

**ORAL HISTORY OF
DAVID C. ACHESON**

Second Interview - February 26, 2010

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is David C. Acheson. The interviewer is Kurt J. Hamrock. The interview is taking place in the offices of McKenna Long & Aldridge LLP on February 26, 2010, beginning at 10:11 a.m. in the morning.

(Tape 2)

MR. HAMROCK: Mr. Acheson, thank you again for coming and speaking with us today. We appreciate the time you spent during your first interview with us. Two topics that arise from the first interview we wanted to touch bases on. First, before we continue, if you care to share with us any thoughts, or memories you had of your siblings? Also, you mentioned during the first interview that you, by the time World War II ended, were married. Any reflections of memories you might share with us of you and your wife?

MR. ACHESON: First siblings. I am smack in the middle of two sisters. One, three years older, the other three years younger. Inevitably, I suppose I became quite close to my older sister because she being older and more sensible than my younger sister. (laughs) Not a reflection on my younger sister, but my younger sister was really quite the child. My older sister was six years older than she, and was therefore sort of a role model and a very, very thoughtful, considerate young lady. My older sister, Jane, carried her middle name Stanley, after my mother's maiden name. My older sister, from her earliest years, was what you might call a good government enthusiast. She had a pretty clear idea of how the household and the conduct of its members should proceed. She conducted herself according to her own rules, and urged me to conform to those rules also. Actually, I did not resent that because I thought she was very sensible and had good ideas, and she was also a lot of fun. She was a fun-loving person, and she

was quite smart. She was not a particularly good student, which is surprising because she had very good intelligence and instinct. I learned later in life the correlation between being a good student and being intelligent is not necessarily close, because there could be reading disabilities or something that interfere with the learning process and the reading process. It does not mean that the person does not have a lot of brains. I always felt that my older sister was a great person. We were very good friends really until her death, about eight years ago. My younger sister was very charming. She was as a child, and she became really quite a lovely person, a really good-looking girl. She was clearly the favorite of my mother because they had the same birthday. My mother, who came from a family that you might call part of the Anglo ascendancy in Ireland, was sort of superstitious. She thought because Mary and she had the same birthday — my older sister was Jane and my younger sister Mary — and she thought that the birthday coincidence meant that there was a special spirit between the two of them. That meant that everything that happened in the household brought favor to my younger sister. (both laugh) That was sort of a mild pain for me, but Mary quickly learned that any sound of anguish from her based on anything I did met with quick correction and disapproval at me from my mother.

My father was very skeptical of mother's sort of otherworldly beliefs, and I found that sometimes I could take an appeal to my father when he came home from work. I also learned that was pretty risky because if my appeal was denied, or the lower judgment affirmed, then I was in serious trouble with my mother. (both laugh) So I threaded my way as a youngster through a family relationship that was far from simple, and that gave me, I think at a fairly young age, a sense of the subtleties that one had to work through in life. Anyway, Jane and I became really good friends. Jane is deceased, Mary is still alive. She is a widow. Jane married a very nice man whose family was very wealthy and he was actually a major shareholder in the

holding company called American Electric Power. Later in his life, after they were married, they asked him to go out to Milwaukee and act as the CEO of the Milwaukee Electric Power Company, which was in some kind of trouble. He did that, and he and Jane lived there for two or three years until he went back to New York to resume his role in the holding company.

