ORAL HISTORY OF
JACK H. OLENDER

First Interview - February 25,2004

Ms. Thompson: Today is February 25,2004. My name is Phyllis Thompson, of Covington & Burling, and I am here with Jack H. Olender, of Jack Olender & Associates. We are here as part of the D.C. Circuit Historical Society Oral History Project and this is our first session. We are starting at just about 4:00 p.m. Eastern Standard Time and we are using a tape recorder that I hope will record our words today. I already noted that eventually we want to get your reflections, Mr. Olender, on the U.S. Court of Appeals for the D.C. Circuit and the District Court for the District of Columbia and your thoughts on the judges of these courts as they intersected with your career. But first we want to talk about you, your history, your career, and I'll start by sounding like I'm taking your deposition. So let me ask you initially just to state your name.

Mr. Olender: Jack Olender.

Ms. Thompson: Is Jack your full name? Is that a short form for John, or is it just Jack?

Mr. Olender: Jack is my official name.

Ms. Thompson: I think you have a middle initial "H." Is that right?

Mr. Olender: Correct.

Ms. Thompson: What is the "H" for?

Mr. Olender: Do I have to tell?

Ms. Thompson: No, you don't.

Mr. Olender: Well, it's Harvey.

Ms. Thompson: Well, that's a perfectly fine name. Is that a family name, or is that unique to you?

Mr. Olender: I don't know.

Ms. Thompson: Where do you live currently?

Mr. Olender: In Washington, D.C. In Watergate East, 2500 Virginia Avenue, N.W.

Ms. Thompson: **A** very historic address.

Mr. Olender: Yes.

Ms. Thompson: When were you born?

Mr. Olender: 1935.

Ms. Thompson: I think I read that it is September 8th. Is that correct?

Mr. Olender: Correct.

Ms. Thompson: And where were you born?

Mr. Olender: In McKeesport, Pennsylvania.

Ms. Thompson: Is that near Pittsburgh?

Mr. Olender: Yes, it's 15 miles from Pittsburgh. It was a steel mill town, a very busy and prosperous steel mill town.

Ms. Thompson: What about now?

Mr. Olender: Now the mills are all gone, and the town is not at all as it was.

Ms. Thompson: How does one earn a living in McKeesport, Pennsylvania today?

Mr. Olender: Well, they always earned a living by working very hard but I don't

think there is a very good living to be made in McKeesport today.

Ms. Thompson: What size town was McKeesport when you lived there?

Mr. Olender: 55,000. I think it's smaller now.

Ms. Thompson: Are you married?

Mr. Olender: I am married to Lovell. I've been married for 41 years.

Ms. Thompson: Congratulations.

Mr. Olender: Thank you.

Ms. Thompson: What is Lovell's maiden name?

Mr. Olender: Ruckman.

Ms. Thompson: And how did you meet your wife?

Mr. Olender: I met her in Washington at a party.

Ms. Thompson: Was it love at first sight?

Mr. Olender: Maybe. You know, it's hard to sort out feelings from 40-some years ago. But more or less.

Ms. Thompson: I believe I read somewhere that your wife at least initially played a role in your law practice. Is that right?

Mr. Olender: Yes, by helping -- really, moonlighting as my secretary. She was very helpful, before I could afford any help.

Ms. Thompson: Do you have children?

Mr. Olender: No, we don't.

Ms. Thompson: Let me ask you something about your family history. Did you know your grandparents?

Mr. Olender: No, I did not. They had predeceased me.

Ms. Thompson: I think I read that your parents immigrated or at least your father immigrated.

Mr. Olender: My father immigrated from Europe.' From an area that at various times was Poland, Germany, Russia -- borders which shifted constantly in that era. And my mother was first-generation American. Her parents were born in Lithuania.

Ms. Thompson: Do you know how old your father was when he came to this country?

Mr. Olender: Not precisely, but, he was either a teenager -- I think he was still in his teens when he came.

Ms. Thompson: Did he come with his parents?

Mr. Olender: Oh, no. He came alone.

Ms. Thompson: I see. And what brought him here? Why did he come?

Mr. Olender: Opportunity. Opportunity, freedom to work, freedom of religion, freedom.

Ms. Thompson: Did he go immediately to McKeesport, or did he make his way there gradually?

Mr. Olender: He went there almost immediately.

Ms. Thompson: And did he work in the steel industry?

Mr. Olender: No, he started, I understand, with a push cart. He had a little confectionery store, and then a fruit and vegetable business, and he added groceries after that.

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[1] Jack H. Olender's father was Benjamin Olender. His mother was Kate Harris Olender.

Ms. Thompson: Was he eventually successful with the grocery store?

Mr. Olender: Yes, it was a successful produce and grocery store. Especially the produce because he bought in wholesale lots by the carload. The farmers would bring in wagon loads of things and sold very good produce at very reasonable prices -- sort of like you might get today at a farmers' market. You know, fresh things. And so he was very busy, the store was very busy.

Ms. Thompson: You said that your father came alone. Does that mean he did not come with siblings either? He really came by himself'?

Mr. Olender: That's correct.

Ms. Thompson: Did you hear him say much about the family that he left in Europe?

Mr. Olender: Well, he brought some over. He had an older brother who was in Detroit and he brought over two sisters and a nephew, niece, and so forth.

Ms. Thompson: **A** real goal of folks who came ahead in those days.

Mr. Olender: Yes.

Ms. Thompson: What do you know about his parents, if anything?

Mr. Olender: His father was a trader in things like flax, various products that he would buy from farmers and sell to merchants, and so forth. My father would talk about hauling the flax in a wagon with horses. Delivering, buying, and selling **--** that sort of thing.

Ms. Thompson: Your father came from something of a merchant and business background.

Mr. Olender: Very hard working. Workaholic.

Ms. Thompson: What about his mother, do you know anything of her?

Mr. Olender: She was a very hard worker. Very short. And there was a story of her about the Cossacks coming and raiding their house and their farm, and she stood up to them and chased them out.

Ms. Thompson: Even though she was very short.

Mr. Olender: Yes.

Ms. Thompson: How short was she? Did you hear anyone say that?

Mr. Olender: No, but probably under 5 feet. Apparently, she was fearless.

Ms. Thompson: What was your father like, in terms of his personality?

Mr. Olender: He worked long, long hours. He did the work and he was generous and stern.

Ms. Thompson: And your mother, what was she like?

Mr. Olender: She was much softer and a loving person.

Ms. Thompson: And you said that she actually was a first-generation American. Where did she grow up?

Mr. Olender: In Ohio. She was born in Ohio and then they came to McKeesport where they sold dairy products -- milk, butter, eggs, and so forth -- in the downstairs of their house, first floor of their house.

Ms. Thompson: So your mother moved to McKeesport with her family when she was still a child?

Mr. Olender: When she was small.

Ms. Thompson: And did she have siblings?

Mr. Olender: Yes, she had brothers, three, and two sisters. Older sisters.

Ms. Thompson: Were you close to your extended family on either your mother's or father's side? To their siblings?

Mr. Olender: Not real close, but we interacted and got together with some of them probably more than once a year, various members. We would go to -- I would go with my father to Detroit to visit his brother, sisters. They would come to McKeesport. We would visit my mother's brothers and sisters and they would visit us.

Ms. Thompson: What language did your father speak as his native tongue?

Mr. Olender: Well, he spoke many languages. At home they spoke Yiddish. He spoke Russian, German, Polish, and other Slavic languages, because the people there, they had to, especially if they were merchants and dealing with all kinds of people. They had to speak all the languages.

Ms. Thompson: Sure.

Mr. Olender: Maybe not a hundred percent fluently. They couldn't read a book or write a book in the language, but enough for everyday conversation.

Ms. Thompson: What about your mother, did she grow up speaking any language other than English?

Mr. Olender: She spoke mainly English and her parents, I am told, would speak Yiddish so that she would not understand what they were saying -- but she would.

Ms. Thompson: [Laughter] But she did?

Mr. Olender: Yes, she understood some.

Ms. Thompson: And what about you, did you learn to speak any of those

languages?

Mr. Olender: Not really.

Ms. Thompson: Is there anyone on either your father's side or your mother's side who stands out as a memorable person or someone who had a particular impact on you as you were growing up?

Mr. Olender: Well, yes, they all really had impact. My mother's brother Saul was a lawyer, the first one in the family and probably the first one that went to college and graduated from college, so he was an influence on me. And another of her brothers, Morris, who had a clothing store in New Kensington, Pennsylvania. They were all nice people, nice to a child. My father's sisters, they had had hard lives. They were good people. So I would say all. And my cousins, too. We would get together a number of times a year and they were friends.

Ms. Thompson: Did your mother's brother Saul encourage you to become a lawyer, or did anyone encourage you to follow in his footsteps explicitly?

Mr. Olender: Not explicitly, no. And he passed away when I was in college.

Ms. Thompson: He never got to see this career. That's too bad.

Mr. Olender: No, no, no. He was a heavy cigarette smoker and he died of a heart attack, and I think probably cigarettes had a lot to do with it.

Ms. Thompson: What kind of law practice did he have?

Mr. Olender: He was in a small town -- Clarion, Pennsylvania, which is northwestern Pennsylvania, up toward Erie -- up in that direction. And it was a small town, so he practiced what they practiced in small towns.

Ms. Thompson: Everything?

Mr. Olender: Yeah, everything. And I remember that he was also executor or something to do with a theater -- a movie theater. Whether he was executor of a will or whatever, he was in charge of the movie theater. And his children, my cousins, were thrilled. They would go to the movies all the time because he as the lawyer was in charge of it.

Ms. Thompson: That was enough to make him a favorite uncle, too, wasn't it?

Mr. Olender: Yes, although I don't think I ever went to the movies.

Ms. Thompson: Did you have siblings?

Mr. Olender: Yes, five sisters and two brothers who predeceased me. One brother died as an infant and I believe it was the flu of 1918. It was a terrible disease that killed a lot of people across the world. And then the next brother died as a young boy of about eight or nine on a sled in collision with a horse and wagon -- so you can imagine that that was a long time ago -- and he died. So, as a result, my parents were very protective of me, having lost two boys. And then there were five girls and then me as the last -- seven years after my youngest sister was born. So they were overly -- well I shouldn't say overly -- but very protective of me. I never had a sled, I never had a bicycle, and in fact my father took me off the debate team in high school because the members of the team would drive to the debate tournaments at night and he did not want me driving with them. So he took me off the team and the coach/teacher came to the store to try to talk him into letting me stay on the team, but he would not budge. So I was not on the debate team after -- I don't know -- after a number of months.

Ms. Thompson: Were you a pretty good debater for the time you stayed on the team?

Mr. Olender: Well, I don't know.

Ms. Thompson: You don't know?

Mr. Olender: I guess I wasn't bad.

Ms. Thompson: So your two older brothers died before you were born, then?

Mr. Olender: Yes, long before I was born.

Ms. Thompson: I see. And then there were five sisters who were younger than they, and then you followed sometime after the youngest of the sisters.

Mr. Olender: Yes.

Ms. Thompson: What are your sisters' names?

Mr. Olender: Well, the oldest, who passed away about eight years ago, was Ruth. And then the next is Racille. And then the next is Doris. And then the next is Edith. And the youngest was Betty, who passed away about seven, eight years ago.

Ms. Thompson: And you said, I think, that you were about seven years younger than Betty. Is that right?

Mr. Olender: Yes.

Ms. Thompson: And were the girls close together in age?

Mr. Olender: Pretty close together, yes. The five girls were all within about eight or ten years, eight, ten, eleven years.

Ms. Thompson: Were you a close-knit family, you and your sisters?

Mr. Olender: Yes, we were close-knit. They had a lot to do with me, at least as a young child.

Ms. Thompson: Did they fancy themselves your mother in a way?

Mr. Olender: To some extent. I understand they dressed me as a girl and my

hair was blonde so they made me to look like Shirley Temple. I did have curly hair and they dressed me like Shirley Temple, I am told. I don't remember it.

Ms. Thompson: [Laughter] That's one of those things best forgotten.

Mr. Olender: Yes, right.

Ms. Thompson: Did your sisters have careers outside the home?

Mr. Olender: Yes, some of them, particularly Ruth and Racille, the two oldest, worked quite a while in my father's store. Doris is a retired schoolteacher who taught art, and Edith is a retired schoolteacher who taught cooking, and Betty worked in offices -- office jobs, secretary, etc.

Ms. Thompson: So how many of your sisters actually went to college then?

Mr. Olender: I am not certain. I think the answer is all of them, and the two schoolteachers, of course, graduated. Betty, the youngest, did not. She quit after a couple of years; she did not like it. Ruth, I think, did -- I am just not sure. I know they did go but I am not certain about them graduating.

Ms. Thompson: Somewhat unusual for that time, really, for so many of them to have gone.

Mr. Olender: For the '40s and '50s. Yes, that was the thing. Education.

Ms. Thompson: Your parents pushed education?

Mr. Olender: Yes, even though they didn't have any -- you know -- formal, that much formal education.

Ms. Thompson: Do you know how far they went in school.? Either one of them?

Mr. Olender: No, I think my mother graduated high school and I doubt that my

father did. I doubt that.

Ms. Thompson: Did you ever work in your father's store?

Mr. Olender: Oh, yes.

Ms. Thompson: Yes, for how many years did you do that?

Mr. Olender: Well, as a toddler I was there. I would stack things. And if there wasn't anything to stack, they would knock over a display of something so that I would have something to do and put it up. But I did actually work from probably 10, 12 years of age and into law school.

Ms. Thompson: Was this your summer work as a teenager, for example?

Mr. Olender: It was summer work and during the year, too.

Ms. Thompson: Was there a time when you thought that your career would be running that family business?

Mr. Olender: Ah. At times I thought, well, that I could operate this business and be a lawyer at the same time.

Ms. Thompson: Do you recall when it first came to your mind that you wanted to be a lawyer?

Mr. Olender: Yes.

Ms. Thompson: When was that?

Mr. Olender: Well, the debate was, I think, a factor. And also I debated just a little bit in college -- University of Pittsburgh. My major was political science and I was pre-law, enrolled as pre-law. So I think when I was in high school I decided that I probably would like to be a lawyer. And I took accounting courses for two years, I think because I was told that that

would help me think logically.

Ms. Thompson: Was this in high school?

Mr. Olender: No, in college, in freshman and sophomore years, and I was very good at it, in accounting. And I found that that helps me in my law practice. It really does. I don't want to tell tales out of school, but none of the lawyers here understand accounting.

Ms. Thompson: I've often thought that if we could all go back and do it again, most of us would pick up more of an accounting background than we have.

Mr. Olender: Yes, so that was helpful particularly when I started practicing long ago. And the business experience in the store also was helpful.

Ms. Thompson: Did you help your father with his books in addition to helping with stacking and selling, for example?

Mr. Olender: Some, and particularly [writing] checks for the business. But also he gave an awful lot of contributions, and I would sit in the store on a stool at a counter, you know, when it wasn't busy. I remember times that I would write dozens and dozens of charity checks for him. They would range $2, $5, $10, $20, $25. The largest one I remember was $500.

Ms. Thompson: Was your father so prosperous that this was easy for him or was he stretching to do this?

Mr. Olender: I wouldn't say that he was so prosperous, but he was able to make enough money to support the family well, to buy some houses around the store, and a gas station he owned and leased out, right next to the store. But he was not monetarily wealthy, no. But this is what he was, a charitable person. So I would write the checks and he would have to sign them. He was over 50 years old when I was born, and I will give you one example of how he thought.

He wrote a will that provided in it -- at the time he wrote that will, I was in law school. What he left for me, he tried to tie up so that actually I would not get it until I was -- like -- 45 years old, because he didn't think a young man would know properly how to use money. I had never seen a will like that. He thought that I should go to art school, be in commercial art, because I made signs for the store and he thought that I was good. He did not encourage me -- rather, he did not discourage me from going to law school, but he suggested that art would be better.

Ms. Thompson: Did you think seriously yourself about doing that, going to art school?

Mr. Olender: No, no, no.

Ms. Thompson: Do you think you had enough talent to do that, artistic talent?

Mr. Olender: No, I didn't think about that. I wanted to be somebody. An artist can be somebody, but I wanted to be a lawyer and maybe President of the United States. You know, that's what I was thinking.

Ms. Thompson: Well, you said that you thought that maybe the debate experience helped form your desire to go to law school, but what led you into the debate society? What caused you to choose that as an activity? Were you already thinking of law school at the time?

Mr. Olender: Probably. And I would see lawyers, hear them sometimes make speeches. I think I thought, "that's what I would like to do."

Ms. Thompson: Political speeches, or what kind?

Mr. Olender: Charitable speeches, soliciting for charity.

Ms. Thompson: What were you like as a child? And tell me also whether you felt resentful because of what you described as a very protective environment. You didn't have a

sled or a bicycle -- were you resentful of that?

Mr. Olender: Well, a little bit, but it wasn't that big a deal because I adapted -- and adopted, really, the thinking. So that I looked upon kids in high school as frivolous. You know, they did not work, they were just having a good time. So the family values took hold of me. So, you know, I maybe was jealous of not being able to do the things, but I accepted it as a way of life.

Ms. Thompson: If you had to choose a couple of adjectives to describe yourself in high school, or even younger than that, what would they be? For example, were you a shy boy? Were you an extrovert?

Mr. Olender: I would say shy, studious, scholarly, hard-working.

Ms. Thompson: You earned good grades in school?

Mr. Olender: Yes.

Ms. Thompson: All the way through?

Mr. Olender: Yes.

Ms. Thompson: And you went to the University of Pittsburgh to college?

Mr. Olender: Yes.

Ms. Thompson: Why did you choose Pittsburgh?

Mr. Olender: I don't think I even thought of going away. This way, I could commute and work in the store and be at home, and Pitt was considered a good school. Betty had gone there, and Racille, and it was well thought of in high school.

Ms. Thompson: Were there other big colleges in Pittsburgh at the time, or universities? Carnegie Mellon is there, but was it -- I don't know whether it was there?

Mr. Olender: It was Carnegie Tech at the time.

Ms. Thompson: I see.

Mr. Olender: And it was a well-regarded school, and that's where my sister Doris, the art teacher, went, because they had very good art, drama, engineering -- those were the big things. So, I commuted every day to school either by streetcar or bus or with other students, paying 25 cents each way; it was a quarter a ride.

Ms. Thompson: Did you learn to drive in those days?

Mr. Olender: Oh, I drove, yes.

Ms. Thompson: You drove. Your father was okay with you driving at that point in time?

Mr. Olender: Yes, he was.

Ms. Thompson: How far is McKeesport from Pittsburgh, Pennsylvania?

Mr. Olender: About 15 miles.

Ms. Thompson: I think I read somewhere that you graduated summa cum laude from Pittsburgh.

Mr. Olender: Yes.

Ms. Thompson: So you obviously had a very successful career there. You said you majored in political science?

