, it really wasn't a bad life for them. They weren't too eager to come home. There were obviously some cases of mistreatment.

Ms. Feigin: How was Griswold –

Mr. Hollander: Griswold, I was shocked. I thought I had been briefing myself on the question of extraterritorial seizure. A president of the United States seizing and confiscating funds located overseas on the theory that the branch bank in which they were located was a branch bank owned by the United States bank. That was the Carter theory. The other theory, espoused by the Iranian government – actually advocated by some Russian law firms on behalf of the Iranian government – was that every state has sovereign jurisdiction over all the materials and assets located physically in that jurisdiction. It went to the two highest courts in both England and France.

Toward the end of that negotiating period for the release of our hostages, Iran made steps to try to negotiate a break in the logjam, to work out some compromise arrangement so far as the return of the bank deposits owned by the American banks and the return of the hostages. What the Iranian government finally said, you return to us sixty cents on all the dollars you've frozen, and we in turn will guarantee that every single one of the hostages will be returned to the United States the day Reagan becomes president. That sort of broke that logjam.

To come to Griswold: Griswold in the interim, after he left the department and before he became ambassador, not only had been dean at Harvard Law School, but had specialized in courses involving the issue as to whether or not there can be extraterritorial vesting of other assets frozen by any country where the asset itself is physically located in another sovereign's jurisdiction. So it was a pleasure. I really had unnecessarily done work (Feigin laughs). This guy knew everything about it! It was amazing.

Ms. Feigin: And of course he knew you independently –

Mr. Hollander: He didn't really know me. I didn't have too many opportunities to be speaking with Griswold. I had been called up to his office about four or five times. In these conversations where he would outline the problem and the potentially optional solutions. Nice guy, very nice guy.

Ms. Feigin: Looking at the list of SGs you worked under, you've spoken about Sobeloff, and you worked under Rankin, Griswold, Marshall, Cox, Bork and McCree, is there anything you would want to remember about them?

Mr. Hollander: What I remember about Marshall – I was up in his office a couple of times when he made it clear to me that he does not like to hear anybody refer to blacks as other than Negroes. He just wants them known as Negroes. That's what they are; that's what they always have been. So far as he was concerned, it was inappropriate. That was the period of time when people were confused between browns and blacks. He said no need for any difficulty on that; they're *Negroes*! I don't know if he reiterated views like

that after he got on the bench but that's what I remember about him.

Cox took a very close (**indistinguishable**) at our office's work. In fact, at one point, he misled me because he had a student while he had been dean at Harvard. He called me up. He was the only one who ever personally referred a Harvard student for employment in my office. I don't think there was any exception to that. Court of appeals judges like Sobeloff had done that regularly. In fact, this guy John Eldridge, Sobeloff was apologizing that the SG's office had not latched onto Eldridge.

Cox called me with one recommendation. It was a ten-to-fifteen-minute recommendation. It proved to be a disaster.

Ms. Feigin: That's your major memory of Archibald Cox?

Mr. Hollander: Yes. That's how I think of him..

Ms. Feigin: What about Bork, did you have any contact with him?

Mr. Hollander: Yes, I had some contact with him. Not really any worthwhile contact. I thought some of his ideas were way out. I forget what the nature of the cases were, but he seemed to imply that we were reaching for too much. It had to do with grants-in-aid to the states from the federal Congress. I don't remember the specifics.

Ms. Feigin: And McCree, who was your last. Did you deal with him?

Mr. Hollander: Just superficially. I think he had been a former court of appeals judge.

Ms. Feigin: I think the Sixth Circuit.

Mr. Hollander: My contacts with the SG's office were not numerous.

Ms. Feigin: Next time maybe we can talk about some of the judges you did have contact with. And the AAGs, because that's where you did have significant contact. We should save that for another time because there's a lot of them.

Mr. Hollander: I did spend a lot of time. Douglas was our assistant AG I think in the 50s.

Ms. Feigin: I actually have a list. John Douglas, '63-'66.

Mr. Hollander: That would put him there with Kennedy and Johnson. George Cochran Doub is the guy who put me up for the appellate staff chief job. I never realized there were so many AAGs. There's a whole page full.

Ms. Feigin: There was a period when AAG was a real jumping-off point.

Mr. Hollander: Heading the list is Burger of course. He went on to become a judge on what I still call Sirica's court (Feigin laughs). William Orrick was a nice guy. He later became a federal district judge and I think he's passed away. He always used to stop off and insist that I walk up the steps with him because his office was on the same side of the building as mine was.

Ms. Feigin: Another thing we should discuss next time too is that you were there obviously during the time of Nixon and *Watergate* and there's a lot connected with that. That would probably be useful to discuss as well.

Mr. Hollander: I look forward to it.

Morton Hollander died on April 17, 2008 before he could complete his oral history.

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Legal Staff (1941-1942)

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