Just a sidelight, but maybe an entertaining one, when he and Jane were married, I met his parents, Jane's in-laws. Old Mr. Brown was a dapper smallish man with a flowing white mustache like the cover of *Esquire* magazine, you know. Slightly popeyed, carefully combed hair and a really nice man. I only met him once, but I liked him and I asked my brother-in-law about his earlier career. He said, "My father hit the big time, purely by accident." He had a friend who worked at a company that made office machines. He was not happy there and he did not think the company was well run, and he had some ideas that he thought could move the technology forward very rapidly, but he did not have enough capital to really go into it himself, to make the necessary investments as an individual. So he asked some friends to take shares in a company that he was starting up. One of his friends was Mr. Brown. Dudley said Mr. Brown was lucky because he became a major shareholder of what had been a little Mom and Pop operation now called the International Business Machines Corporation. (both laugh) Anyway, Dudley was a nice guy, a very good yachtsman. He became a naval officer in World War II. My younger sister, Mary, married William P. Bundy, who achieved fame or notoriety, at least, during the Vietnam War when he was Assistant Secretary of State for the Far East. He was part of, unfortunately, the mistaken belief that if we did not rescue Vietnam from the Communists all of Asia would go down the drain. He really believed that and he and I had some ferocious arguments about it. I was never close to him. I thought he was very book smart, very able, but seemed to me to have no sense of reality at all. So I was never close to him, and I really never

liked him. I never really saw much of my younger sister until he passed away. Then suddenly we became very good friends, (laughs) — my younger sister and I, and still are. I stay with her (when I drive to Cape Cod) in Princeton where she lives, and I see a lot of her and we talk a lot on the phone.

My wife was a classmate of my sister Mary at the Westover School for Girls in Middlebury, Connecticut, and Mary brought my wife, Pat, home once on a vacation, and we quickly became very fond of each other, which led to an engagement and marriage during World War II, which probably should have been delayed if we had been sensible people. Of course we weren't. (both laugh) Her father was a very nice man who came from a southern family. His father was a banker in Texas, and he was asked to go to New York and become chairman of the Guaranty Trust Company many years ago. So my father-in-law was a southerner by parentage, accent, and all kinds of traditions. His mother was Louisianan from a very distinguished family in New Orleans. My father-in-law became a lawyer, a partner at Lord, Day & Lord in New York. One of his clients was an investment banking firm called Charles D. Barney & Co. A digression for historical interests: Charles D. Barney was the son-in-law of Jay Cooke, who financed the Union in the Civil War. You recall he went bankrupt after the panic of 1873. After the panic subsided he went back into banking. He thought it imprudent to put his name at the head of the firm because of his previous bankruptcy. His son-in-law, Charles D. Barney, was a partner in this new firm and he decided it would be prudent to give the firm that name. So Charles D. Barney & Co. was a successful investment banking firm that did underwriting and I do not think it was a retail brokerage, but I am not certain. My father-in-law was in the Yale class of 1915. Significant members of that class were Dean Acheson and John W. Hanes, the North Carolina textile family. All three of them were members of the senior society at Yale

called Scroll and Key. My father and father-in-law were close friends at Yale, and I asked my father-in-law once when he was a partner at Smith Barney, “What was the story on Smith Barney?” He told me about Jay Cooke at the origin. He said, “My classmate and friend, Johnny Hanes, was a partner at E.B. Smith & Company, and we were having lunch together one day, at the Racket Club in New York, and I said to Johnny Hanes, ‘You know, why do we compete? We are two sort of boutique financial firms and we are always batting each others brains out in competition. Seems foolish, why don’t we combine the two firms?’” Johnny said, “I think that is a good idea!” He said, you go back and put it up to your senior people and I will do the same. They did and the two firms merged and became Smith Barney & Company. (both laugh)

Anyway, we were married during the war and, I went away overseas. I left right away. In fact, truly right away. My wife, who was a serious scholar student and history buff, entered Bryn Mawr College as a student, and I was away so long that I came back just before she graduated. She later became a published writer. She published three books through Dodd, Mead and Company, which was a reputable commercial publisher, now defunct. One of them was called *Our Colonial Heritage*, which was a very interesting book about how each of the American colonies had a distinct personality based really on its derivation from Europe. Was it primarily Scottish, was it primarily English or French? Was it predominantly Catholic? Was it predominantly Protestant? Was it predominantly a commercial mother country, or predominantly an agricultural mother country? She really drew profiles of the thirteen American colonies based on their derivation from the mother country, which involved class, economy, trade, history, political history, and religious history. Some of the American colonies were based on religious persecution and escape and others were not. Others became what you might call the offshoot of the original religious ascendancy in mother country. It was a very interesting book