Mr. Olender: Yes, and history was another large part of it.

Ms. Thompson: Were you involved in organizations at the university while a student there?

Mr. Olender: Not other than the debate for a short time and the newspaper, the

Pitt ***News.*** For a while I wrote. In fact, I wrote a column for the paper one time entitled, "The Law is the Law," because that's the term my father would use. He would always say that "the law is the law." If he had to do something [and we asked why, he would say,] "Why? Because that's the law."

Ms. Thompson: You don't argue with it.

Mr. Olender: So, anyway, it was a little column on the old, outdated laws -- ridiculous old laws.

Ms. Thompson: Do you remember any of them?

Mr. Olender: Oh, I don't know -- like not kissing in public, and things like that. And what the penalties were for laws that were still in effect at the time, but dated back hundreds of years.

Ms. Thompson: Did you go directly from college to law school?

Mr. Olender: Yes.

Ms. Thompson: And you also did that at the University of Pittsburgh?

Mr. Olender: Yes, I thought about other schools. I applied to Harvard and I applied to Columbia on a certain competitive scholarship and I applied to Pitt. I applied to three and I was accepted by the three. So the big question was, do I go to Harvard or Pitt?

Ms. Thompson: Columbia was not in the running?

Mr. Olender: Well, not really. I mean Harvard.

Ms. Thompson: It was Harvard versus hometown?

Mr. Olender: At that time, Harvard was *it*. I don't think Stanford or Yale was even in the running at that time. It was Harvard. So that was something hard to decide, but

eventually to help my father, I stayed home. So I remained a commuter -- they called them "streetcar students" at Pitt -- and in the short run maybe it wasn't the smart thing to do. But in the long run, for me it was the better thing to do. Because I have been very happy with the type of law I practice and what I do, and I think if I had gone to Harvard, it would have ended up differently -- that I would have gone to some New York law firm and researched in a backroom and ground out the work and been successful at it, but not be representing people and doing things I like. So I think that fork in the road was an important one, and I took it for maybe the right reasons, maybe the wrong reasons. I don't know. But I think it worked out better. Because I don't think I would be the kind of lawyer I am if I had gone to Harvard.

Ms. Thompson: When you say that perhaps in the short run it was not a good decision, what do you mean?

Mr. Olender: Well, if you have the opportunity to go to Harvard, which was the number one school, and this was before the *US News and World Report* tiers, and instead you go to a local public law school, is that smart? I don't know. Generally, I would say it is not. You know you want to be all that you can be -- so, Harvard.

Ms. Thompson: Well, maybe the answer is it depends on what you do want to be and where you're trying to go.

Mr. Olender: That's right, that's right.

Ms. Thompson: You said that you decided to stay at Pittsburgh to help your father. Did you need to help him in his business?

Mr. Olender: That, and also that he was in his 70s and starting to get sick, and so that really was uppermost in my mind, maybe in my unconscious. Maybe there are other

factors. I had never really been away from home. Maybe I didn't want the challenge. I don't know. But I know I would have felt very guilty.

Ms. Thompson: Was your mother alive at the time?

Mr. Olender: Oh, yes. He passed away in 1962 and she passed away about 35 years later.

Ms. Thompson: She lived a long time.

Mr. Olender: She lived to 97.

Ms. Thompson: You come from good stock.

Mr. Olender: Yeah, and she was considerably younger. Anyway, I know I would have had guilt feelings.

Ms. Thompson: Sure. During the summers, while you were in law school, did you work in law-type jobs? Or did you work with your father, or what?

Mr. Olender: In the store. But, between the second and third years, I did do what was called a preceptorship. You had to do six months of a preceptorship before you could be admitted to the [Pennsylvania] bar, in addition to passing the bar examination. You could do two months of it before graduating. But four months of it had to be after graduating. And generally you were not paid anything for it. So I did do two months, I think between the second and third years. And there was a three-lawyer firm in McKeesport, and they did do some personal injury and I observed it. They were in general practice. They did everything. That would be pretty good.

Ms. Thompson: Is that the first time you thought about doing personal injury law?

Mr. Olender: Yes, I thought that would be pretty good. And I read some of the

books you know, Belli -- Melvin Belli, King of Torts. Preceptorships finally phased out about ten or so years after I graduated. I read a law review article on the subject that said preceptors were required in Pennsylvania because they wanted to keep out minorities. First it was used against Jews and Italians and then against Blacks. I believe it's so, because you had to get a lawyer to be your preceptor and minorities might not be able to get one. The three-Jewish-lawyer firm that I was with took me. I know a prominent African-American lawyer in Washington who is here in Washington only because he could not find a preceptor in Philadelphia. This was at the same time, or a year or two before me or a year or two after me, but he could find no one, and so instead of going to Temple where he planned to go, he came to Washington.

Ms. Thompson: I see. How did students generally find preceptors?

Mr. Olender: Well, family connections usually. So, anyway, they did away with that. I never did the final four months of the preceptorship. So I was here practicing law and I inquired, "can I now be admitted to the bar?" See, I had passed the bar examination. But I couldn't be admitted because the primary office has to be in Pennsylvania. They asked, "where is your firm?" Then they did away with that and I tried again. But they asked, "may I have your residency?" Then they finally did away with that, and I guess it was ten years or so ago when they finally had done away with all those things. So I went up to Philadelphia and got sworn in.

Ms. Thompson: You finally became a member of the Pennsylvania bar.

Mr. Olender: About 10 or 15 years ago.

Ms. Thompson: So you didn't go right to a preceptorship after you finished. What did you do?

Mr. Olender: Well, I went to Philadelphia for two months to a "cram school."

Ms. Thompson: A cram school? To study for the bar exam?

Mr. Olender: And I was the agent for the cram school. They don't call it that anymore, they call it bar review.

Ms. Thompson: Bar review, right.

Mr. Olender: Cram school.

Ms. Thompson: That's actually what you called it in those days.

Mr. Olender: Yes, I was the agent for it. So I got free tuition for selling it to the other students. One of them, who later became a prominent judge, did not pass. But he was -- I think he blamed me for signing him up for that school. He came to Philadelphia for that and he didn't pass. So I think he blamed me.

Ms. Thompson: Where did you live in Philadelphia?

Mr. Olender: At a room in a doctor's house. This doctor and his wife rented out a room to students. So I was there and then I came to Washington to start as a teaching fellow and graduate student at the George Washington Law School, which I did for a year. I obtained a masters of law in forensic medicine, which was administered by the law school and the medical school, and I did some research -- medical research -- on the subject of pain and suffering, proving pain and suffering. I had decided that by the time I had graduated law school that I wanted to be a personal injury and malpractice lawyer. I think maybe the biggest influence at that time was Belli and his books. I thought I would like to do that. And I needed to learn some medicine, how the two get together. The person in charge of the [GW forensic medicine] program was Murdoch Head, who was a physician, a plastic-surgeon, a dentist, and a lawyer, and he was in charge of the program. And actually after that, he founded Airlie House, which was a

think tank.

Ms. Thompson: What did you do as a teaching fellow?

Mr. Olender: Legal research and writing with students, you know, to help them with classes. Also, if requested, I would assist professors in substantive courses, but that wasn't requested much. But research and writing -- I helped with that -- and grading the briefs, and so forth. I attended classes at both the medical school and the law school and did my research and writing for my -- what is it called -- master's dissertation.

Ms. Thompson: Or thesis?

Mr. Olender: Thesis, whatever it was then, which I then converted into articles that were published in the *Duke Law Journal*, and some others were reprinted in books on proof and evaluation of pain and suffering in personal injury cases. And I got to meet one of the preeminent physicians from -- I think he was from Harvard -- on the subject of pain. I used his references, and I think I sent him a copy of the thesis or dissertation. But in any event, when he was going to be in Washington, he called and wanted to meet me to talk about what he wrote about: scientific equipment to measure pain, and various things. Anyway, I enjoyed the subject. It was fascinating. I researched the law on proving pain and also what you can argue in arguing pain and suffering. In fact, I did the Am. Jur. Trials. It was a large set of books. It's still around, and they did a section on pain and suffering, which I wrote. So that work prepared me a little bit, both for personal injury and malpractice work, but also helped me with getting myself known among other lawyers, so that they would send cases to me. Belli invited me to speak at a seminar for the first time. I was still at GW. The first time, he had me on at ten minutes to midnight. The seminar had started at eight or nine in the morning. Ten minutes to midnight I was a young

kid, and so he had me on and he talked about my article.

Ms. Thompson: It was your article that brought you to his attention?

Mr. Olender: Yeah, and then the next Belli seminar, when he invited me, I said, "I don't want to go on at ten minutes to midnight." So he gave me a good spot the next time. And I would go to the local trial lawyers' meetings, and I gave a talk, I remember, before I'd ever even tried a case. I gave a talk to these experienced lawyers, and some of them would send cases to me.

Ms. Thompson: Do you remember the subject of the talk? Was it about pain and suffering?

Mr. Olender: I think the first talk was on that, I think so.

Ms. Thompson: Did you come to Washington because you wanted to be in Washington in particular, or did you come because of the GW program?

Mr. Olender: It was because of the program. And to my knowledge it was the only one in the world. I don't think there was any other.

Ms. Thompson: That was going to be my next question.

Mr. Olender: And I don't know that there are any others now that are a combination of law and medicine.

Ms. Thompson: What did you take in law school that you think may have moved you in this direction? You said you did the short preceptorship work with a personal injury firm, so that contributed to it, but are there any courses in law school that got you thinking you would like to practice personal injury law, or be a real trial lawyer?

Mr. Olender: Well, really not. Torts was the only really relevant course, plus

Evidence. I guess by exclusion, a lot of the courses told me that I did not want to do a lot of things, like Estates & Wills, and Real Property, and Corporations, and all of those things that are not litigation-related.

Ms. Thompson: Was there a trial practice course when you were in law school?

Mr. Olender: No.

Ms. Thompson: When did you get your first on-your-feet experience in a courtroom, whether a real one or a simulated one?

Mr. Olender: A real one.

Ms. Thompson: And when was that?

Mr. Olender: Well, I'm not sure if it was before Judge [Alexander] Holtzhoff in the U.S. District Court for the District of Columbia, or whether it was in the then-Municipal Court in a domestic case. I'm not sure.

Ms. Thompson: But in any event, it was after you finished at GW and started practice?

Mr. Olender: Yes, there were no mock trials or moot courts. And I remember the appearance before Judge Holtzhoff very, very well --

Ms. Thompson: Is that right?

Mr. Olender: -- because I could barely breathe.

Ms. Thompson: Well, tell me about that. I actually have a few more questions about law school, but tell me about that.

Mr. Olender: I could hardly breathe. It was a case -- it was very complicated for me. I think it involved -- I think maybe it involved some transportation or certificate to -- I'm not

sure what it involved, but it was very complicated to me.

Ms. Thompson: It was not a personal injury case?

Mr. Olender: It was not. It was very complicated, and it had been brought to me by a man who was not a lawyer but who was a patent examiner and who had some law school training, and he was the one who taught me what I needed to know for this case, which I didn't learn. I don't think I learned it well enough, and it was pretty complicated, and I started -- the judge wanted to know what it was about. And I started to tell him and he said, "No, tell me in one sentence what this case is about." And I could barely breathe. So, I don't know if that was my first experience, but that's the one I remember.

Ms. Thompson: That's the one that sticks out in your mind? It was a bench trial, or was this one just a court appearance?

Mr. Olender: It was a court appearance. I don't know if it was a motion or scheduling conference or something, but he wanted to know what the case was about.

Ms. Thompson: And it was difficult enough to remember your name?

Mr. Olender: Yes, I had observed him and, you know, it wasn't the first time I had been in his courtroom, I don't think. I think I had observed at least that day, and he was not somebody to trifle with, and I realized that. But my experience with him as time went on was not bad, for one thing because I had a good loud voice and I could make myself heard without a microphone, and he was very, very hard of hearing. Lawyers would have trouble with him because of that. They would shout into the microphone and he would get upset, but that was one thing -- my voice was strong enough that he didn't get upset with me for not being understandable.

Ms. Thompson: I think I read that you were on the *University of Pittsburgh Law Review*. Is that right?

Mr. Olender: Yes.

Ms. Thompson: And I remember a reference to your writing an article or note on a medical topic. Is that right?

Mr. Olender: Yes, it had to do with organ donations or dead bodies.

Ms. Thompson: Dead body donations. It won the law review prize for the best student article of the year, and I made my first money from the law from that article. There was **a** professor in the School of Health who had given me advice on the article. I had gone to him for advice, and he said that it could be -- that reprints could be sold. So we were partners, and he arranged for the sale of reprints and I got, I think, a couple hundred dollars.

Ms. Thompson: That's pretty good.

Mr. Olender: Yeah, and another law review article that I wrote -- maybe that was the first money I made from law, because I got something from that too. A contest was held by ASCAP. I don't know if they still do it. ASCAP, you know, relating to music and other things dealing with copyright law. They had a contest in every law school and gave a prize. I don't remember what it was, I just don't remember: $50, $100, $200, I don't remember. Anyway, I won first prize for Pitt. Now to fully disclose, I was the only one that entered the contest from Pitt, but I won first prize and got a certificate for first prize, and I believe it was published in our law review. "Clean hands" was the topic -- clean hands in the equity court and in copyright cases.

Ms. Thompson: Is that a doctrine you have had to resort to in any of the personal

injury work that you do?

Mr. Olender: No, but you do. The saying was -- maybe it was by Belli -- that the plaintiff has to be as pure as Caesar's wife. And I forget her name.

Ms. Thompson: What led you to do the other article that you did on dead bodies and organ donation?

Mr. Olender: I can't remember.

Ms. Thompson: Do you remember what your position was in that article?

Mr. Olender: Well, it was no position. It was reviewing the law on things like permission, and suing because there was no permission. I think at that time I researched them very thoroughly. At that time, I don't think there was a comprehensive article on that subject, so I think it was my contribution to the literature.

Ms. Thompson: Can you say what it is about personal injury law that so fascinated you that it caused you to go and do the LL.M. at GW and the subjects that you studied there -- forensic medicine? What was it about that area of the law?

Mr. Olender: Two things, one noble and the other practical.

Ms. Thompson: There's always a practical side.

Mr. Olender: The noble side is I thought this was really something good to help people that are hurt, to get money for them, to sue the wrongdoer. I thought that was good. Also, I saw the lawyers in the firm I clerked for get a fourth or a third of what they collected from the case, and I thought that was pretty good, too. It was a combination.

Ms. Thompson: And so when you left GW with your LL.M., that was about 19--?

Mr. Olender: '62, or '61 actually.

Ms. Thompson: And then what's the next thing you did, by way of moving your career forward?

Mr. Olender: By then I had taken the D.C. bar and I opened an office.

Ms. Thompson: Were you married yet?

Mr. Olender: No, I opened an office in the first floor of a house which I shared in Foggy Bottom on 25th Street with the other teaching fellow. I furnished an office there and tried to get clients.

Ms. Thompson: Did you literally hang out your shingle?

Mr. Olender: Yes, and tried to get clients.

Ms. Thompson: How did you do that?

Mr. Olender: Very slowly and very unsuccessfully for quite a while.

Ms. Thompson: Did you advertise somewhere?

Mr. Olender: No, I couldn't afford that. Well, first of all, advertising was not allowed.

Ms. Thompson: I thought of that after I asked the question.

Mr. Olender: Other than a small yellow pages ad, that wasn't allowed. So some people would somehow happen upon me, with some little cases. I do remember my first malpractice case came to that house in -- would have been '62 or '63, and it was a terrible case that never should have been prosecuted, and fortunately I got out of it before trial. I was able to get out of it. I signed up for domestic cases representing the defendant in cases where the defendant had not filed an answer. At that time, the rules required that the defendant in a divorce case be represented -- you know, even in uncontested cases, the defendant had to be represented.

So if no answer was filed and no appearance entered, then the plaintiff would have to have the court appoint a lawyer to represent the defendant and, I think, the fee was $50 originally and went up to $75, then $100 for this representation.

Ms. Thompson: For the whole representation, that was the fee?

Mr. Olender: Yes, so I got some of those. In the federal court, everybody was appointed. Everybody who practiced in the court or would file cases in the court was appointed to criminal cases, so I was appointed to them regularly, several a year usually. And that's how I got some of my first experience, and I don't think that I caused anybody harm. I'm thankful for that. Through a combination of luck and also trying hard, I don't think I caused anybody harm by representing them. They would appoint you based on the severity of the case, and you'd have time to learn. One of the assistant U.S. attorneys was known as a very good prosecutor, but yet he was a gentleman and actually I can think of a case where he taught me what I needed to do.

Ms. Thompson: Is that right?

Mr. Olender: Yes, this poor fellow was going to be -- I don't remember the details and all, some drug conviction. Anyway, he taught me and told me what laws to look at and what needed to be done. The same thing with the late Luke Moore, who was an assistant U.S. attorney who was just splendid -- interested in justice and not just the maximum punishment for the defendant. And the most serious case I was appointed to -- it must have been after a couple of years or so -- the charge was rape. I got a man who had been a witness in a domestic case that I was involved in who helped me investigate. The court didn't pay anything, but they would on occasion provide an investigator. The only expense money they gave was -- well, they didn't give expense money. But if you were appointed for an appeal to the U.S. Court of

Appeals, they would provide you with mimeograph paper, and you would type the brief on that, and they would run it off for you. They had a mimeograph machine, so you wouldn't have to pay for mimeograph paper and running it off to make briefs. That, to my recollection, was the only expense that was reimbursed. But anyway, the rape case -- this man took me in his car, and I understood he had a gun, and we went to investigate the case, including the victim and her family. And I think we did a very, very good investigation. The assistant U.S. attorney was one of the top ones, and he would not give an inch. It was very tough. I don't remember -- was it called first degree rape? -- but I think he was not willing to give any plea bargain whatsoever, and he put on his case, and there was a point where my client was in the cellblock behind. He was crying, and he was afraid, and he wanted to plead. And at that point the U.S. attorney would give only -- he would have to plead to -- I believe it was assault with an attempt to rape. I'm not sure if that was the charge, but it carried 20 years. The client was telling me he wanted to plead, he wanted to plead. He's crying, and I'm not a hundred percent sure of the ethics of it, but I told him, "no, just hold on, hold on." So the trial continued and the father testified and I was able to develop good things from him. And based a lot on the investigation that we did -- personal investigation with this family and the neighbors and so forth -- it reached a point where the assistant U.S. attorney offered two counts of simple assault, each of which carried a maximum of one year. So we started out with a charge -- I don't remember it -- but if the rape charge itself carried the possibility of life in prison -- I just can't remember, it may have -- but the assault with intent to rape, I'm sure it carried 20 years, and he ended up with one year and one year. So I felt I had done a good job for him, and as to whether justice was done, I think it probably was.