that way. Then she wrote a potboiler which was not very interesting, but it earned her quite a lot of money. It was published in paperback and hardback, called *Our Federal Government and How It Works*. This book defined the three branches of government, Executive, Congress, Judicial, and something about their functions, with the organization of the executive departments and the way the committees and the Congress worked, and the jurisdiction of the Supreme Court, and how that had changed over time. Not a big heavy book but a book about, I would say, an inch thick, mainly for high school students. Because government changed frequently, particularly executive branch, she was asked by the publisher to redo it about every two years. So this book was kept current you know, and there was a time when there were about eight or ten copies of this book in every USIS library in the world. She found it ironic. She did not have a subtle mind, but she had a disciplined and energetic mind. It was a discovery to her to learn that the least praise-worthy book she had written was the most profitable. (both laugh) Her third book was called *America's Judicial Heritage*, and how its jurisdiction was derived and defined and how it changed over the years. That did very well. That was a very sought after book. That was in education libraries all over the country. Dodd, Mead published all of those books.

As long as I am talking about my marriage, I will talk about my three children. Just for the record my oldest was a daughter, Eleanor, who lives here in Washington and is a lawyer, and is now Senior Vice President, General Counsel and Corporate Secretary of Amtrak. My second child is a son, David, who has unusual ability and imagination, and he became an architect with a close friend from architecture school at Harvard. He formed his own firm in New York and has done extraordinarily well. At a time when most architects are having a tough time, he did it by thinking up two quite original ideas. First, he and his friend were junior architects for a German immigrant who had a very successful firm in New York, Ulrich Franzen. Ricky Franzen, was a

very, very nice man. He was a very gifted man, and he had a very successful firm. He gave those two boys a lot of leeway. After they had been there several years, he said to them, “You know, I don’t believe in enlarging this firm, I never have, and I never will, and I don’t want partners, but you two guys are unusually able architects. I will refer business to you if you go and start your own firm.” David was lucky because Franzen put him in charge of building a mansion for a client in Long Island, which this client wished to become an art museum after his death, because he had a significant art collection. David did that and that house appeared on the cover of *Architectural Digest* with a big story about my son. He had just gone independent and that really put him on the track to go forward. He discovered that the architecture business was based on projects, building projects. Therefore, projects came in and were completed.

Sometimes you would have a new project coming in but sometimes you would not, and if you did not you would want to lay off some people and wait for the next project to come in. This parabolic curve of business seemed to be a fundamental problem of his profession. He said to himself and to his partner, “You know a way to cure that is you can live with the parabola if you have an underlying steady stream of income from the other sources than projects.” How to do this? They became retained by leading hotels in New York to be their house architect, keep them up to code, and if they had to do work on the buildings, David’s firm would do the work. So this gave him a rather steady stream of revenue. He now represents five or six of the best hotels in New York. Not necessarily the biggest, but the ones that have the most *éclat*. That worked very well. Then he and his partner realized that another trouble with income directly derived from projects from developers, is that the architects are the last people to be paid. The development starts with a lot of zoning work. Then it goes through a lot of cost analysis, and then it goes into building. The people who do the first two get paid first and by then the client is

probably running short of money. When the building is finished, and as it progresses, the payment gets slower and slower and the architect is the last to be paid. So David said, "You know, we have had one or two very successful experiences as zoning consultants, why don't we expand that business aggressively and we would have solved that problem because those guys get paid first." So he and his partner accomplished this and are now among the two or three leading zoning consultants in New York. (laughs) He said, we have now arrived at the point where every cycle of a development we have something to do with, as well as the underlying revenues streaming from the hotels. He said, we really are doing damn well. I found that quite extraordinary. I have never heard of other architect firms who analyze things that way and solve those problems that way. But he has unusual powers of analysis, and he is very, very reliable. So he made a great success of himself.

My younger son, Peter, lives in the Hudson Valley and he is an artist. He has not had the financial success therefore that my other two kids have had, but he works very hard and he is doing okay. He works at Bard College in the Hudson Valley, paints and now has a very successful dealer who is selling his paintings pretty well. Curiously, of my three children, I would say he is the one with the most active imagination, and the quickest mind in many ways. For example, he can do the Friday and Saturday *New York Times* crossword puzzle in about 30 minutes. (laughs) My other two kids, although they have great gifts, and even verbal gifts, can not do that. He reads everything, he remembers what he reads, he has a very active mind, he lectures on art, and he paints a lot. He has three children. He is divorced. His oldest is about to enter college. So he is now facing what you might call a testing period for a single parent. So, I think that takes care of my family, as far as my oral history is concerned. I see a lot of my children and talk them a lot on the phone. We e-mail actively back and forth.

So now we can go back to where we stopped, I think, where I had finished my life in the U.S. Navy and was about to enter the Harvard Law School.

My first interview at the Harvard Law School, after I applied for admission, was with a highly respected professor of tax law named Erwin W. Griswold. Later, you may recall, he became Solicitor General of the United States, and he came to Washington where he lived the rest of his life. He had a very nice wife. He and I became law partners at a firm called Jones, Day, Reavis & Pogue, which is a huge firm of Cleveland origin with a big Washington office, and now offices all over the world. You may or may not have heard of them, I don't know.

MR. HAMROCK: Quite a bit.

MR. ACHESON: So Erwin and I used to have lunch together occasionally, and he said to me once, "You know, when you interviewed me, I remember you were wearing a naval uniform," and he said, "I said to myself, this guy probably thinks that I am going to be impressed and his chances of getting in are going to be better because he has his naval uniform on. He said, tell me honestly David, was that ever in your mind?" I said, "You know, actually it never was. The truth is that I only had one other suit to my name and I did not like it and I did not think I should wear it to an interview." He said, "I did not count it against you, but it just crossed my mind to ask." (both laugh) Erwin's lectures always started, "Gentlemen, don't try to think great thoughts about tax law, just read very carefully the words of the statutes." (both laugh)

The great thing about the Harvard Law School was that I saw so many of my friends coming back. The war had collapsed the college graduation years, so the college classes of '40, '41, '42, '43, '44 and even '45, were all together at law school. Some in their third year, some in the second and some in the first, but it was a big mixture of all those people. I saw a lot of old friends there, and I quickly renewed friendship then, and with many of them now married as I

was, I made a lot of new friends there whom I have really treasured later in life. That was on the plus side of the ledger for the Harvard Law School, that was a big plus. I would say some of the teaching engaged my interest. I mean all of it obviously required discipline, work, reading, doing homework and preparing for class the next day, I could do all of that pretty well. On the negative side the big problem was there were a lot, I would say, a high percentage of the faculty was the pre-war faculty, many of whom were old even prior to World War II, and older still by the time I got there, and some probably should have been retired before. All of them, even the ones I liked, tended to teach from the methodology that they thought should be revered because it was traditional at the Harvard Law School. That was a kind of blind adherence to the case method with little patience for discussing the consequences, implications, possible critiques, and the law was taught at the Harvard Law School by that tradition, even when I was there, as if there was no real world. There were only lawyers, plaintiffs, and defendants. It was regarded as intellectual sissy stuff to think about or talk about the social or political consequences of legal judgments, judicial judgments, or legal reasoning. They rather prided themselves on this chilly, narrow definition of legal education as opposed to what they rather contemptuously called social law, as taught by the Yale Law School. I can understand that criticism, but I couldn't agree with it. I discovered very early on, that a lot of my classmates felt the same way. I actually thought about transferring to another law school, maybe University of Pennsylvania, maybe Yale. I did not want to spend another three years in New Haven, which I found a boring surrounding. Penn had a very good representation as a law school, and I thought about moving there. A lot of people, my father, some of his friends, Justice Frankfurter, all discouraged me from doing that because they thought that the thing to do was to just bull your way through the Harvard Law School and you will profit later in life from that harsh discipline. So that is what I did, and now I