Ms. Thompson: And you said that in the court at that time, at the time when you

were getting started, fees were available for representation in domestic cases, but if you were appointed to handle a criminal matter at the trial level, there were no fees?

Mr. Olender: That's correct.

Ms. Thompson: Except that you could get the cost for an investigator. Is that what you said?

Mr. Olender: Yes, if you made an application you could. There were other types of cases where people could get fees, you know, appointed cases. Some type of estates, I'm not sure just what it was; the mental health cases -- you could get a fee if the family or the client had money to pay a fee. I did that for a while. I was appointed guardian ad litem for people who were at St. Elizabeth's, and there would be hearings at St. Elizabeth's, and I would go over there for the hearing representing the patient. In some of those cases, the family would have money and there would be some substantial work done, and a fee could be gotten from that. But the government couldn't pay it, it was the patient. Also, guardians were appointed and -- I don't remember whether this was in District Court or in the Municipal Court -- no, I think I can visualize the furniture of the U.S. District Court. So that was before a lot of this stuff was sent over to the Municipal and Superior Court. I was appointed to a whole slew of cases for people who were incompetent. Quite a few of them were veterans who were in St. Elizabeth's, and I would have to take care of their money and make a yearly accounting to the court, and the fee I think was 5 percent -- I think, 5 percent of the corpus.

Ms. Thompson: The bottom line is, you had to eek out a living.

Mr. Olender: Yeah, there was very, very little money from such cases. So there were opportunities.

Ms. Thompson: Do you remember the address of your law office at the time?

Mr. Olendar: Well, at first it was 950 25th Street, downstairs of a house. Then it was 711 14th Street for a year, which is an address which no longer exists. And from there I went to the Barr Building, which is at 910 17th Street, and rented -- shared space -- rented space from two lawyers, Kurtz & Donovan. I was there about ten years, and I would do some litigation work for Mr. Kurtz. He represented a lot of businesses, and so forth, and they would have litigation, and I would handle some of those matters and get fees from it. Mr. [James P.] Donovan had a case he was handling for Mr. Kurtz for one of Kurtz's clients. It was a company that made hoses for the astronauts -- air hoses for the astronauts. And it was a question of copyright infringement, and it was in the U.S. Supreme Court. The petition for certiorari was filed by one Abe Fortas, and Mr. Donovan represented the company, and he had me write half the brief. He took one section and I took the other section, and I got $500 from that Supreme Court brief. We got a telegram from the Court saying, "The petition for certiorari is denied, Justice Fortas not participating," because after he filed that petition, he was put on the Supreme Court.[2] Whenever I see Stiffle Lamps -- that was one of the leading cases that we used in the brief. How do you pronounce --

Ms. Thompson: I've heard "Stiffle." I don't know if that's correct.

Mr. Olender: All right, so anyway, that was one of the leading cases. And that was quite a thrill, we got a telegraph from the Supreme Court. And then there were other -- I don't know, two or three other -- Supreme Court cases where I was filing the petition, doing them for other lawyers -- criminal cases.

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[2] The case was ***Space Aero*** *Products v. R.E.* ***Darling*** *Co.*, 382 U.S. 843 (1965).

Ms. Thompson: Were you in solo practice in all those early days?

Mr. Olender: Oh, yes.

Ms. Thompson: And how long did it take before you became comfortable that you could make ends meet in law practice?

Mr. Olender: Well, I never thought about "can I make ends meet?'' I mean, I never considered not proceeding, but it took, I would say, a good ten years before the fees began to be somewhat commensurate to the effort.

Ms. Thompson: Well, let me ask this last question, and then we'll stop for the day, and maybe you can answer it for me tomorrow, because I'd like to know about your very first jury trial. Do you remember your very first jury trial? You obviously did a lot of other work on your way to that, and had a lot of cases where there were pleas or settlements, before you got a full trial.

Mr. Olender: I don't remember the first, but I do remember one that involved one of the mental patients. That was a jury trial. So that would have been in the very early years when I was representing the mental patients.

Ms. Thompson: Okay, let's stop here.

ORAL HISTORY OF
JACK H. OLENDER

Second Interview - February 26,2004

Ms. Thompson: Today is Thursday, February 26,2004, and this is a continuation of my discussion with Jack Olender, recording his oral history for the D.C. Circuit Historical Society. When we ended our discussion yesterday, you were telling me about some of the various types of cases that you took on early in your career as a lawyer, when you started your practice. I wanted to ask you about when it was that you became firmly established as a personal injury lawyer, malpractice lawyer, as opposed to a sort of general lawyer of the type that you were when you started out.

Mr. Olender: Well, I would say at least ten years. My first negligence cases -- other than one malpractice case that was not a good case at all -- were for insurance companies, subrogation claims. Some of the insureds would be injured in the collisions for which the insurance companies wanted to be reimbursed, so I would be able to represent the injured driver or passenger in some of those cases in addition to the insurance companies. So I got some experience with injury cases that way. Also, I did some collections and I got a patent for a water meter, a tropical climate water meter. Just about any kind of case.

Ms. Thompson: It sounds like you took quite a few of those. Well, I want to go on in a little while to ask you in particular about some of the cases that you handled in the federal courts. But, I've been eager to ask you about your personal injury/malpractices cases generally and to have you tell me which ones you think have been the most significant and important, and get your view on them. I know you mentioned to me Janette Moore versus –

Mr. Olender: Janetta Moore.

Ms. Thompson: *Janetta Moore v. Washington Hospital Center,* is that correct?

Mr. Olender: Yes.

Ms. Thompson: Tell me about that case, if you would.

Mr. Olender: Well, when I first got into the case, the child was about 2 or 3 years old. She had been delivered at Washington Hospital Center and she was a double footling breech, meaning that instead of head first, her feet were first, and both feet were down. **A** double footling breech, and there was difficulty in her delivery and she was born in a very depressed state, and she was severely cerebral palsied. I was brought into the case by another lawyer and I then brought a doctor/lawyer into the case with us, who was able to get, I think, all of the expert witnesses. He was able to get experts from all over the country and we prepared the case, and in the discovery of the case the resident doctors who worked at Washington Hospital Center testified in depositions that, contrary to the medical record, they pulled the baby's feet down in the delivery room, as part of the delivery. The nurse's note showed that they pulled the baby's feet down in the labor room. So the nurse was very important, but she had disappeared; we could not find her. So the case would have gone to trial with these two residents testifying they pulled the baby's feet down in the delivery room, which could have been appropriate because they were trying to deliver the baby if that were true. If they were pulling the feet down in the labor room, that would be absolutely the worst thing in the world to do, because you don't pull the feet down until you are ready to deliver because it causes the baby to come down, and if the baby is hung up and not coming out the baby doesn't get any oxygen. That's because the neck is squeezed, the cord is squeezed, so that the oxygen is not going to the brain. It's well known, and it was well

known at that time; and they had a saying, "hands off the breech," don't fiddle with the breech, don't pull. So we were going to have to somehow get the jury not to believe these two doctors and not to believe that the nurse had made a mistake. Well, I was in New York, in the Bronx, in the hospital where one of our experts was the chairman -- the Albert Einstein Medical Center, connected with one of the hospitals in the Bronx. We had the chairman of the department, we went over the case, and I mentioned the name of the nurse, that we couldn't find her, and he said, "She is here. She is a nurse practitioner." The reason we couldn't find her is she had gone to England to study to become a mid-wife. So she was a nurse mid-wife practitioner in that hospital and he summoned her and she came and she remembered everything perfectly. How she had bawled them out, "You don't do that!" They rushed the mother and baby to the delivery room where a C-Section was done to deliver the baby. So, I like to think that this case was the predecessor to "The Verdict," the Paul Newman movie. Because that case rested on the testimony of the nurse who was contradicted by the doctor and, if you remember the movie, Paul Newman traced the nurse to another city where she was working in a school and she saved the day and won the case. So, we had the same thing in that case. It was tried and we had the trial and the verdict.

Ms. Thompson: Do you remember what the verdict was?

Mr. Olender: I do very well, extremely well, because according to what I've been told, it's the first verdict in the country in an obstetric malpractice case that was $1 million or more. It was $2.5 million.

Ms. Thompson: What year was that?

Mr. Olender: That was in 1976, so I remember that case.

Ms. Thompson: Well luck, and being in the right place, and making the right inquiries certainly played a role. If you think back about that case, are there other things that you learned from it?

Mr. Olender: Well, to never give up and to just pour in all of the time and work that is required, because it was like a full time job, that case. The painting on the wall here [pointing] -- oh yes, do you see that drawing there in color?

Ms. Thompson: I do.

Mr. Olender: That's by Janetta, which she made with a wand on her forehead because she didn't have enough control of her hands to hold a paint brush. So the wand was fastened to her forehead and she made it. To me it looks beautiful -- I mean it's modern art that you may pay hundreds of thousands of dollars for from some celebrated artist.

Ms. Thompson: When did she do that?

Mr. Olender: I don't remember exactly when or how old she was, but she probably was a teenager at the time. The testimony, the expert testimony in the trial, especially by the defense experts, was that she would not live long at all because of the severe cerebral palsy. If that were believed, then that would hold the damages down, because the expenses of giving her good medical care and rehabilitation would have been less. Well, she passed away a few years ago and she was about 24 and she had graduated college. She had become a college graduate and she worked as a counselor to people with disabilities.

Ms. Thompson: Is that right? Which court was that tried in?

Mr. Olender: That was tried in the Superior Court.

Ms. Thompson: Do you remember who the judge was?

Mr. Olender: Oh yes, it was Judge [James] Belson, who now is a senior judge on the D.C. Court of Appeals.

Ms. Thompson: What are your recollections of Judge Belson in the course of that trial?

Mr. Olender: He was a very good judge. He understood everything. He gave a very fair trial. He gave some rulings that I thought were adverse to us, and conservative, but with hindsight it's better that he did make those rulings so that the verdict and judgment were more sound than they would be if questionable things had been allowed.

Ms. Thompson: Can you recall what some of those rulings were?

Mr. Olender: The only one I can remember, which I really think was incorrect -- there were others but I can't remember them -- but the one that I remember, because it stunned us really at the trial, was he did not allow the child to be brought into the court for a physician to demonstrate what her disabilities were and what her condition was. His reason was that we had shown a movie of her getting physical therapy and the jury had already seen her on the movie and seen what her disability was, and so we didn't need to have her there in person, and her being there and the prejudice would outweigh the benefit. **As** a result of that, I have been very hesitant about using a-day-in-the-life videos. Most lawyers in such cases use day-in-the-life videos, but that made me gun-shy. I could see the logic of his position; I don't think it was correct, but I can see the logic of it. Why gamble? I'd rather have the child in the court, and let the doctor demonstrate what the disabilities are, than to depend on some video.

Ms. Thompson: In other cases have you been permitted to do both?

Mr. Olender: I'm trying to remember whether after that I tried, and I can't

remember one. I was just so gun-shy about that, because I respect him as judge and as a person. I don't know if his ruling was correct, but it was the ruling in that case, and other judges could do the same thing.

Ms. Thompson: Your comment is interesting. Is there anything else about that case, anything other than what you've just mentioned, that you think shaped the way you practiced in later cases or helped to shape personal injury law in the district? Anything about that particular case?

Mr. Olender: I think so, because really it's probably the first cerebral palsy obstetric case that I'm aware of that was tried and won. I remember the opponent saying in the rain at National Airport -- we were getting on a shuttle to go to New York for deposition in the case -- saying, "You don't really expect to be able to win this case do you?" I think the offer before trial was $50,000, and the offer while the jury was out was $300,000. So the case I think showed that it could be done, and it showed me that it could be done. Because I had never undertaken a case of that magnitude and worked with an excellent doctor/lawyer who did most of the expert witness preparation. I was the lead trial counsel, and the lawyer who brought me into the case was there; he participated. I think it sort of was a model for other cases, and because of it people came to me with cases. One of the things I liked most about it was I learned that one of the officials at the Washington Hospital Center said that that was the best thing that ever happened to the obstetrics department, to help them shape up.

Ms. Thompson: The question you got about whether you thought you could actually win the case, was that a question from someone who knew of the difficulty you were having in locating the nurse, or was it sort of a more general question?

Mr. Olender: Oh, this was the defense counsel. And this was before we had located the nurse, or was it? I'm not sure. Not sure. But in any event, they were very confident all the way through until the jury was out.

Ms. Thompson: What was it about your experience up to that time that you think caused the other lawyer to bring you into the case?

Mr. Olender: Well, I had tried several other cases for him, and I know that two of them were the largest verdicts he had ever been associated with.

Ms. Thompson: That could cause someone to bring you in.

Mr. Olender: And he had been to two other lawyers before me on this case who were older and more recognized malpractice lawyers, and they had turned the case down.

Ms. Thompson: On what ground do you think? That it couldn't be won?

Mr. Olender: Well, probably, but maybe because there hadn't been any that had been won. In any event, they didn't think they could make out a case. But we were able to, with good testimony. We had one expert who at that time was a pediatrician in Baltimore, and he then attended law school. And now he is an M.D., J.D. The obstetrics expert was chairman from the Obstetrics Department of Albert Einstein Medical School, a very eminent physician, and we had very good, reputable experts, and we caught a lucky break locating the nurse. The case frankly was a strong case and we tried a strong case, but the defense just didn't realize it, you know, and didn't think such a case could be won.

Ms. Thompson: Well, you now have handled many obstetrical cases, obviously.

Mr. Olender: Yes, yes.

Ms. Thompson: How many would you estimate?

Mr. Olender: Well, I don't know for sure, but I believe that I have looked at hundreds of them, hundreds, and I have probably prosecuted -- I don't know. It would be dozens, but I can't estimate more than that.

Ms. Thompson: You've turned many away, or declined to do them?

Mr. Olender: Oh yes, many. Many are turned away and many after doing thorough evaluations and going through a large number of experts. And if it turns out it is just not a case -- everybody, all the experts tell us it is not a case, we have no choice but to give it back.

Ms. Thompson: Can you talk about that a little bit? The context for my question is that, you know, you see articles in the press about malpractice lawyers, and they call you ambulance chasers. You are not a friend of the medical society, no doubt, or they don't think you are. They probably think in their most angry moments that you might take any case that comes down the pike. What for example has caused you -- without naming the particulars of any case -- what has caused you to decline a particular case?

Mr. Olender: Well, it's just good professional sense and good economic sense, because these cases never have been easy. They never have produced settlements unless the case is a strong enough case that a jury verdict is a good probability. And so a lawyer with good common sense is not going to want to take in an inventory of cases that are going to take a lot of time, a lot of money, and be losers. These cases are the best examples of a contingent fee system being valid, because the contingent fee system is a big incentive not to take a bad case, because a third of nothing is still nothing. So you want the cases to be cases that you can win before a jury, and if you can win a case before the jury there are good chances they can be settled without a

jury.

Ms. Thompson: I wanted to ask you about contingent fees, and this seems to be a good time to do it. What would you say to those who suggest that contingent fee percentages are too high? How do you arrive at the view, if it is your view, that a third is a reasonable fee?

Mr. Olender: It *is* my view that a third is reasonable, and not just because that is tradition. It has been for probably most of the last century. It gives enough to the client, two thirds; the client gets fair compensation for the injuries. And it gives enough to the lawyer that it's incentive to the hundreds or even thousands of hours that go into the case and the tens of thousands or even more that is invested in the preparation of the case. So that if it were a lower percentage, it would not be enough incentive for a lawyer to invest professional time and the expense money that goes into the preparation of the case. Most clients, especially people who are severely injured or their families, don't have money to spend on lawyers or on court reporter fees or expert witness fees, so the lawyer has to advance all of those costs in order to put the case on. The people who propose lowering the fees are the people representing the medical industry and the insurance industry, because they want to discourage the suits. It's very difficult for an injured person, say in California, to obtain an experienced trial lawyer to prosecute a malpractice case, because there is law in California that caps the damages. It also caps the attorneys fees at such low figures, low percentages, that the lawyers just can't afford to take the cases. So it's instructive to look to who is asking for the caps on the fees. It is not the patients.

Ms. Thompson: Tell me about some other cases that you think are memorable and important in your career.

Mr. Olender: Well, one that was tried in the federal court about 12 or 15 years

ago was *Leahy v. Columbia Hospital* and a firm of obstetricians. That was a case where the child had cerebral palsy as a result of the labor and the delivery, and we sued the hospital and also the medical partnership that was involved in the management of the labor and the delivery. The case was settled shortly before the trial with the hospital. The doctors would not settle, so we had a trial. The family would have settled with the doctors for not too large an amount; they didn't want a trial. The father was a prominent lawyer and the mother was a prominent Capitol Hill staffer. And they were not looking for a lawsuit, but they had to see it through because they could not get an adequate settlement for their son without the trial. We had the trial, and the verdict was $10 million and Mike Wallace did a story on it on "60 Minutes." After the verdict the nurses at Columbia Hospital picketed, protesting the verdict against the doctors who practiced there. It was a big to-do.

Ms. Thompson: What year was that approximately?

Mr. Olender: That was 1989. We learned afterward that the doctors wanted to settle the case, and the lawyer hired by the insurance company and the insurance company were not interested. So the doctors then hired a large law firm to represent them after the verdict. And the case was settled for the amount of their insurance, which was $4 million. That was quite a good case.

Ms. Thompson: Were there any particular principles of evidence or other lessons that you derived from that case?

Mr. Olender: The only thing I can remember that I learned -- and I guess I knew it before then but I have put it into practice -- is to make sure that the other side doesn't get away with trying to talk to the jury privately afterward, trying to get some information that will allow

them to attack the verdict. After the trial, we were leaving the courthouse and I saw defense counsel with his cartons and several big cases or document carriers, whatever you want to call them. He had a lot of them and he was following a juror out of the courthouse. She was walking and he was following her, attempting to talk. He was a Virginia lawyer, and I followed him out of the courthouse onto Pennsylvania Avenue and walked right with him. He was trying to talk to her, and I stayed right with him. And we walked probably from the court -- it was at John Marshall Place all the way down to -- I don't know -- 10th or 12th Street where her bus stop was. And I made comments to him like, "Are you walking all the way to Virginia?" and so forth. He just kept trying to talk to her.

Ms. Thompson: Did she speak with him?

Mr. Olender: She didn't want to, but he was questioning her because he apparently thought she was the most favorable juror to him. It's the first time I can think of that I had to do that. I remember now to watch, especially since the federal rules of the U.S. District Court at that time and perhaps even now -- I haven't looked at them recently -- do not allow the parties to talk to the jury without permission of the court. I had that in another case where they did that, and they got affidavits from some of the jurors -- a railroad case. I don't know if at this moment that is still a rule or not.

Ms. Thompson: I'm not aware of that either. Who was the judge in the Leahy case, do you recall?

Mr. Olender: I'm trying to remember -- He was a lawyer at Hamilton & Hamilton and he was the U.S. Attorney -- a very nice man.