am sorry I did that but you can't go back. In any event, in practical terms one of the chief problems I had was that the classes were huge, like three hundred people, and classrooms had no amplification, and if you did not get in the first two rows when class started, you were going to miss a lot. A lot of us had, I know I did, suffered a little bit from the effect of gunfire on the eardrum. I was not seriously impaired enough to need a hearing aid, but I did need to hear a voice really speaking up, and people like Ralph Baker, who taught the corporation law, and E. Merrick Dodd, who taught bankruptcy and corporation law, particularly corporate finance, were kind of old and frail and their voices carried well in the second row but not beyond. I would go to class sometimes and not know a goddamn thing that happened in class, and I would have to go up afterwards and ask a lot of questions, which were received somewhat impatiently. I mean courteously enough, but you asked Ralph Baker a question and he would look at you as if you really did not have a lot of brains, and then he would be looking at his watch and obviously wanting to get out of there. (both laugh) So I felt, Goddamn it, why can't this place amplify the lectures. Not a hell of a lot to ask! We did not have one amplified classroom, and they were huge classes. So we were borrowing each others notes all the time. Occasionally, I would get up in the front row and afterwards I would have about five or six people ask me if they could borrow my notes. More often I would get in the middle, or the back of the class and have to borrow somebody else's notes. There was one guy who was always in the first row scribbling furiously. His name was Albert Sachs. He later became a contemporary of mine at Covington & Burling, and everybody wanted to borrow his notes. He graduated number one in our class. He was on the *Harvard Law Review*. He was very nice guy. He later became dean of the Harvard Law School. He left Covington and went back to teach and became dean. A very good dean and a very nice man. I liked him a lot. Anyway, that was the Harvard Law School. So I thought the

social experience there was very nice and very rewarding. The educational experience there I thought was backward and failed to meet the legitimate expectations of the student body. I can't say that I did not get a good education there as far as it went, but it was not a pleasant experience of my life. Now that I look back on it, sort of saying well — it had its good points, it had its bad points. Basically, I am glad it is over. (both laugh)

MR. HAMROCK: May I ask two questions?

MR. ACHESON: Yeah.

MR. HAMROCK: First of all, what prompted your decision to go to law school at all after the war, and what prompted the decision to go to Harvard versus some other school?

MR. ACHESON: When I was placed on terminal leave from the Navy, I thought carefully about what I really wanted to do in life professionally. I can dismiss some things that I was neither suited for nor educated for, nor disposed toward like medicine. I thought about going to business school, but then I thought, you know, if you are really not sure of what you want to do and you want to be equipped to take opportunities that may arise, getting a legal education would probably open more doors than any other single mode of education. That is what I thought. I am not at all sure I was correct in that judgment, but that is what I thought. I talked to my father about it who knew a lot of — he was a very, very good lawyer. He had been number two in his class at the Harvard Law School. He was the Treasurer of the Law Review on the Board of Editors. He was also a fellow of the Yale Corporation. So he was in a good position to sort of compare the advantages and disadvantages of the legal education. He was also in a position to compare the Harvard versus Yale Law School. Dad encouraged me to go to law school on the grounds, I was thinking, which was to open more doors, probably, than any other single thing. Medicine, church, military, law, business, are sort of the things you think

about professionally. Most of those were not in my field of interest in anything I had been prepared to be educated with or to think about. So he encouraged me to go to law school. His close friend, Felix Frankfurter, who had fatherly feelings for me, was enthusiastic to have me go to Harvard Law School. I was moved by their advice, and I did not talk to anybody who said, For Christ's sake don't go to Harvard Law School. Or, For Christ's sake don't be a lawyer. My father-in-law said, "I am a perfect example of a person for whom doors were opened other than the law because I was a lawyer." So I found that pretty persuasive. In turn, I have to say it proved true in my case. When I look back on how I thought Harvard Law School should have been run, and how teaching should have been done there, when I look back on that now I said, "I don't see how they could do that!" (both laugh) And, that is still what I think.