Ms. Thompson: Do you recall any rulings in that case that stick out in your mind,

evidentiary rulings and the like?

Mr. Olender: No, it was a good trial. There wasn't anything bizarre other than my opponent in his closing argument taking out a surface and putting it on the jury rail and putting three cups and a pea on it and playing a game of "shell game" --

Ms. Thompson: The shell game.

Mr. Olender: -- and telling the jury that that's what I was doing.

Ms. Thompson: [Laughter]

Mr. Olender: [Laughter] -- Judge Flannery. If I recall correctly, he was the judge.

Ms. Thompson: Had you appeared before him before?

Mr. Olender: Yes, in a few cases. I remember specifically two cases before Judge Sirica that I think were interesting. One was where I represented a local union of health office workers of the United Mine Workers. The United Mine Workers had an office on K Street where people who administered the health benefits worked. And they tried to unionize and the United Mine Workers opposed the unionizing by their in-office employees, and it involved the ballots being seized and all kinds of things. I represented this little group of office workers. We had a trial before Judge Sirica, and I brought -- I mentioned Mr. Donovan, who I had my offices with -- I brought him into the case. This was a case that I had gotten but I brought him in. I tried it. I did most of the talking and, anyway, we lost before Judge Sirica. Then we appealed to the U.S. Court of Appeals and had it reversed; and, by the time it was sent down, Tony Boyle had been arrested for murder, and his regime left and the new people came in, including Mr. Yablonski's son. Boyle was convicted of murder –

Ms. Thompson: I remember.

Mr. Olender: -- so the son, Chip Yablonski, became general counsel for the United Mine Workers, and we were then able to settle the case decently.

Ms. Thompson: The specific issue before the court was what, whether or not the workers could unionize?

Mr. Olender: Whether they were properly certified, whether the election was correct. The ballots were seized, and a bank was involved -- I think that's where the ballots were put -- and a hotel was involved where the election was held, and it was quite unusual for this major union to be fighting against this.

Ms. Thompson: Quite ironic.

Mr. Olender: Yes, and the office workers -- you know, my clients -- they would go to West Virginia. They had offices in other places besides D.C. They had field offices in West Virginia and elsewhere, and they told me that men with guns chased them off; and I said, "You know that I didn't know what I was getting into," and they assured me and said, "Don't worry. They never hurt the lawyers."

Ms. Thompson: And you're here to tell the tale.

Mr. Olender: Yes, I am here.

Ms. Thompson: Well, you obviously didn't like Judge Sirica's ruling very much, but what are your memories of him personally?

Mr. Olender: Very fondly. I remember another case I tried before him. This one Mr. Donovan brought me into. The case involved a typewriter company -- a lawsuit over typewriters. I don't remember any of the details. But it was a jury trial and, as I recall, we won

the case. I recall cross-examining a witness and I was smiling quite broadly, so the judge suspended all of a sudden, called us to the bench, and said, "Be like Mr. Donovan here -- a poker face. I see you grinning like a Cheshire cat."

Ms. Thompson: [Laughter]

Mr. Olender: And then, shortly thereafter, there's a recess and the judge comes back in and he calls us up to the bench and he bawls out Mr. Donovan for walking when the "all rise" was called. We rise, and Mr. Donovan was sitting at the other end of the courtroom, so he was walking [to get in place].

Ms. Thompson: [Laughter]

Mr. Olender: So he bawled him out for -- you know -- not standing in place, and I was convinced then, and I'm convinced right now, that he did that to make me feel better.

Ms. Thompson: [Laughter]

Mr. Olender: Here I was, a young lawyer and -- see, I think he was very softhearted and kindhearted.

Ms. Thompson: That's a great story.

Mr. Olender: And he was -- you know -- he was teaching me. He wanted to teach me and he thought that it probably hurt my feelings. I don't say it hurt my feelings, but it made me feel bad that I wasn't doing something right.

Ms. Thompson: I'm sure.

Mr. Olender: So he -- I'm convinced that he did that to make me feel better.

Ms. Thompson: How long had you been in practice at the time, do you recall?

Mr. Olender: Well, that's when I was in the Barr building, so it would be in the

first ten years, somewhere in there.

Ms. Thompson: That's a great story. I wanted to mention to you that I looked at a reported case that you handled in the District Court -- I'm not sure whether you remember it -- *McCall v. Shields Associates*, I think it was called.[3] It was a case in which you represented the plaintiff, and the defendants were challenging the makeup of the civil jury. Do you remember that case at all?

Mr. Olender: Was it Norman McCall?

Ms. Thompson: I believe that's right.

Mr. Olender: So it was a Fed. Supp. case, I guess --

Ms. Thompson: I believe that's right.

Mr. Olender: -- because I don't think it was on appeal.

Ms. Thompson: I think that's right, and I think the defendants were challenging the verdict on the grounds that the jury had been unfairly weighted on the basis of the fact that more -- or a larger percentage of -- whites were managing to avoid jury duty than blacks; so I guess it was a heavily black jury -- civil jury.

Mr. Olender: I frankly can't remember that.

Ms. Thompson: Well, I suspected you might not.

Mr. Olender: I remember the case very well, and I'm in contact with Mr. McCall and his son to this day. In fact, he called within the past week --

Ms. Thompson: Oh, really.

Mr. Olender: -- from Philadelphia. He was in Texas for quite a while and I

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[3] The case is reported at 617 F. Supp. 244 (D.D.C. 1985).

remember his case well because he was on a sidewalk in Georgetown, innocently on a sidewalk, when a young man in a van or a truck operating on the business of his employer -- I forget who the employer was -- ran up on the sidewalk and knocked Mr. McCall through a window, a big window, and badly fractured at least one of his legs. It was a serious injury and I forget whether there was some evidence of drugs or what on the part of the driver, and we got a verdict.

Ms. Thompson: I mention the case because I was interested in your observations on juries in the District and what you think of juries that you've encountered in the local courts and in the federal court -- whether you think there has needed to be a change in the rules of jury service, or your general observations on juries.

Mr. Olender: Well, one of the first jury trials I remember from the federal court -- this would've been probably from the '60s, I guess -- the client was a railroad worker and he was injured at Union Station. He was getting on a freight elevator and the doors came from the floor and from the ceiling. And as he was walking toward the elevator, he said there were people on it. He said "hold it," but they brought the door up so he tripped on it, and he fractured something -- I think the upper extremity, the elbow or the wrist or something. So we filed suit under the Federal Employees Liability Act. The gentleman was African-American and the jury was Caucasian. The case went very well, and we won the case, very good verdict, and the jury was very nice and friendly, especially some of the middle-aged women, they were nice to me, a young lawyer, and they wanted to do the right thing. I don't think the color made any difference in the outcome of the case, although I do think it does in many cases. That particular case, he was a nice man, hard working. He had a serious injury and the jury was fine. We've come almost full cycle some days in court, where the jury pool is almost all white. The problem is the

response to the jury summonses. The people that are being summoned are not representative of the community, and particularly the people who respond to the jury summonses are the doctors and the lawyers and the nurses and the office administrators and the bankers, etc., etc. And the people who don't respond to the jury summonses are people who are not that much part of the upper and middle class society, comfortable with the courts, and so forth. So the jury is back to the '60s -- not as bad, but we are somewhat back to the '60s in the make-up of juries. But I didn't remember the case where the question of the jury's color was raised. I vaguely remember that was involved, I guess post-trial -- that would have been before the *Batson* case[4] --

Ms. Thompson: I'm pretty sure it was.

Mr. Olender: -- oh, yes that was way before the *Batson* case.

Ms. Thompson: I'm sure.

Mr. Olender: So this was creative thinking by the defense counsel and my vague recollection of it was that it was no big deal with the judge.

Ms. Thompson: It was Judge [Oliver] Gasch, I noted.

Mr. Olender: Right. Okay.

Ms. Thompson: You remember him well, I'm sure.

Mr. Olender: I tried quite a few cases before Judge Gasch and he was very fair, he was conservative but very fair, very knowledgeable. But later on under *Batson* I tried a case in the D.C. Superior Court again involving a brain-damaged child -- I'm wrong, it was not a

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[4] The reference is to *Batson v. Kentucky*, 476 U.S. 79 (1986) (holding that because the Equal Protection Clause guarantees a defendant that the state will not exclude members of his race from the jury on account of race, a prosecutor may not challenge potential jurors solely on account of their race).

brain-damaged child. This case was a former football player who lost his leg because his circulatory condition was not diagnosed. He sustained a blood clot, which was not diagnosed -- peripheral vascular disease -- and it was not diagnosed, and the leg eventually had to be amputated. He had tried out professionally, and he was a college football star, and we tried that case in Superior Court before now Chief Judge King, against the neurologist who did not diagnose it. He was sent to the neurologist to see what was wrong with his leg and his circulation in his foot. During the selection of the jury, after we got the jury selected, the defense counsel moved to strike the jury for violation of *Batson.* This was the first time I'd encountered *Batson* because it was fresh after *Batson,* probably the first time a lawyer encountered it. And I suspect that it was the first time that Judge King had encountered it because what was done was not as it prescribed that you have to do it. He didn't allow me to develop the reasons why I had struck these people, and he really didn't allow us to get on the record things that were needed, and he made his decision that there was no violation. I had not struck these jurors for racial reasons, and we went on to trial.

Ms. Thompson: The allegation was that you had stricken white jurors, black jurors?

Mr. Olender: White jurors. And my client was African-American. One person, I don't know exactly what he was, he seemed to be Hispanic, I think. It wasn't clear. Another person, too, it wasn't clear. Nobody knew exactly -- you know, we were not experts on *Batson* -- so the case resulted in a *$5* million verdict, which was way more than the judge or the defense anticipated, and the defense filed a motion for a new trial NOV and everything else, and one of their grounds was *Batson.* Judge King granted their motion, and that was one of the reasons. I

don't remember what the other reasons were, but *Batson* was one of the reasons. He said in his ruling that he had decided the issue wrongly initially, that he was wrong, and so it was reversed for a new trial. I don't remember what the other grounds were, but he had other reasons -- I think he found the verdict excessive, and so forth. In any event, the case, sometime before the next scheduled trial, was settled -- I think it was $2 million, which still was way, way, way more than the other side was willing to pay initially and way, way, way more than Judge King was considering in trying to facilitate a settlement. So after that, we here in this office, we studied *Batson* very thoroughly. We have a big file we go over -- every case that comes out here or elsewhere -- to make sure that we know exactly what needs to be done, what needs to be asked of the jurors, and we've made ourselves experts on it.

Ms. Thompson: Your observation about what has happened to the jury pool is one that applies to the Superior Court as well as the District Court, I take it. Is that your experience in both courts?

Mr. Olender: That is my guess. But in recent years, I have not had a lot of experience in the federal court. The reason for that is that we don't get railroad cases because -- well, first of all, years ago, as you know, the federal court had most of the local cases over some small amount of money, so all the cases went there. The railroad cases usually are filed in federal court, under the FELA [Federal Employers Liability Act], but they don't have to be. They can be filed in the local courts. I stopped getting the railroad cases. There was a railroad lawyer in New York who would send the cases, so that's where most of them came from. So I haven't been there on railroad cases. Actually, I had a run of very good verdicts in the federal court on railroad cases when Amtrak decided to have its own in-house counsel try the cases, instead of the

outside law firm they used, which was Hamilton & Hamilton, who knew how to try cases. So they developed these young trial lawyers to do these cases and I kept a record at one point, the fantastic multiples of the verdicts over what the last offer was. It was fantastic -- you know, like multiples of ten or more. They soon went back to having outside counsel try the serious cases, but also because of the rule, the Federal Rule that requires the parties to present detailed statements from their experts toward the beginning of the case, unless both the parties waive out of it. That rule has caused us to be very reticent about filing in federal court. One of my colleagues said, "Don't worry, the defense doesn't like it either. They are never going to ask for it." Well, that worked for a few cases until we came to a case where the defense did demand that we follow that rule. And it was very difficult and very expensive. We had a lot of experts in the case, all over the country and we had to get detailed statements from them -- you know, in the early stage before we had taken any discovery -- and because of that we decided we were better off in Superior Court. But in recent times we have filed a few in federal court for reasons where we thought we'd be better off in federal court. I can think of one very major case, but from the last two years that we had in federal court, and I think we moved it much quicker than we could have in Superior Court, and it worked in that case. But the point I'm getting to is, I don't think I've tried a case in U.S. District Court in several years, so I don't know that much about the juries there.

Ms. Thompson: What kind of cases do you get when you really have an option of going in one court or the other?

Mr. Olender: Oh, a lot of cases. I would say that maybe in 30 percent or 40 percent of our cases we would have an option to go into federal court on diversity because almost

all of them are malpractice cases, and in a case where the plaintiffs reside in Maryland -- that's very often the case -- they reside in Maryland or in Virginia and come into D.C. to delivery a baby at Washington Hospital Center, Columbia, or whatever. And if the doctor is not a resident of the state where the client lives, then we've got diversity to file in the federal court.

Ms. Thompson: I was going to ask you about your recollection of the time when there was court reorganization and jurisdiction went from the federal courts to the local courts. It obviously had an impact on your practice in terms of what you've just described, the number of times that you try cases in federal court. At the time that happened though, which I think was in the '70s, what was the impact then, if you remember, when the courts were reorganized?

Mr. Olender: Was it '72?

Ms. Thompson: I'm thinking '72 or '73. Did you see an immediate impact on your practice at the time?

Mr. Olender: Well more cases in Superior Court, sure, because they weren't large enough to go into the federal court. I can remember one case where the client gentleman had a serious fracture in his hand and he was a commercial artist, so this impacted him very much, and I filed at the federal court and the judge threw it out. I think at that time the required jurisdictional amount was $10,000 -- I think it was -- and the judge threw us out to Superior Court because the case wasn't quite $10,000. So it went to Superior Court and I got a verdict in excess of $10,000. I was very happy about that. But the judge was an elderly I guess he was a senior judge, very conservative, and to him that couldn't be worth $10,000, that permanent injury to his hand which impaired his earning capacity.

Ms. Thompson: Do you find, or did you find at the time, any difference in the level

of interest in personal injury cases by the judges in the federal courts versus the local courts? Did the federal judges find these cases interesting and intellectually satisfying, do you think?

Mr. Olender: Frankly, I don't think any of the judges -- well, some judges like them, but most I don't think like personal injury and malpractice cases.

Ms. Thompson: Is that right?

Mr. Olender: The malpractice cases are pretty specialized and pretty complicated, and a judge who doesn't have any experience with them really has a lot of learning to do.

Ms. Thompson: My impression in reading some of the reported decisions from the federal courts in which you participated, in which you represented plaintiffs, is that it's almost as if you were consciously testing the bounds of personal injury law in the District. Did you have that sense yourself? I'll tell you what I mean in a second, but did you have that sense?

Mr. Olender: No, and I will give you an example of the one area where I should have, but didn't.

Ms. Thompson: Please tell me.

Mr. Olender: Well, okay. I remember a case where -- and this would have been in the '60s and possibly the early '60s or mid-'60s -- where my client was taken into D.C. General [Hospital] into the psychiatric section because he wasn't acting normal at all, and they put him up on a high level, fourth story or something like that, and it was supposed to be a psychiatric section. The window was open, and he was found below with fractures of both legs and throughout the body. It's a miracle he lived, and a miracle that he recovered pretty well. By the open window was found a comic book open to an ad that said. "You, too, can fly." I filed suit

against the District, I'm sure it was in the federal court, because at that time the Municipal Court wouldn't have had the authority. I knew that the District was probably immune from suit, and sure enough the judge threw it out -- sovereign immunity, which was the law. Nobody had ever won a case against D.C. General because of sovereign immunity. Lo and behold, a year or two later there was an opinion by the U.S. Court of Appeals saying that D.C. General is not immune. That's an exception; it's not governmental, it's proprietary, so there is no immunity. And the lawyer who won the case was an excellent lawyer, but he was not particularly a tort lawyer. Maybe he was out to change the law, I don't know. At the time I thought, "well he doesn't know what he's getting into," but he won. And I had studied all of this and I knew that I couldn't win. But I could have --

Ms. Thompson: But you might have won [your case].

Mr. Olender: Yeah, so there you are.

Ms. Thompson: Well, what caused me to say that I got the impression that you were testing the limits of the laws -- there were a number of cases decided where there were some new principles announced. One was the case that I mentioned to you briefly, when we met before. The *Marusa* case that we talked about, a 1973 decision by the D.C. Circuit establishing the principle that tavern owners could be held liable if they served alcohol to people who are obviously drunk.[5] And I think the court reversed and remanded a case for trial where, I believe, you had sued, among others, a tavern owner, the owner of Wayne's Love, in the District. So that's one example. Judge Bazelon wrote the decision in that case, do you recall that?

Mr. Olender: I think so.

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[5] The case is *Marusa v. District of Columbia*, 484 F.2d 828 (D.C. Cir. 1973).

Ms. Thompson: Did you have other experiences before him or do you have any memories of him?

Mr. Olender: I can't remember.

Ms. Thompson: Well there was that one, and then there was a case called *Houston v. Bechtel Associates*.[6] This was a 1981 case where you were representing a plaintiff who was seeking, I think, punitive damages. He had already been compensated under the Longshoreman and Harbor Workers Act, and the court held eventually that that was the remedy Congress meant to provide, and no further damages were available. But you were looking for punitive damages and additional damages in the court, because of reckless conduct. Does that ring a bell?

Mr. Olender: The name sounds familiar, but I just cannot remember the case.

Mr. Thompson: There was another one, *Antoine v. United States*.[7] That was one where you sued on behalf of a plaintiff who was a military person who was injured at Walter Reed Hospital, I think, because of negligence of the hospital. And you argued -- there was a case called *Feres*[8] --

Mr. Olender: The *Feres* doctrine.

Ms. Thompson: Right, that established that the United States was not liable under the Federal Tort Claims Act for injuries arising out of treatment incidental to [military] service. And you argued that this particular injury was not a service-related injury, but it related to negligence by the hospital.

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[6] The case is reported at 522 F. Supp. 1094 (D.D.C. 1981).

[7] The case is reported at 791 F. Supp. 304 (D.D.C. 1992).

[8] *Feres v. United States*, 340 U.S. 135 (1950).

Mr. Olender: Yes, was that [Houston] F. Supp. or was that D.C.?

Ms. Thompson: That was a F. Supp. case.

Mr. Olender: F. Supp., so we must not have appealed it. I knew full well when I filed a suit about *Feres,* but if there was ever a case that should erode the *Feres* doctrine, that was the case. This client was a physician at Walter Reed and I forget what it was she had had done there, you know, as a patient. But it had nothing whatever to do with her service, but only that she was entitled to use of the medical services because she was active duty in the military. And it was a terrible thing that happened to her, but I just cannot remember it. It was a very serious injury, and it was a slam dunk as far as liability goes. So we decided to give it a try. We gave it a good try and it was thrown out and I guess we must have decided it would be fruitless to go on appeal, because we would have had to go to the Supreme Court.

Ms. Thompson: Well, in any event, that's what I mean when I say that it looks like early on you were testing where there might be the availability of damages under various schemes and under various limitations that exist in the law, in the federal courts. There are a number of cases out there that you handled, that established some real parameters for litigation. One case I wanted to ask you about is a case called *Laws v. Georgetown University Hospital* that dealt with the peer review privilege.[9] Let me see if I can get you to remember that one. The courts had already recognized a privilege, of course. Judge Gasch wrote the decision in this case, and it dealt with a memorandum written by a physician to his supervisor, a physician who was charged with malpractice. The issue was whether or not that communication was privileged. Do you recall that case at all?

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[9] The case is reported at 656 F. Supp. 824 (D.D.C. 1987).

Mr. Olender: I remember *Laws* but I don't remember that aspect of it.

Ms. Thompson: That's what happens when you handle so many cases.

Mr. Olender: What did it hold? That it was privileged?

Ms. Thompson: That it was privileged, right. And I wondered if you thought that this decision was significant in shaping the course of personal injury law in the District. Is that decision one that has guided what has happened in future cases?

Mr. Olender: I don't think so, because I think that it must have dealt with peer review and subsequent to that the D.C. Council passed a law recognizing by statute peer review. It made peer review much stricter so that you couldn't get these documents. So peer review is very strong. Maybe that is one of the cases that occasioned lobbying to get the law changed.

Ms. Thompson: Do you remember Judge Gasch in this case?

Mr. Olender: Oh, sure.

Ms. Thompson: What do you remember about him?

Mr. Olender: I remember he was a courtly gentleman and a very friendly man. He had a military bearing and was conservative and didn't brook nonsense, but very fair. He gave a fair trial. I also know him from George Washington University's Law School. He was very active and he was the most influential person in keeping night school open. GW Law School wanted to close the night school and he was the leader of the campaign to keep it open.

Ms. Thompson: Did he have a particular interest in the night school?

Mr. Olender: I'm not sure. Did he go there? I think so, but I'm not sure. And his protege Larry Margolis, who is now a senior judge in the Federal Circuit, he was sort of his deputy on the campaign and I'm quite sure that Larry graduated the night school at GW.

Ms. Thompson: You didn't go in the evening as a graduate student, did you?

Mr. Olender: No, I was there as a graduate student and a teaching fellow, so I was there in the evening, but not as a night student. I took courses in the evening.

Ms. Thompson: Actually, while I'm asking you about some of the judges that ruled in the cases that I mentioned to you, let me ask you about a couple more. *Antoine*, the case involving the *Feres* doctrine was written by Judge [Royce] Lamberth. What are your recollections of Judge Lamberth?

Mr. Olender: I don't remember him in that case, but I think he's a very good judge.

Ms. Thompson: One of the cases I mentioned to you, *Houston* v. *Bechtel Associates*, a Longshoreman and Harbor Workers Compensation Act case, was decided by Judge [Howard] Corcoran. Do you recall Judge Corcoran?

Mr. Olender: Yes.

Ms. Thompson: What do you recall about him?

Mr. Olender: Well, the main thing is that he was Tommy the Cork's brother[10] and he was friendly. I don't remember a lot about him, I didn't have much before him and I don't remember that case, but I do remember he was gracious and seemed to be a nice person.

Ms. Thompson: Another interesting case that you had and which you may not recall is one called *Washington v. National Railroad Passenger Corporation*,[11] an Amtrak case.

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[10] The reference is to Thomas Corcoran, an aide to President Franklin Roosevelt and the main author of the SEC laws.

[11] The case is reported at 477 F. Supp. 1134 (D.D.C. 1979).

It involved an injury to a worker on the Amtrak train, and there was a motion filed, I think, to set aside the jury verdict. The damages were excessive, it was alleged. Judge [Louis] Oberdorfer wrote that decision.

Mr. Olender: Oh, yes. I remember that case very, very well.

Ms. Thompson: Why do you remember that one in particular?

Mr. Olender: Well, because of the client, and because of what the jury asked for. The client was on a cart, like a golf cart type thing, where they hauled modules, modules where they had food. In other words, they had things for the dining cars and cafes; they had them in these modules, and they had them packed onto this cart-like thing, motorized thing. He was in it with another man and there was some accident and the modules came down on his neck and his back, and so he was injured. He went to a doctor who took care of a lot of railroad men at Capitol Hill Hospital. He went to his office some 90 times. The doctor told me and testified, "I don't know exactly what was wrong with him but I do believe he was injured and did have a permanent injury from this and can't do a lot of things and has pain." See, there was nothing like any broken bone or anything that showed on X-ray, CAT scan or anything like this, and this was at the time that the railroad was using these in-house, young trial lawyers instead of experienced trial lawyers. So they wanted to settle for $20,000 or something, and I felt really that if he could get $40,000 or $50,000 for soft tissue injury -- since the doctor couldn't really give any diagnosis -- that he would be doing very well. The client would not budge. He was confident everything would be fine. And we had the trial and the jury sent out a note asking for an adding machine, or was it a calculator? What year was it?

Ms. Thompson: It was 1979. There might have been calculators then.

Mr. Olender: So Judge Oberdorfer sent in the calculator from his office. Do you have the amount of the verdict? It was down to the penny.

Ms. Thompson: $378,890.39.

Mr. Olender: They needed the calculator to calculate it. Judge Oberdorfer of course denied [the defendants'] motion [to set aside the jury award], and they paid it. Mr. Washington then used a lot of the money to buy houses for his children.

Ms. Thompson: And what do you remember of Judge Oberdorfer in that case or others?

Mr. Olender: Very intellectual judge, knowledgeable, and kindhearted. A good judge.

Ms. Thompson: Let's stop here because I promised we'd go for an hour and a half and I think we've gone a little past that and we'll pick up again next time. Thank you very much.

ORAL HISTORY OF
JACK H. OLENDER

Third Interview - March 11,2004

Today is March 11,2004, and this is our third session in the oral history of Jack Olender. We had an interesting discussion in our last session -- at least it was interesting to me, I hope it was interesting to you -- about some of the cases that you have handled in the federal court, and I wanted to go from there to a number of subjects. In particular, I wanted to ask you about some other cases that have caught my eye, that seemed to me at least to have been significant in terms of shaping the law in the District. I'm eager to hear whether you agree and whether you have any specific recollection about these cases. One that caught my eye is a case from 1977 called *Spar and Lustine Realty Co. v. Obwoya.*[12] It was a case decided by the D.C. Court of Appeals, and the court upheld a verdict against a landlord for negligence in a suit in which the landlord failed to repair the lock on the main entrance door of an apartment building and his tenant, the plaintiff, was robbed and injured by a third party. The landlord's negligence made it possible for the criminal to injure the plaintiff. Do you remember that case?

Mr. Olender: Oh, very well.

Ms. Thompson: Do you remember the circumstances under which it came to you?

Mr. Olender: Yes, Prince Obwoya was from -- I'm trying to remember the name of the African country he was from. I can't remember it, but he was brought to me by a countryman of his and that's how the case came to me.

Ms. Thompson: In 1977, you perhaps were not yet a specialist in medical

[12] The case is reported at 369 A.2d 173 (D.C. 1977).

malpractice. Is that right?

Mr. Olender: That's correct.

Ms. Thompson: Did you have the sense at the time you took the case that this was an opportunity to really make a change in landlord/tenant law?

Mr. Olender: I don't think so.

Ms. Thompson: Seems like it did make a change, though.

Mr. Olender: Well, I think at that time *1500 Massachusetts Avenue*[13] was the leading case on the landlord and property owner's liability for maintaining safe premises. As I recall, I used that as the guide; I think the *1500 Massachusetts Avenue* case was a guide on what needs to be proved, and I was able to do it. I remember one point that appeal dealt with, and I don't know that I remember the other points. The point I remember was that the court ruled that the government HEW Life Tables -- life expectancy tables -- are applicable to a non-citizen, a person from an African country. That was one of the appeal points by the landlord that those life tables should not have been admitted because they are U.S. life tables.

Ms. Thompson: That's interesting.

Mr. Olender: Yeah, but there must have been more. I think there were issues regarding liability, which we proved mainly by showing what type of security comparable buildings in the area had, that this did not have.

Ms. Thompson: Do you remember ever hearing that landlord practices changed in the wake of this case?

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[13] The reference is to *Kline v. 1500 Massachusetts Avenue Apartment Corp.*, 439 F.2d 477 (D.C. Cir. 1970).

Mr. Olender: I can't claim that I do. There were two cases that I recall -- in addition to *1500 Massachusetts* -- there was one regarding a restaurant on Connecticut Avenue around the corner from the Shoreham Hotel. I forget the name of that. I think it was a barbeque restaurant. So, that was an important case and *1500 Mass*, so maybe *Spar v. Obwoya* joined those two.

Ms. Thompson: I seem to recall seeing a reference, and I'm not quite sure where, to another case that you handled that involved a window screen in an apartment building. Does that ring a bell?

Mr. Olender: Yes.

Ms. Thompson: Do you remember the name of that case or what the facts/circumstances were?

Mr. Olender: I remember the facts well because it involved a young child, I guess about 4 years old, who was in a bedroom, I think alone -- there may have been another small child in there, I don't know. She was there taking a nap, I think, and the bed was up against the outer wall, so that the window was right there. There was a screen in it, and she leaned on it, and she was on the fourth floor. The child leaned, the screen gave way, and the child fell four flights and survived, but was in a -- I won't say a vegetative state -- but not quite really fully conscious and aware. The suit was filed against the landlord and the case came up for trial on the scheduled date and I saw in the courtroom some other people, including a lawyer that I knew from Utah. He was there to try a case that day. Sure enough, the judge was taking this other case. Our case was re-scheduled one year hence, and I filed motions and did everything I could to try to get the case heard earlier because the child was, as I've described the state, barely

conscious. I wanted to get the case to trial while the child was alive: (1) so that the money could do some good for the child, and (2) because if the child did not survive, then the value of the case would go way down. But I could not get an earlier date. I tried a number of times, but I could not get it. The child did survive, and shortly before the scheduled trial a year later, it was settled. Probably you knew about it because it was reported in the press; it was a large, a very large settlement at that time. So that was the case. It never did go to trial, but I had as one of the witnesses a person who worked as a part-time custodian in that building, and he testified that the screens were bad, that he had told the owner they needed to put in good screens. The screens were loose. So his testimony was going to be crucial, that the screens were bad and needed to be replaced with new tight screens. So that was the gist of the case, and probably, I probably had an expert on it. I just can't remember the expert, but I remember that one witness was crucial to the case.

Ms. Thompson: What kind of expert did you have in that case?

Mr. Olender: Well, I can't remember who, but I would have had some expert on screens. I must have, because you needed to have screens that would resist a certain amount of pressure, since it's known that children will lean on screens. So I must have had some type of engineer.

Ms. Thompson: Were you concerned about a possible argument that the family was negligent in placing the bed by the window screen?

Mr. Olender: Oh that was an argument, all right. That was a definite argument, but the law then and the law now in the District is that the mother's negligence cannot be imputed to the child, and this was a child below the age of contributory negligence.

Ms. Thompson: You had your argument prepared.

Mr. Olender: Oh, yes.

Ms. Thompson: Another of your cases that caught my eye was a case called *Greco,* well it was called *Greco v. United States*,[14] an opinion in which the Supreme Court of Nevada responded to an issue that had been certified to it. It was a case involving an Air Force base hospital in Nevada. Certain defects to the child in the womb that went undiagnosed. Do you remember that case?

Mr. Olender: Yes. It occurred, as you say, in Nevada. The folks lived in Maryland; they were on duty -- or the husband was on duty -- in Maryland, so we filed the suit in the federal court in Maryland in Baltimore, I think, or it could have been in Greenbelt.

Ms. Thompson: It was in the federal court in Maryland, in any event.

Mr. Olender: Yes, and since it occurred in Nevada, it involved Nevada substantive law, and the issue was where there is a failure to diagnose a defect in the fetus at a time when the fetus could be aborted if the parents so choose, would Nevada recognize a cause of action for the expenses of taking care of the child -- you know, the medical expenses, and I think also for a loss of earnings for the child, I'm just not sure. Maryland law recognized that. Then there was another issue, whether the Nevada court would also recognize a cause of action for wrongful life by the child for the child's own personal injuries and damage.

Ms. Thompson: That was the issue that caught my eye.

Mr. Olender: As I recall, Maryland had not decided that aspect, but Maryland had decided that the parents could claim the expenses of providing medical care, which would

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[14] **893** P.2d 345 (Nevada 1995).

include residential care for the rest of his life. So they asked the Supreme Court of Nevada to decide that issue, and we got a lawyer in Nevada who is known as an expert appellate lawyer, and she argued the case, and we won the case. The Maryland Court of Appeals decided that there is a cause of action for the expenses of taking care of the child. They split on the question of whether the child would have a "wrongful life" cause of action. Their judgment was "no," but it was three to two, or something like that.

Ms. Thompson: This was nearly ten years ago. Does any state recognize a cause of action from wrongful life now?

Mr. Olender: Yes, but the great majority say "no." So that was in accordance with the great majority of cases, but there are some, a few [that say "yes."].

Ms. Thompson: Did you get reaction to that case, or to any similar cases involving a wrongful life claim, from right-to-life type groups or groups opposed to abortion?

Mr. Olender: No, no. There was an earlier case that involved the wrongful death of a fetus and that was in the D.C. Court of Appeals, which did get press and did get inquiries from groups on both sides of the issue. That was *Williams v. Greater Southeast* [Community Hospital].

Ms. Thompson: I remember seeing that case. I think it was from 1984.

Mr. Olender: Yes, in that case, the Court of Appeals held that a viable fetus can be the subject of a wrongful death action. They did not decide the question of a non-viable fetus, which at that time was basically under 24 weeks, and now it's moved back perhaps to under 22 weeks. But they specifically did not decide that issue; they decided the issue of a viable fetus, and I did get calls wanting to know the ramifications of that decision on the right to life and so

forth. I didn't feel that it really had much effect on that. It dealt with whether parents could recover money damages when negligence caused the death of their child.

Ms. Thompson: Did you have any moral qualms in taking the other case, the one that advanced the theory of "wrongful life?" Is that something that troubled you at all?

Mr. Olender: No, not at all. It would benefit the child and the family if they got money. The more money, the better existence he would have.

Ms. Thompson: You know, as I read the account of your various cases in the press and on the internet and many places where one can find them, I find that you seem to have had sort of a full array of the kind of tort cases that the law student reads in law school. You had the sponge left in the patient, the delays in detecting disease, and the operation on the wrong side of the body, failure to get another doctor to cover. I wonder if any one of your cases sticks out in your mind as the most interesting or the most difficult. Maybe they're different cases.

Mr. Olender: Well, I mentioned the *Janetta Moore* case. That I would put first. Another interesting case involved -- and stop me if I've told you this already -- a transplant of an incorrect kidney to a patient. That was in the U.S. District Court. That was two years ago. That involved a gentleman who waited a long time to get a kidney transplant. He was undergoing kidney dialysis several times a week. He had been for a long time, and finally his number came up to get a kidney transplant. They had the right blood type, and he went in at night to the hospital to have the transplant. There was more than one kidney transplant being done at that hospital that night, and they had more than one kidney. Through incredible neglect and error they gave this gentleman the wrong kidney and they gave the other person the kidney intended for my client. The other person was all right because his blood type was the common blood type

that could take any type blood, so his was all right. But my client was nearly fatal at that time and virtually assured, by billions or trillions to one, that he would never be able to have a transplant since it totally destroyed his immune system. He will die probably from this. He is still alive. This happened a couple of years ago, but he's going to die because of this. So that was quite an incredible case. Hopefully, they have measures in place now, I think they do, I think other hospitals do. This should not happen again. People have to actually look at the label and check off that they looked at it, and the surgeon has to look at the box and the label and not just rely on the clerk -- a fail-safe system of cross-checking. Hopefully, this isn't going to happen again. That's a case where I wanted to get this case to trial as quickly as possible because of the condition that the client was in. I wanted to get money for him while he was alive so that he could see that it would be used for his children and his wife. That's one of the reasons why I filed it in the U.S. District Court, because I thought that with most judges I could get it quicker to trial there than the way the docket moves in the Superior Court. I mentioned to you previously that I don't file many cases in the District Court any more because of the federal rule that requires you to make this extensive filing close to the beginning of the case on all of your expert testimony. In this case I wanted a quick trial, and the judge was accommodating in setting the dates, and we moved quickly and took depositions all over the country. One of the main experts, I remember doing his video *de **bene*** esse deposition, because he could not come to Washington for trial. With the judge's cooperation, I was able to get an early date for the case.

Ms. Thompson: So you actually got a verdict in that case?

Mr. Olender: I'm not able to answer the question. I'm not allowed to answer the question.

Ms. Thompson: You know, your mention of a video deposition reminds me that I wanted to ask you about your use of exhibits at trial, demonstrative exhibits and the like. You mentioned to me earlier that Melvin Belli is one of those people who's been something of a role model for you. I remember reading somewhere that he was known as the "King of Demonstrative Exhibits," because he was so innovative in his use of them. I'm not sure what was innovative. Are you aware of what he did that was innovative? Because then I wanted to ask you whether you have done any innovations in the use of demonstrative exhibits.

Mr. Olender: The first one that I remember that impressed me, he tried a case for an amputee, a person who had lost a leg. The person had a prosthesis on. And he [Belli] had something on the trial table wrapped in brown butcher paper throughout the trial. He never opened it up. It was in the shape of a leg.

Ms. Thompson: [Laughter] He never did throughout the trial? What kinds of interesting demonstrative exhibits have you used?

Mr. Olender: Really not that interesting, but models of body parts. The first one I remember -- and this was when I couldn't afford a full-size skeleton -- was a skeleton about 2 feet or 3 feet tall. It cost about $20 or so. At that time a full-sized skeleton would cost $100 or $200. So I had this little skeleton, very realistic. It was plastic. I took it out in front of the jury and took the cloth off, and I saw that it shocked the jurors. They thought it was a baby or small child's skeleton. So I learned a lesson from that.

Ms. Thompson: Was a small child at issue in that case?

Mr. Olender: I don't think so. I think I just wanted to show the bones of the body. I think probably it was a fracture of somebody's arm or leg or some back injury. I don't

know what it was, but it was probably not any huge case. I think I remember the blond wood in the courtroom, so I think it was the U.S. District Court. It was many years ago, so it must have been. I learned from that always to tell the jury beforehand that the skeleton or model or part or whatever is plastic, and not real, before taking the thing out. That, I think, was my first big encounter with demonstrative evidence. Years ago, the blackboard, the flip pad was considered demonstrative, writing things on the flip pad was considered demonstrative. We used that a lot to list the damages and the testimony, to show contradictions in the testimony between the various experts, and so forth. We have used here in this office -- but I have not personally, I don't think -- but we have used computers, where they reconstruct something by computer -- I can't think of the word. But we've used that, showing how much blood and where it goes -- animation. We use that sometimes. In the *Williams* case, *Williams v. Greater Southeast,* I remember the best evidence in the case was the fetal monitor tracing, because the fetal monitor tracing showed the fetus getting sick, and sick, and sick, and sicker, and flat, dead. It showed that the nurses were not properly watching it and not advising the doctor. Somebody assisted me taking the other end, one of us holding one end and opening it like a scroll so that the jury could follow along and the doctor could point on it. So that was real evidence, but it also was demonstrative, and it really proved the case. Now, in a lot of cases, we'll use blow-ups. We use them all the time. We'll blow up parts of the fetal monitor tracing, if there are things at various times we want to show. Or we can put it on CD and show it that way. But in that particular case, *Williams,* it was so dramatic over a period of several hours, the change, and we wanted to see it on one long sheet.

Ms. Thompson: You obviously pay close attention to the jury's reactions to things

going on.

Mr. Olender: You have to. You have to let them, to some extent, be the guide of what you do and how you question a witness, whether you're losing them, whether they're with you or with the witness, whether they don't like something that's going on. That's an advantage we have over stage actors. The stage actors, usually because of the lights on the stage, cannot see the audience. They can just look out and pretend that they see. But that's a big advantage.

Ms. Thompson: Can you think of anything that you've been doing during a trial where you changed course or changed how you were doing it because of what you were seeing in the jury?

Mr. Olender: I can't think of anything specific -- I can think of one thing. Arguing the case of *Janetta Moore*. One of the jurors during my argument at some point just turned away and closed her eyes and just wasn't paying attention. So I thought, "uh oh." But it turned out there was no problem, she just didn't need to hear anymore. She knew what had happened, and how she was going to decide the case, and she just didn't need to hear anymore. That shook me up a little bit, to see a juror do that. I can think of a few instances where jurors have snored.

Ms. Thompson: When you've seen jurors snore, what have you done?

Mr. Olender: [Loud] What I've done is raise my voice. I raise my voice and wake them up, or probably drop something and make a noise. I've seen judges send marshals over to wake them up.

Ms. Thompson: You have been written about in numerous places and are called many things, similar to the phrase, "the King of the Malpractice Bar." What would you say are

the qualities that you have that make you a good trial lawyer?

Mr. Olender: Well, one, I'm a workaholic, that's one thing. Two, I try to be a perfectionist and avoid failure. To try to assure that everything is done properly. Three, I believe in my cases. I believe in the clients, and I believe it is right what we are doing in the cases, so I can do it with sincerity, because I believe in the cases. I think I'm fortunate because my practice allows me to pick the clients or pick the cases, unlike a criminal defense lawyer, or a lawyer that represents big business and corporations, or an insurance lawyer who has to take the cases assigned. I can pick the cases, and I believe in them, and I'm sincere. The fourth thing is that I am a student. I study; I read. So whatever success I have, those are my attributes.

Ms. Thompson: In terms of your courtroom presence and demeanor, what would you say is the most important quality that you have or the most important skill that you have?

Mr. Olender: Well, I think I know the medicine pretty well. I'm able to cross-examine. But maybe sincerity is the most important. In one particular case, I learned that that skill or ability to cross-examine, and knowing the case and knowing the medicine worked with some of the jurors, but was resented by other jurors. There was a case that we settled while the jury was out and the judge had us go in and talk to the jurors about the case. They were not unanimous, I think, and I guess maybe it was 10 or 12 on the jury, and most of them were with us, the plaintiff. But there were four women who were for the defendant, who was a doctor, an obstetrician, and a female. Some of the jurors were very complimentary to me. One man in particular got a kick out of, after a defense expert would testify on direct, he knew I would come and knock it all down. He took pleasure in all that. I felt like I had to be pretty tough in that case because the chart that the doctor had written was totally contrary to what she testified had

happened. It was a case of a baby sustaining a brachial plexis palsy as a result of being pulled out too strenuously with too much traction, so that the brachial plexis nerves were ripped from the baby's arm and hand, and crippled. Well, in the testimony she said she did everything properly, and she recited the maneuvers that she used such as the McRoberts maneuver and all these things. She recited that she did all these things which you are supposed to do when you encounter a shoulder hung up that won't come down because its hung up at the pubis. Her testimony was that she did all these things, but the records were devoid of these maneuvers. So the question was, is the jury going to believe her or the records? And I had things about her in the past, so that I could show that she was not a truthful person. I just used all that stuff and argued it very hard, and these four women resented it. "There was no reason to attack her like that," and so forth and so on. The other jurors understood. But it was a question of credibility. And all of them were sort of supervisors and administrators. I think they resented a professional woman being, in their view, abused by a lawyer. So they were the four who were holding out for the defense.

Ms. Thompson: I imagine you've kept this in mind as you faced other juries.

Mr. Olender: Yes.

Ms. Thompson: Have you done anything different because of that?

Mr. Olender: Well, I don't know, but I do have it in mind that you can do too good a job. In that case though, I still think it was necessary that she had to be destroyed as a witness.

Ms. Thompson: You know, I have to say that I find you not the person I thought you were going to be based on what I've read about you. I've read for example that you are

"arrogant, abusive, and vindictive" --

Mr. Olender: No.

Ms. Thompson: That you are a "shameless self-promoter." You've seen these write ups.

Mr. Olender: Yes.

Ms. Thompson: You've seen these words used. And yet you have come across to me in each session -- here we are halfway through a third session -- and you come across to me as modest and self-effacing, I must say. Who is the real Jack Olender?

Mr. Olender: Well the persona in the courtroom -- when I have to be tough, I can be. But I try to be fair and project a fair image, but yet on cross-examination sometimes I feel you have to be tough or these people will get away with it. You have to let them know you are not going to let them get away with it, and you have to keep after them to get the truth out. So, I guess a combination. When I need to be tough I can be.

Ms. Thompson: So how did this shy boy from McKeesport rise to the occasion? How does a shy boy become a tough cross-examiner?

Mr. Olender: Practice man, practice. You know the old story about how do you get to Carnegie Hall?

Ms. Thompson: I'm not sure I do.

Mr. Olender: The person stops and asks this jazz musician, "how do you get to Carnegie Hall?" "Practice man, practice."

Ms. Thompson: You have taken some criticism because you advertise, and we see pictures of you in the *Washington Post* with the phrase, "King of the Malpractice Bar." What do

you say to critics who don't like seeing those ads there?

Mr. Olender: Well, too bad. Too bad. The quotes that I use are what media people have used. I didn't ask them to, but that's the language that they've used with me, and I feel that I want to do that. I want to let the public know what my reputation is, so that when they hire a lawyer they can consider that. Because I see all kinds of ads, double pages in the Yellow Pages that promise all kinds of things. Some of the things that people tout I know, as a member of the bar, I know these things don't mean anything, but to the public they do. In terms of people who really have not many accomplishments, they will put certain things in to make it appear that they are top lawyers. So a lot of the cases go to heavy advertisers. We are not heavy advertisers. We have small ads in the newspapers. Ads to some extent are a waste of money. But there are several of the big advertisers on television in D.C. and Baltimore who I know, from a lot of personal experience from people calling me who have been to them, advertise heavily for malpractice cases, particularly babies who are brain damaged during the birth process. And some of these biggest advertisers do not even see the clients. They send them directly to different firms for a share of the fee. And a substantial number of the serious cases, you know, end up in firms other than the advertiser, you know. They send them and they share the fee, and I don't think this is good. People call because this ad is on television all the time, and I don't think that gives good quality service. So in order to compete, I think it's important to let the people know that we're really the pioneers as far as representing cerebral palsied children and we have the experience and the record to let people know, in order to compete with the TV ads. So I would say that that's the main reason, because to compete and get these cases that I have trained for all my professional life, we have to do that.

Ms. Thompson: How do you determine within your office who does the principal work on a case?

Mr. Olender: Sometimes it's just a matter of who's available, but we try and do it in a way that someone with the most experience with a particular type of case can take the lead on it.

Ms. Thompson: How many lawyers practice with you?

Mr. Olender: We are eight -- myself plus seven.

Ms. Thompson: How long have you been organized as Jack Olender and Associates?

Mr. Olender: About, well let me think now, because we incorporated about 27 years ago, or so. Before that it was Jack Olender and Associate, Harlow Case. He was the first lawyer that joined me, whenever that was -- I don't remember. Probably over 30 years ago. I was solo for more than ten years.

Ms. Thompson: What was the primary reason, if I may ask, for incorporating rather than practicing as a partnership, which, I am guessing, is probably the predominant form here in town -- but I may be wrong about that.

Mr. Olender: I am trying to remember. I think probably it was tax reasons.

Ms. Thompson: Are you the sole shareholder of Jack Olender and Associates?

Mr. Olender: Yes.

Ms. Thompson: And is that a satisfactory arrangement to you, not to have partners?

Mr. Olender: Well, we are partners in some ways. The way the cases are

handled, the way the information is shared, etc.

Ms. Thompson: Tell me about your colleague Harlow Case. I've seen that name many times on cases. What is his special expertise, and what can you tell me about him?

Mr. Olender: Well, he has a lot of experience with children's cases, cerebral palsy; he has worked on lots of them. He also is a good appellate lawyer and brief writer and he is an excellent mediator. I think he's considered the best mediator among the practicing lawyers in the District of Columbia. He's requested by the courts to mediate in a lot of cases, some of them large and difficult cases. And he is an excellent negotiator of settlements. In fact, we many times have a case on two tracks, the trial track and the mediation track, and Harlow does the settlement or the mediation because he's very good at it. He has a good temperament, so he doesn't lose his temper like some of us do.

Ms. Thompson: Would that be you?

Mr. Olender: Yes, and the others too. He's just excellent at it, so rather than some of the rest of us bungling settlement, we let him do the talking on that while we prepare for trial.

Ms. Thompson: Well, the reports all say you are a pretty tough negotiator, that you will walk away from clients if they are willing to accept offers that are too low. Is that true?

Mr. Olender: Well, I don't know that I can do that. That would have to be done early on. You try to convince them, but usually that's not a problem.

Ms. Thompson: You had a colleague Gary Freeman whose name I saw on many cases. I think he died a few years ago. Is that right?

Mr. Olender: That's right.

Ms. Thompson: What was his specialty? What can you tell me about him?

Mr. Olender: Well, he was an excellent trial lawyer. He prepared a case as thoroughly as I've ever seen anybody prepare a case. He just prepared it from all angles, and he was one that would want Harlow to negotiate a settlement. He did not want to get away from it. He wanted to keep the adrenaline running and get the case ready; he didn't want to think about settling a case as he was getting ready to try the case. He was excellent and he really got involved in the case and with the clients, and the case would become a part of him. His heart was in it. He was great.

Ms. Thompson: You know, I think anyone would have to be struck looking at a picture of the lawyers in your firm at how many women lawyers there are, and how many women of color there are. Those of us in law practice hear all the time about how difficult it is to achieve diversity in law practices, and you seem to have done it. Is that by design?

Mr. Olender: Well, to some extent, to some extent. I called Mabel Haden, who was one of the pioneer female lawyers in history, because I knew she mentored particularly young women law students, and asked her if she had recommendations. She sent a slew of people. So, I hired one and she had another, so that was two African-American female lawyers. [One was] Sandra Robinson, [who] has been a pioneer really in the District of Columbia in trial law. She's the first woman to be elected President of the Trial Lawyers Association of D.C. She is the first and, I believe, still the only woman to be named Trial Lawyer of the Year by the D.C. Trial Lawyers. She has been on the Executive Committee of ATLA, the American Trial Lawyers Association, and she has been a pioneer or trailblazer among female lawyers in the District of Columbia. Her aunt was Mabel Haden. When a position was open, Mabel sent, I think, two or

three people, not just her niece, and Sandra was the outstanding one. And then -- this was by happenstance -- I gave some scholarships, they were very small scholarships to GW undergrads. [George Washington University President] Steve Trachtenberg had started a program of very generous scholarships to District residents who graduated from District schools. So my wife and I held a reception for the students, the beginning GW students and I sent small scholarships. Come to think of it, I'm not even sure they were given -- they may have been given some small amount of money, and they were given a bust of Reverend King. Maybe something else, I don't know. Anyway then four years later, four and a half years later, I received mail from one Narda Newby, a student at University of Pennsylvania Law School. She was one of the awardees when she was a beginning freshman at GW. So she came as a clerk for two summers, and she's here, I guess seven years later. Very good.

Ms. Thompson: I know the name very well. She's very active in the bar.

Mr. Olender: Very, very good. She had to learn about medicine, she had -- well most of them -- Gary Freeman knew some medicine because he was an Assistant Corporation Counsel for a number of years, so he had some knowledge, but the rest of them [had to learn]. The two nurse-lawyers, they had knowledge, but Narda had no knowledge. But she's terrific. She knows the medicine. I had to interview a new client this morning -- a very complicated estate situation, you know. A wrongful death case, but very complicated as to who the family was and who we could cover, and I asked Narda to come in and consult. She knows that stuff, so she's very good.

Ms. Thompson: But what caused you to make this phone call that you mentioned a while ago? What was it that caused you to make this call?

Mr. Olender: Well, I did want to diversify lawyers. That was one of the reasons, and I needed a lawyer. I needed a good lawyer and I knew Mabel would know good lawyers. At the same time I made a call to J. Clay Smith, who at that time probably was Dean at Howard Law School. He sent candidates, too, but I chose the ones that Mabel sent. And then the other African-American female lawyer in the firm is a nurse-lawyer whom we'd had against us in cases. She practiced for about a dozen years as a defense lawyer and she was impressive, and we needed to hire a lawyer and interviewed over a period of half a year. It became a joke because one person we interviewed three times and we couldn't decide, and so forth. But anyway, we chose her because she is experienced in malpractice and does a good job.

Ms. Thompson: How do you bring young lawyers along? How do you teach them this field?

Mr. Olender: Well, by immersion, and also slowly. Narda – well, the only ones that started with me fresh out of law school were Harlow Case and Narda Newby, because all the others could practice. The other nurse-lawyer, Beth Frey practiced as a plaintiffs lawyer for ten years, she knew the things. So all of them except Harlow, who learned along with me, and Narda, fresh out. By giving her things to do, assisting on things, mainly a lot of research and sitting in on depositions. I'm trying to think of one very, very big case where I was taking a key deposition, and on one side was Narda and on the other side was another young associate Dan Gray, who left a few years ago to become a minister. He was extremely thorough, he was amazing, and he would take the longest depositions I have ever seen. He would leave nothing unturned. But anyway, the two of them were working on the case, and I wanted to take some of these key depositions and they were on each side, you know, and Narda was mainly watching,

listening and taking notes, as did Dan in those depositions. **As** the case moved on, there were, I don't know, like 60 something depositions, doctors, nurses, and so forth, all over the country. Dan was the senior lawyer on preparing the case -- you know, the discovery -- and Narda was assisting him. I don't know that she took any of the depositions herself, I just don't remember, but that's how she learned, you know, and then she began taking depositions slowly, but by working hard and immersing herself and learning what needed to be learned. And also, I shouldn't forget that we have a lot of lawyers' meetings, a lot of lawyers' meetings. If we're not too busy, I like to have one every day. Now today is Thursday, I think we've had only one this week, and that was a short one because everybody's been extremely busy. But if there are three or four of us that can get together, we have a lawyers' meeting and we go over things, and I think that's a great learning device, not just for them but for me, all of us. We learn by going over cases that we want to talk about to get everybody's input, what experts we should use, what theories, what we know about the doctors involved, and the lawyers involved, to cross-pollinate the information. And we also deal with more general things that aren't particularly key to a certain case but more general things like medical advances, you know, things that are going to change the cases, going to change standard of care. We go over medical journal articles. Usually I scan the journals and bring to their attention articles that have a bearing on the type of cases that we handle, go over the cases from across the country, significant cases. So I think that especially if you are fresh out of law school, it helps a lot.

Ms. Thompson: What kind of hours do you work?

Mr. Olender: Well, I used to work long hours. Now I work sort of a nine-to-five in the office, but I take stuff home, and take a lot of reading home. Things that may

not be specific to a case, but things that are important, I think, for a malpractice lawyer to know. The legal newspapers and some medical newspapers and any heavy reading I take home, so I may have several hours of reading at home. I used to work long hours.

Ms. Thompson: Sounds like you are still working pretty long. You yourself have been very involved in various bar associations, trial lawyers associations, and it seems like other lawyers in the firm have been so, too. Do you encourage that, and why?

Mr. Olender: Well, I just got in the habit of doing that, particularly with the various trial lawyers associations. I think it's important for us to be heavily involved for two reasons. One is the learning from others in those organizations -- seminars and the meetings and the sharing of ideas. That's very important. And I'm an activist in protecting the civil justice system, so I'm heavily involved in that, and trial lawyers associations are involved in that, and so I've done a lot of that to preserve the jury system. Everybody here works on that, too.

Ms. Thompson: I know you've been very active in opposing legislation that would impose damages caps, cap certain kinds of damages. But you mentioned just now preserving the jury system. Is that what you meant?

Mr. Olender: Yes.

Ms. Thompson: I've heard and I read your thoughts on that. I mean, you have an answer to those who say that your type of practice drives doctors out of business and causes malpractice premiums to go up. Where's the fight going? Where do you think it will end up?

Mr. Olender: Well, hopefully it's going to be defeated in Maryland. I think it's being defeated in Virginia right now, Texas has gone down the drain, more or less, and there's a tough fight in Pennsylvania, and New York. I am hopeful that in the District the Council will

continue to see the light and understand the truth and not adopt these so-called reforms. On the federal side, nothing substantial is going to happen until after the [2004 Presidential] election, and the election is going to determine what happens thereafter. If President Bush is successful in being reelected and if the Senate gets total Republican control, if the Senate gets enough Republicans to win cloture, then we would see all kinds of reforms. Because right now, the Senate is the only thing that has stopped the so-called tort reforms, with the filibuster. So if the Democrats would face a terrible loss in the Senate this time, and not be able to muster enough votes to defeat cloture, then we are going to see our rights trampled upon and destroyed by the federal government. It is strictly as political as it could be, the red against the blue. There are very few issues that are as totally political, with very few crossovers.

Ms. Thompson: What impact, if any, has the advent of managed care had on your practice?

Mr. Olender: I think managed care, at least the way it's practiced, is not a good thing. HMOs – I don't think they give good care and I think they commit a lot of malpractice, and they have a lot of cases against them. So if you want to look at it as "you get a lot of cases," yeah. Managed care provides a lot of cases, but it would be better if it were the other way. We would have more safe care. I think it's generally bad. We have Blue Cross/Blue Shield here in this office, even though it costs more than those other kinds of insurance, so that everybody can pick their own doctor, as I think being sent to a list of doctors who will cooperate with the insurance company and spend only a few minutes with patients. That's asking for malpractice to be committed.

Ms. Thompson: It's reported that you go to seminars of the medical societies and

learn there, and it's suggested that you have a great deal of nerve in doing that. Do you in fact go to seminars for doctors?

Mr. Olender: Some, yes.

Ms. Thompson: Do you take abuse for going? Have you been personally insulted or harassed for doing that?

Mr. Olender: On one occasion, I was.

Ms. Thompson: Can you tell me about it?

Mr. Olender: It was at Georgetown, and it was obstetrics, and one of the members of the audience left an obscene note at my place. See, I was known by a lot of the people there, obstetricians, so most of them were not friendly. But they advertised it as a public seminar and I sent my application and I didn't hide who I was. I sent my lawyer's check for the fee, and it was a very good seminar.

Ms. Thompson: You got your money's worth?

Mr. Olender: Yes.

Ms. Thompson: Does this bother you at all -- the personal attacks, or that personal attack?

Mr. Olender: No, because I think I'm doing a good job if my opposition is angry with me, and there are many. You would be surprised how many potential clients were sent to us by local physicians.

Ms. Thompson: Is that right?

Mr. Olender: Yes, a lot. Some of them tell the patient not to use their name, but many of them do, and so that's a high compliment.

Ms. Thompson: I notice that on the table in your waiting room you have one of the articles that calls you "Jack the Ripper." Do you sort of wear that name as a badge of pride?

Mr. Olender: Well, I think it is -- I think it is. I think if the people you work against love you, then you're not doing too good a job.

Ms. Thompson: I think that's got to be right.

Mr. Olender: Yeah.

Ms. Thompson: I guess we should stop because we're at 5:30.

Mr. Olender: Okay.

Ms. Thompson: Let me stop the tape here.

Mr. Olender: Okay. Thank you.

ORAL HISTORY OF
JACK H. OLENDER

Fourth Interview - March 31,2004

Ms. Thompson: Today is March 31,2004 and this is a continuation of the oral history of Jack Olender. When we were talking the last time -- or perhaps it was the session before that -- I asked you to predict for me what was going to happen with efforts to impose caps on damages, and you were kind enough to tell me what you thought. And I realized after that that I really should give those who will read this transcript later an opportunity to hear your thoughts on that issue, and I didn't and I'd really like to. So, if you would, tell me why you think there should not be caps on damages in personal injury cases.

Mr. Olender: Well, when caps are put on damages a legislature is prejudging cases that will arise in the future, and they're not in a position to do that. The court system is in a position to do that, and the court system decides what the damages are, and it has at least three layers for that decision, which protects everyone against any irrational judgments. The first is that the trial judge can do something before the case gets to the jury to prevent them from considering certain damages. Then the jury can decide the amount of the damages. Then the judge, the trial judge, can decide that the jury's decision was not within reason -- it was irrational -- and can either order a new trial or reduce the amount of the damages or order a new trial unless the plaintiff accepts the reduced amount of damages, or simply reverse the decision of the jury entirely and grant NOV -- judgment notwithstanding the verdict, that would give the plaintiff nothing. So then there is an additional layer in the Court of Appeals. If the Court of Appeals feels that the trial judge was wrong in dealing with the damages, the Court of Appeals can order

that the damages be reconsidered or find that they are unreasonable. And we've seen how the U.S. Supreme Court has gone even a step beyond that -- has declared that, for example, punitive damages, if they exceed a certain multiple of the compensatory damages, are unconstitutional. So we have an excellent, sophisticated civil justice system under the judiciary, and for legislators to take away the rights of the jury and the judges to set damages is totally unnecessary, and legislators are not the people who should be judging what damages are in the future, without knowing any details of the person or the injuries. One size does not fit all. So caps generally are one size; it does not fit all. Those are the legal reasons. The political and social reason I'm against it, is that it's giving something to the people who need it least: big business, industry, the insurance industry, the medical industry, and so forth. It is reducing their exposure for damages and taking away from the people who need help most, the people with the most serious injuries. Those are the ones whose damages are capped. Minor cases, smaller injuries, there's no cap, because those cases don't reach the level where the caps would go in, which is somewhere between $250,000/$500,000/$1,000,000 -- whatever. Also, caps do not discourage negligent wrongful conduct. They encourage it, because the damages are limited and, in many industries, decisions have been made that it is cheaper to kill or to maim than to redesign a product. This has been proven, I think -- well, in the auto industry, for example. In certain instances there have been memos showing that cost analysis was made and it was found that it was cheaper to pay a certain number of judgments a year than redesign a product, and this is certainly not right. It should be made expensive to injure people. So the tort system serves that purpose as well as compensating injured people. It serves the purpose of serving as a deterrent to negligent and reckless conduct. And when the damages are capped, then there's no real deterrent.

Ms. Thompson: Well, what do you say to those people who suggest that it's personal injury suits of this sort that you bring, and verdicts such as those that you obtain, that drive up malpractice insurance premiums and run doctors out of business?

Mr. Olender: Well, I don't think they are valid arguments. Of course, if nobody could ever collect any damages for an injury, then insurance premiums should not be high; but it doesn't work out that way. There's no correlation between the prices of insurance in places that have caps and those that do not. I don't know if I'm stating it correctly. There's no correlation between caps and reducing premiums, because we have a lot of statistics that show that insurance premiums are less in many states and cities where there are no caps than they are where there are caps. So, you know, logically you would think that if you capped the damages, you're going to hold the premiums down, but that's not what the statistics show. The insurance industry wants to make as much profit as it can, and it does not pass on any savings to the insureds, such as the doctors. So, in theory, the argument might make some sense, that caps on damages hold down the cost of insurance, but in reality the statistics are they do not.

Ms. Thompson: **As** you think about the laws that govern the available remedies in personal injury suits and the court rules that you're subject to, are there any changes you would make legislatively, or in court rules, to make the system function better?

Mr. Olender: Well, one thing is that in my field there are a limited number of lawyers who are lead defense counsel and, as a result, they are able to delay trials considerably because they are not available for trials; they are booked up. And so it depends on the judge. Some judges won't put up with it, but some judges will give you a date a year and a half in the future -- you know, when it comes time to schedule the trial -- because the lead counsel on the

other side is not available. Now the U.S. District Court for the District of Columbia years ago had a system, which I think should be adopted today both in the District Court and the Superior Court. That rule was that if a lawyer had X number of cases in the court, they could not have a trial date continued because they were unavailable for trial. That doesn't happen now except with judges who diligently want the calendar to move. Justice delayed really is justice denied in many instances where people are very badly injured. Did we discuss this at all?

Ms. Thompson: We did.

Mr. Olender: Okay.

Ms. Thompson: Are there judges who come to mind who are particularly stern about this and about not tolerating lengthy delays?

Mr. Olender: I don't want to give an inaccurate answer so I'd better not.

Ms. Thompson: [Laughter] That's fine, that's fine. I think I read somewhere a comment from you to the effect that there is some laxity -- perhaps maybe that's too strong a word but -- in physician supervision or regulation or discipline. Maybe discipline is the right word -- [laxity in] physician discipline in the District.

Mr. Olender: Yes.

Ms. Thompson: Is that your view?

Mr. Olender: Oh, yes.

Ms. Thompson: What needs to be done differently in your view?

Mr. Olender: There needs to be a change of attitude, so that the medical board will be looked upon as a board who has a major function of weeding out bad doctors and disciplining doctors, instead of a very reactive board. Most of the disciplinary cases are the result

of actions taken in other jurisdictions, and so they're just reciprocal. They have very little funding, very little investigative ability and, as a result, unlike the legal discipline for lawyers in the District, the cases are not taken care of. If someone has been convicted of a crime -- a serious crime -- that's one thing; they'll pick that up. Or if there is a reciprocal discipline, that's easy to pick up. But to go out and investigate complaints against doctors and to look for bad practice and deal with doctors who have multiple malpractice judgments against them, that they don't do. And the medical profession has not, to my knowledge, lobbied the D.C. Council to try to get money for disciplinary purposes for the medical board. And, as a result, it operates with a skeleton staff and it doesn't do much; and, therefore, the District in the last decade has been rated at the very bottom of all the jurisdictions -- the states plus the District of Columbia -- and the District has been rated 51st for the last two years. This year they moved up a few points. And that doesn't mean necessarily that we have the best doctors and so we don't need much discipline; it doesn't mean that. We do have a lot of excellent doctors, but it means we're way below the average number of disciplinary actions per hundred or per thousand physicians, which means that we're not watching our doctors.

Ms. Thompson: Are neighboring jurisdictions significantly more active in that regard? Obviously, they were better when the District was 51st --

Mr. Olender: Yeah.

Ms. Thompson: -- but were they significantly better?

Mr. Olender: Maryland has been down at the bottom; it's risen some in the last couple of years.

Ms. Thompson: Have physician defendants in the cases that you've brought been

physicians that you think might have been weeded out and excluded from practice, or that should have been?

Mr. Olender: They should be, yes; they should be. They should've been --

Ms. Thompson: They should've been prior to those suits?

Mr. Olender: -- and then they should've been afterwards, too, but they're not. That's not a basis for the medical board acting.

Ms. Thompson: I noticed, when I was sitting in your waiting room, a Rex Morgan, M.D. cartoon where Dr. Morgan is having some discussion about how doctors need to agree on a set of practice standards, and how doctors are "paying through the nose" because of careless colleagues, and how if they don't start policing their own they will have no room to complain. There is a handwritten note under the cartoon that says, "Dr. Morgan could add to the regimen by providing strict insurance regulation and by eliminating the exemption from antitrust laws that insurance companies now enjoy." Did you write that?

Mr. Olender: Yes.

Ms. Thompson: What did you mean by that?

Mr. Olender: The key, I think, to making malpractice insurance affordable to physicians is to regulate the insurance companies very strictly. The insurance industry and major league baseball are the only industries in the United States that are exempt from antitrust laws. It's amazing. So the insurance companies can conspire all they want on premiums, and it's all legal. And they have profited on malpractice. For example, I attended a seminar a few weeks ago at Howard Law School on medical/legal matters and one of the panels was on malpractice, and there was a gentleman who is the executive director of an organization of physician-owned

insurance companies, and he showed some slides and in his lecture he said that the companies are all losing money, and so forth. So in the question and answer period, I said, "It's interesting you're here in the District of Columbia and you make a statement that the insurance companies are losing money, and NCRIC [National Capital Reciprocal Insurance Company, which is the local company owned by doctors in the District] is doing fine and their reports to the SEC and to the stockholders show how well they are doing." And he said, "They are not doing well now, at this time." I said, "Well I'm a stockholder, and I get all these reports and I know they're doing very well." And he said, "Well, go buy some more stock then." That was his answer. But they have this mantra of losing money, losing money, and so they stick it to the doctors and make the doctors pay. So regulation of the insurance companies and a change in the premium structure [are what is needed]. Now there are approximately 20 categories for doctors, and it used to be there were four, and they would level off the premiums some by not having so many categories. The premiums would be affordable for everyone.

Ms. Thompson: What are the categories? Is it by type of practice?

Mr. Olender: It's by type of practice, and in some of the categories there is only one specialty in the category. So, yeah, that's what I mean by needing strict insurance regulation and needing to do away with the antitrust laws.

Ms. Thompson: So, regulation of premium levels or premium structure. Is there any jurisdiction that does regulate that effectively to your knowledge?

Mr. Olender: I just don't know. Not in the three in this area of D.C., Maryland, and Virginia. And also, of course, a big factor is malpractice -- the commission of bad medicine and bad hospital care. If that were controlled and the doctors who were repeat offenders were

taken out of the system, there would be a lot less payments for malpractice.

Ms. Thompson: And the point about the exemption from the antitrust laws, is it your contention that the insurance companies are sort of in league together in terms of the rates that they are charging doctors?

Mr. Olender: I think so. And then they go to legislatures where they need to get approval for rate increases -- I misspoke -- they go to insurance commissioners, and the insurance commissioners in most places do not have much personnel at all. There is no way, in the District of Columbia, for example, that they can check the data they are given to see if it's valid.

Ms. Thompson: You mentioned that there's a relatively small number of lawyers who defend malpractice cases. Who are some of the leading lawyers?

Mr. Olender: Well, okay, I hope I won't leave out someone just because I forgot: Joseph Montedonico, Stephen Hamilton, Brian Nash. In Annapolis, there are lawyers who come to the District quite a bit -- Dave Levin and his firm, very active. In Rockville, there are lawyers who come to the District quite a bit.

Ms. Thompson: Who would you say?

Mr. Olender: Larry Ceppos and his firm. Gleason -- James Gleason. Gary Brown in Virginia --I think primarily deals with D.C. cases. These are some of them, and they're very busy and their calendars congested, and they may have other lawyers in the firm do almost all of the work -- the depositions, all the discovery -- and the lead counsel may attend only the defendant doctor's deposition and the pretrial and the mediation and the trial. When it comes to trial, they insist that they try it; they insist that the client wants only them to try it. And, so it creates a serious scheduling problem.

Ms. Thompson: So the shortage is with respect to the lead trial lawyers --

Mr. Olender: That's right.

Ms. Thompson: -- and not so much the other lawyers who help prepare the case.

Mr. Olender: That's right.

Ms. Thompson: Who would you say has been your most effective opponent or opponents?

Mr. Olender: Well, it depends on the case -- and the day. There have been -- Brian Nash is very good. Joe Montedonico, Stephen Hamilton. One that I didn't mention -- I can't think of his name. They've been some of the more effective ones. There were some great ones, either dead or retired.

Ms. Thompson: Who are they?

Mr. Olender: Well, the Welch brothers -- Mason Welch and Harry Welch, brothers; they were very good. Joe Barse was good; he's retired. Denver Graham I think was considered tops at one time; he's deceased.

Ms. Thompson: And what distinguishes these lawyers from others? I mean, is it one sort of thing or is it a number of different skills?

Mr. Olender: Well, I would say, first of all, they all work hard, workaholics, just like on the plaintiffs side, workaholics. And also I think they -- by being on one side all their lives, they believe, I think -- they pretty much believe in that side; and they believe they're doing good by defending these cases. Another reason why they're good -- and this is somewhat generic on the defense side versus the plaintiff side -- is that they handle and try a lot more cases than any plaintiffs lawyer does in malpractice. They might be trying cases 40 or 50 weeks out of the year,

some of them, and there's no plaintiffs lawyer, to my knowledge, who does that. **A** plaintiffs lawyer might be trying a few cases in a year. That's just the nature of the practice, because they're hired -- defense is hired -- by the insurance companies, they're assigned these multiple cases, they really can't turn any down, they take whatever they're assigned to take. Contrast that with a plaintiffs lawyer, who picks and chooses. So most lawyers, except the few who really specialize in malpractice, most plaintiffs lawyers are not as expert in preparing the case or trying the case. But the plaintiffs lawyer's advantage generally is the plaintiffs lawyer can know more about the case than the defense lawyer, because the plaintiffs lawyer is working on the case from day one, and the lead counsel for the defense may not really get into the case very much until the weekend of the trial. So the plaintiffs lawyer has an advantage on that. But the defense counsel has an advantage on always being warmed up and, you know, knowing how to try a case and being tuned up.

Ms. Thompson: Interesting observation.

Mr. Olender: Yeah.

Ms. Thompson: It's been a while since you were a defense lawyer. You did defend some cases way back when, did you not? I'm trying to think of the early ones you discussed with me.

Mr. Olender: Well, criminal cases.

Ms. Thompson: Yeah, but ever a personal injury case?

Mr. Olender: I can't remember specifically. There probably were some. Oh, I can think of one. I can think of one in particular, and that's because of the defendant that I was representing, and that was the football great Willie Wood. He was not in the court, and I don't

remember ever meeting him, really, but I was his lawyer --

Ms. Thompson: [Laughter]

Mr. Olender: -- in the trial. As I recall, he was hitting golf balls at some apartment development or something like this. I don't think it was a golf course. And the case was tried in the U.S. District Court for the District of Columbia. And he was being represented by a law firm. A person was injured by the golf ball that he hit, and a law firm represented him. I don't think it was being paid by insurance, but I don't know. I think he had insurance; I don't know. And the apartment development was being sued. And on the opposing side were two older lawyers, one of whom had earphones on -- he was very hard of hearing. The other one was an older lawyer -- I think it was my first contact with him, Martin Mendelson -- who wasn't trying the case, but he was along with the other lawyer. And after that I started trying cases for Martin Mendelson and, in fact, shared space with him. Anyway, in this trial -- and as I said I can't recall Willie Wood being there, and I don't know how I could defend the case without him--

Ms. Thompson: [Laughter]

Mr. Olender: -- but we lost. The injured person won, but I don't think it was very much. And I remember that --

Ms. Thompson: You don't forget those cases.

Mr. Olender: Yeah. Oh, and I can remember another case that I defended in the federal court, and this was very unusual. This was before Judge Leonard Walsh, who at one time was Chief Judge. And, in this case, I defended an elderly lady who was -- I can't remember -- in her 70s or 80s, she was an elderly lady. She was being sued by a woman in her 30s or 40s for -- I don't know if it was alienation of affections, whether that was a legal cause of action at that time,

but something akin to it. If it wasn't alienation of affections, it was something like that. This woman, the plaintiff claimed -- my client, the defendant -- had lured her husband who was a young man. He was an Army officer -- a young man, about 40 or in his 40s. She would lure him to her apartment with cooking, various things, and she accused my client of alienating the affections, while suing for damages. That alone made it rather noteworthy, but what I also now remember was the prosecuting lawyer -- the lawyer for the plaintiff -- was a retired Congressman who had had his larynx, I believe, removed because of cancer, and he talked with an artificial device; the voice, you know, was distorted, a mechanical voice. And he tried the case and it was an interesting trial. I think we both did a pretty good job, and the 80-year-old lady and I lost.

Ms. Thompson: [Laughter] Were you surprised?

Mr. Olender: Oh, we were stunned!

Ms. Thompson: [Laughter]

Mr. Olender: We were stunned, and Judge Walsh was surprised, too, because he NOV'd it. He didn't find that it was credible, that the jury could've rationally decided what they did. So we won --

Ms. Thompson: [Laughter]

Mr. Olender: [Laughter] -- but the retired Congressman with an artificial voice sure beat me.

Ms. Thompson: [Laughter] Can you remember now what the most damning piece of evidence was from your client's point of view?

Mr. Olender: I don't think there was any -- I mean, I thought that I totally destroyed the plaintiffs case. But the jury -- and I think they were mainly women, as I recall --

mainly women on the jury --

Ms. Thompson: Have you arrived at any views about, in general, who's better for a plaintiff or a defendant, women or men?

Mr. Olender: Yes, but we're not allowed to use that information. Clarence Darrow wrote a piece on that, you know, 100 years ago or whatever. You're probably familiar with it.

Ms. Thompson: Yes.

Mr. Olender: We're not allowed to act on this information, but just generally, I would think that -- well, as far as the sexes go, it depends a lot on the case. Women, perhaps, are often more harsh on other women. I think generally, regardless of the race of the injured plaintiff, an African-American juror is more inclined to be less harsh and more sympathetic to persons who have been injured -- especially in children's cases -- it doesn't matter what color the child is. Generally, African-American jurors are less likely to be harsh and rigid and looking for reasons to throw the plaintiff out. But, of course, that cannot be used as a basis to strike jurors under the *Batson* case, nor can gender, and perhaps nor can religion, you know, according to some lower court cases. But I think there are differences in people, and I don't think that they are genetic, but they are cultural.

Ms. Thompson: Have you ever made use of a jury consultant to choose a jury -- to help you choose a jury?

Mr. Olender: No, no, I haven't. Sometimes we've done mock trials -- focus groups -- and looked at the results to see what persons generally have been with us and which were against us in the trial -- demographics -- but we haven't used so-called experts for jury

consultants. The less experience -- I think the less experience a lawyer has in trying cases, the greater the need for the jury consultant, although there are some very great and experienced trial lawyers who swear by it.

Ms. Thompson: I can see why you would remember the case involving your 80-year-old client, and the alienation of affection. I was going to ask you whether or not there is any case out there that sort of "sticks in your craw," so to speak, because we all have these cases -- most of us have cases that we lost that we sort of never have gotten over. Do you have one of those?

Mr. Olender: Well, first of all, the cases I've told you about, you know, they didn't bother me at all -- I mean, I was just amazed -- and then the result ended up all right. In the golf case, I think the amount the jury awarded was probably about what the insurance company was willing to pay anyway. Anyway, so they weren't big losses. The only -- and stop me if I've told you this -- as I think back, the only case that I really have real regrets about was a case where I represented a cerebral palsied child and family, and we turned down a settlement during the trial that we didn't think was enough, and the parents didn't think was enough. But if I had strongly urged them to take it, they would have, I'm sure; but I didn't think it was enough and then the jury was out for three days and came out with a defense verdict. That case I felt very bad about and still do.

Ms. Thompson: Was it a close call in your view? Did the jury's verdict -- and was it a real surprise to you?

Mr. Olender: In retrospect, it shouldn't have been. In retrospect, it was not a slam-dunk case, but I felt it was a very good case -- the clients thought it was very good. So

that's the only one I can think of.

Ms. Thompson: Can you recall any specifics about the facts of that case that made it difficult? What kept it from being a slam-dunk?

Mr. Olender: No, I don't remember the obstetric details. The defendants were female obstetricians. I think maybe that helped their defense. The father of the child was deaf and mute, so we tried the case with -- this was the beginning days of computers. We could input and the words would be shown on a screen. This was very early. This was a good while ago, too. And so we had interpreters, but we also had somebody -- and this was before you had real-time stenographers, you know -- maybe I invented this, really. Maybe this was my idea, because I had never seen anyone do it. I had a secretary inputting what was being said, the answers by my client. I don't remember specifically, but it was very unusual and we were inputting on the screen something -- questions or answers -- and I had never seen that done before or heard of it being done before. So it was a very tragic loss.

Ms. Thompson: Was there something about that case that caused you to want to do that, to show the answers?

Mr. Olender: I don't know whether it was to let the client read the questions, maybe it was that. Maybe the interpreter or the hand interpretation was not adequate, something like that. I think maybe that was it, too -- to put my questions in type so that he could read it.

Ms. Thompson: Oh, I see.

Mr. Olender: And this, I'm quite sure, was before there were any stenographic machines that were computerized.

Ms. Thompson: This must have been quite a good secretary you had.

Mr. Olender: Yes, so it must have been a good 20 years or more ago. But somehow if there were a screen, it had to have been a computer and not just a typewriter.

Ms. Thompson: Have you ever, since that case that you've just described, had cases where you really agonized over whether to accept a settlement offer or go on to trial?

Ms. Thompson: Well, you always agonize over it, but this is one where I feel that I didn't agonize enough. I should have advised the client that it was a sizeable amount of money. I should've encouraged them to take it, but that's hindsight.

Ms. Thompson: Sure.

Mr. Olender: Yeah.

Ms. Thompson: Have you ever thought about doing class-action litigation?

Mr. Olender: Well, I've thought about class-action litigation as something that I would indeed want to learn and do, you know, if I were starting out; but it's very specialized. I know how to do individual cases, and so, no. But the advice that I often give to any law students or young lawyers who want advice on how to get into personal injury and what to do, I suggest they try to get a job with a firm that does class-actions to learn how to do it. Because that, I think, is where the future is, rather than case by case. Because the system -- the court system, I don't think, is going to stand for accommodating case-by-case trials. Mediation has taken over and there are attempts to have arbitration, so I think there are going to be very few cases tried. I think class-actions are another way to deal with a huge number of cases which are very, very, very rarely tried. You know the tobacco case in Florida involving the flight attendants? That was actually tried to a verdict, successfully by the plaintiffs, but it dealt with a class of thousands and thousands of people. The trial took -- I don't know how long -- a year or whatever. But most

of them are settled, most of the class actions. So the court can handle the caseload. But if all these cases were individual, there's no way the court could handle it.

Ms. Thompson: Is it a good or a bad development, the mediation/arbitration development that you mentioned?

Mr. Olender: Well, I think arbitration is a bad development because people are being forced to take a judgment by one person who's not a judge; and, in many instances, he is a representative of industry. For example, there is so much industry that has compulsory arbitration as part of doing business with them such as banks, stockbrokers, you name it. They've got compulsory arbitration clauses that the customer is not aware of in the least until it comes time to try to sue. So I think these represent the industry and the supplier; they certainly are not for the benefit of the consumer. Mediation is good if it does not delay trial, because in larger cases, it's usually not successful until the parties are facing the gun of a trial. And the further off a trial date is, or if there's no trial date scheduled, the less likelihood there is for a case to be settled in mediation. It's only the threat of a trial and a jury that forces people to settle, so it's very effective and, as you probably know, the District is the pioneer in mediation and it works pretty well. And, in the large cases, we usually opt out of the court mediation for private mediation because the mediators generally are not real knowledgeable about malpractice cases.

Ms. Thompson: The court mediators?

Mr. Olender: That's right. Now, they have started a malpractice docket with lawyers who are experienced in malpractice. I'm on the panel, but I don't get any cases because the defendants don't want me. I divulge -- well, they know it anyway -- who I have suits against now, and who I've had suits against in the past, and who I am studying whether I'm going to have additional suits against, and generally they don't want me.

ORAL HISTORY OF
JACK H. OLENDER

Fifth Interview - August 4,2004

Ms. Thompson: Today is Wednesday, August 4,2004, and this is a continuation of the oral history of Jack Olender. Mr. Olender, you have been kind enough to grant me one more session with you after I did something peculiar with the tape recorder the last time and wiped out the last half hour or so of our discussion. In a way, though, I'm not *sorry* about it because I had a chance in the interim to read the transcript of our discussion, and I think it was helpful in preparing to conclude. Some of the things that I recall asking you, I want to ask again, and there may be a few other things I didn't ask but will try to include this time.

You know, when I looked back at the transcript of our last meeting, I saw that we concluded by talking about mediation. You noted that you have volunteered to be a mediator in malpractice cases, but you think the counsel probably really don't want you to be one because those whose cases you would mediate have been your opponents or are your opponents in other cases. That got me to thinking that I should ask you what you might do as a mediator in the sense of pointing out to litigants weaknesses in their cases, one of the things a mediator does. I wanted to ask you to reflect for a moment, without naming any specific case necessarily, about what you thought over the years have been weaknesses in your opponent's cases or the biggest mistakes opponents made. From our earlier conversations, I suppose you might say that one of their biggest mistakes was taking on clients who are negligent, but aside from that, where have your opponents failed to prepare well enough, or what have been the sort of weaknesses in their cases, if you observed any?

Mr. Olender: Well, one thing that seems to be systemic: the defense lawyers are a small group who defend all these malpractice cases, and usually the lead lawyer doesn't do much on the case until the end and until there is a mediation, a pre-trial, and a trial. And as a result, the lead lawyer really often doesn't know much about the case until right before and during the trial, and that is probably not the best way to handle a case, but that's the way it is done. So the weekend before the trial is often when the lead defense lawyer really learns about the case. But on the other hand, the plaintiffs' lawyers do not have cases back to back to back to back -- like 20 or 30 jury trials a year on these cases -- the way some of the popular defense lawyers do. So that's a little bit of a weakness, I think, in the preparation.

Ms. Thompson: Have you seen evidence that lead lawyers don't really know the cases that well? Again, without naming individuals.

Mr. Olender: Yes, and I've heard defense lawyers say this -- that this is the way they have to live. They don't really read depositions until the last minute and during the trial, and they learn as the trial goes by.

Ms. Thompson: That does make it difficult to react and defend. Is there any particular trial technique or rule of evidence or anything of this sort that has particularly served you well? You obviously are a very successful lawyer in your cases, and we've had a good bit of discussion, and it comes through quite clearly, that you work hard and you prepare, and so that obviously is a big factor. But is there anything in the courtroom itself, in terms of your questioning technique or your reliance on rules or anything else that you might think of, that you would say is a key to a successful outcome?

Mr. Olender: I can't think of anything at the moment. It's really the preparation

by studying the deposition and other depositions that are available of expert witnesses, finding inconsistencies that can be used in cross examination. That seems the biggest thing, I think.

Ms. Thompson: I talked with one of your colleagues, Kim Keenan, who told me that you are someone who reads all the time. She said you read everything, and that it's surprising what you read. What do you read?

Mr. Olender: Well, I read the *Washington Post*, the *Washington Times*, and the *New York Times* every day, plus I read various weekly newspapers, a number of legal newspapers and journals, some medical newspapers and journals, which I scan. Even *National Enquirer* has some good medical information. I've gotten at least one good expert witness from *National Enquirer*. They were dealing with something that was leading edge, and I got that doctor in Pittsburgh who was very good.

Ms. Thompson: Is that right?

Mr. Olender: I think the more you know, the more information you have at your hands, you have it to use, and you use it in preparing the cases.

Ms. Thompson: She also told me that you are someone who believes that you can learn at least one new thing from any seminar you go to and that you are likely to be the fellow on the front row of the legal education session. Is that right?

Mr. Olender: Oh, yes.

Ms. Thompson: What kind of training sessions do you go to?

Mr. Olender: Some medical lectures and programs at trial lawyers associations, various seminars, conventions. Good information is given out, experts are often brought in, medical experts, economic experts, etc. to discuss their topics. So there is a lot.

Ms. Thompson: We had some discussion the last time -- and we lost some of the transcript -- about your foundation, the Olender Foundation. Tell me again, if you would, what led you to start the Olender Foundation.

Mr. Olender: Well, it started informally by giving some scholarships to law students. Actually the first year, I asked a professor at Antioch, you know the predecessor to the UDC [University of the District of Columbia] Dave Clarke School of Law, to select a good trial advocacy student to receive an award, the Earl Davis Prize, in honor of a great trial lawyer who had passed on, and so he nominated the person who received it. The next year I asked Judge William S. Thompson to get a student from Howard. I intended that it be rotated at that time, to all the law schools in the District. So he got his student, but then he held on to it. He wanted a Howard student permanently, so we did that and then added UDC David Clarke School of Law. So, in the last number of years, six students from each school have been the recipients. We never got around to the other four law schools in the District. And then, you know, as a result of that, we became bigger and bigger and formed a foundation. Coleman McCarthy wrote an article in the *Post* calling me a peacemaker for my efforts on malpractice, calling this a type of peacemaking. So we started the Peacemaker Award, and it grew.

Ms. Thompson: Was that an apt characterization, you think, of your work -- that it is peacemaking?

Mr. Olender: Well, I think so. To help people get what is due to them and it's done peacefully, it's done in a courtroom, it's done through negotiation, and it's not done through violence. Anyway, that's the way Coleman McCarthy looked at it, and he's an expert on peacemaking. So it was good enough for me.

Ms. Thompson: How did you happen to extend the awards then to some more famous people -- because there are a number of celebrities who have received the award? How did that happen?

Mr. Olender: Well, they do great things and we ask them and most of them are willing to participate.

Ms. Thompson: Who was the first celebrity recipient?

Mr. Olender: Probably a person that not many people know of, but he was the doctor who went over to Chernobyl to treat the children who suffered from the nuclear energy accident. His name was Dr. John Gale. So that was the first national or international award.

Ms. Thompson: Who have you found to be the most fascinating of the individuals that have received the award, in terms of your personal interaction with them?

Mr. Olender: Gee, that's tough. Elie Wiesel, Mayor Washington, Christopher Reeve. A number of them -- and Jerry Lewis was the most fun.

Ms. Thompson: Is that right?

Mr. Olender: Yeah.

Ms. Thompson: And what about the other three? What was fascinating about them?

Mr. Olender: Well, what they've done, their history, and their intensity and sincerity.

Ms. Thompson: I know that you have a connection with the Luke Moore Academy here in Washington, and I've seen that one of the awards went to Luke Moore at some point. What is that connection about?

Mr. Olender: Well, the late Judge Luke Moore was a friend and I think he did a wonderful thing starting that school, and they do tremendous work.

Ms. Thompson: It's the old Street Academy, is that what it's called?

Mr. Olender: Yes, Street Academy. They take children who washed out everywhere else, and they do a terrific job with a good percentage of them going on to college and a fair percentage graduating college. It's a terrific endeavor, and so I'm glad to support it.

Ms. Thompson: Did you ever appear before Luke Moore when he was on the bench?

Mr. Olender: Yes, I can't remember anything specific, but I know that I had some case. I first got to know him when he was an assistant U.S. attorney on the other side. He was a fine gentleman.

Ms. Thompson: And I know, too, and your remarks a few minutes ago show this, that you have a great deal of admiration for the UDC School of Law, particularly their clinical programs. Is there something in particular about that program that you think makes it effective or worthwhile?

Mr. Olender: Yes, the school concentrates on clinical law, and I think it is the highest rated of the local schools in clinical law. It's right up toward the top of the ratings in the *U.S. News and World Report* on clinical law. And a number of professors there are very good at it, and they deal with subjects that are of importance to the citizens in the District. They handle cases with the result that people are paid, they've helped with wills, they've helped in the courts. They have, I think, the most interns in the D.C. courts and in the District Government of any law school. So they prepare people to be real lawyers **as** opposed to, at least when I went to law

school, preparing them to be judges really, to read cases and understand the cases and reason. They prepared us more for being judges than for being practicing lawyers, I think.

Ms. Thompson: I think many of us would agree with that. Perhaps all of us would.

Mr. Olender: And then when they named it the David Clarke School of Law, that made it even nicer because Dave Clarke was a friend.

Ms. Thompson: That was a great loss for this town.

Mr. Olender: Yes.

Ms. Thompson: Well, speaking of awards, you've won a number yourself. I saw you win the Trial Lawyers Association "Champion of Justice" award a few months ago, and the word on the street is that you are going to be a recipient of the Charles Hamilton Houston award from the Washington Bar Association.

Mr. Olender: Yes, that's a big one.

Ms. Thompson: That's a big one. What accounts for your involvement in causes such as those that your foundation supports? Where do you get that from? Are you a religious man? What would you point to as the influence in your life that led you to be a "champion of justice?"

Mr. Olender: I don't know. My father was very charitable. I've always wanted to be involved in good things.

Ms. Thompson: I remember your telling me about writing checks for him to charities when you were a young fellow. That taught you a lesson you think?

Mr. Olender: I think so. The Charles Hamilton Houston medallion is particularly significant. I don't think particularly that I deserve it, but it is real significant because

it's -- I would say a spiritual thing, really. The people I have known who have received it have done great things for society. So if they want to give it to me, I will take it gladly.

Ms. Thompson: Quite an honor. Congratulations.

Mr. Olender: Thank you. It's beyond the usual thing. A bar association awards something for somebody who has been successful in law, makes money in law, that sort of thing. This is more spiritual, I think, than just practicing law.

Ms. Thompson: We've had a good bit of discussion about cases that you have been involved in, successes you had, and I've asked you about your more interesting cases. Let me broaden the question a little bit and ask you about what it is that you are proudest of in your career. It doesn't have to be a case in particular. What would you say? What is your biggest achievement? And I know you are a humble guy, and you're going to tell me you haven't achieved enough probably, and I'm going to disagree. But tell me what you are proudest of.

Mr. Olender: That's what Elie Wiesel said. We did a little conversation on stage, and I questioned him a little bit. And that's what he said -- that he hasn't done enough. I don't know. I think I've done some good for some clients, and I think I've done some good with lawyers I'm associated with, and through the foundation we've done some good, so I can't think of one thing in particular.

Ms. Thompson: What's ahead for you? Are you going to retire any time in the near future?

Mr. Olender: No, I just signed a new lease.

Ms. Thompson: So you won't be doing that. [Laughter] Do you foresee any changes in your practice or activities, or will you continue on this road?

Mr. Olender: I plan to continue.

Ms. Thompson: What do you like to do in your spare time? And I should add that your colleague, Kim Keenan, told me that you're always working, you're here on the weekends, you work all the time, so I'm not sure how much spare time you have. But what do you do with what you call spare time?

Mr. Olender: I turn on boxing on television. I put it on the calendar so that I don't forget what's on. My wife and I go to the Kennedy Center very regularly for plays, ballet, concerts, and so forth, and we make little trips, that sort of thing.

Ms. Thompson: What's your favorite of the types of performances at the Kennedy Center? Are you a dance aficionado, theater, or what?

Mr. Olender: Because my wife loves ballet, maybe that's the favorite. And there are good plays. Some of the performers -- the concerts in the Concert Hall are excellent. We go a little bit to the opera, but not much.

Ms. Thompson: Somebody told me that I ought to ask you about your own doctor. Whether or not you can find a doctor who is willing to treat you, and whether the doctor is nervous. What is the answer to those questions?

Mr. Olender: The answer is "yes." My wife and I have very good doctors, and there have been some that did not want us, so we didn't want them, but the doctors we have are excellent, and I don't think it's because they look on it as insurance, which it is in a way. Because I am highly unlikely to take a case against a personal doctor. I don't. But I don't think they think of it that way.

Ms. Thompson: That is another way of looking at it. I am told that you are a very

devoted and loving husband, and I wonder what your wife thinks about this profession of yours -- if she is bothered at all by the attacks by some on you or does she have a thick skin to all of that now?

Mr. Olender: Well she loves it the same as I do.

Ms. Thompson: I think this is a good place to stop. Thank you.