MR. HAMROCK: One other question that occurred to me —

MR. ACHESON: I thought that thoughtful, able people with good minds and some interest in educating young people, really ought to have thought about how to teach older veterans comprising the majority of the student body. How to teach them in a way different from what they have been doing from the previous 50 years. I do not think they really thought about it.

MR. HAMROCK: One thought that occurred to me was in today's world the cost of law school is such a big factor, and many people talk about how people can go to law school and pay off their debts and so forth. They almost have to try and go for a large corporate experience.

MR. ACHESON: Yes, I understand that.

MR. HAMROCK: How would you compare that to the law school experience?

MR. ACHESON: That problem did not exist when I was in law school. First of all, the GI bill paid every nickel of my legal education. I had saved a lot of my Navy pay so that I

could manage living expenses fairly well. My wife got a teaching job at a very reputable girl's private school in Boston, so she was earning some money. We were getting along okay. We never had extra money in any large amounts but we usually ended the month in the black. I had a very amusing experience. A number of my friends at law school who were veterans and married — there was one guy in particular who was a very amusing and nice guy, who had been to Princeton and been in the Marines during World War II, and came to law school in my class. He was quite a sport, he liked to party. He and his wife — his wife was not working — his wife was a very good friend of my wife and we were having dinner with them one night and Mo said, "You know, I think I am sort of running out of money. I am going to apply for a student loan here." He went to Erwin Griswold, who had just become Dean following Jim Landis, who had left rather abruptly. He went to Dean Griswold and asked for a student loan. Griswold said, "No Mr. Weisheit. Of course, we can consider a student loan, but I cannot tell you off hand that we can grant you one, but if you will prepare a budget that shows what you need and what you needed it for and how much you can expect, or how much of a loan you need, we will consider it." So, Mo being an honest, straightforward guy, put together a budget. He did not know that Erwin Griswold's uncle had died an alcoholic and Erwin had a very strong attitude about alcohol and people who use it. So he shows his budget to Erwin Griswold, and there the bottom item is alcohol, X dollars. (both laugh) He came back and reported this meeting to me. He said, Griswold said to him, "What's this item alcohol at the bottom of your budget!" He said, "We couldn't possibly consider a student loan for somebody for alcohol!" He said, "Go back and revise this budget!" (both laugh) Mo, who had a good sense of humor said, "There's an old story about a guy who was sent on a business trip, and while he was on the trip meeting customers he ran into very heavy rain and he went into a shoe store and bought a pair of rubbers and put it on

his expense account when he came back. This guy who is the head of accounting, looked at the expense account, and he said, "You can keep those rubbers, we do not pay for property that you keep." He said, "Take those rubbers off and resubmit the budget!" The story is, the budget goes back, every figure is different, the bottom line is the same. Then he says, "Now find the rubbers!" (both laugh) Mo said, "Maybe I can do that." He said, "I'll say to Griswold, Now find the alcohol!" (both laugh) I said, "Mo, you better play this straight, or you're going to be broke." (both laugh) But he never did get a loan. Erwin Griswold, I thought, tagged him as a really bad guy. (both laugh)

One of the courses that I really liked was Property Two, taught by W. Barton Leach. A personable, bright, rather elegant lawyer. Tall, slim, witty, wry, and really a kind of professor you would want. He had been in the Eighth Air Force during World War II. As you know, the Eighth Air Force was conducting the bombing raids over in Germany, the heavy bombers. The Director of Operations of the Eighth Air Force was a very, very, young bird colonel named Ramsay Douglas Potts, who later became a founder of the firm called Shaw, Pittman, Potts here in Washington. Ramsay was one of the very youngest colonels that were made in World War II in the Air Force. He was Director of Operations, and Leach was in the intelligence unit of the Eighth Air Force. He was only a lieutenant colonel when he got out of the war. He and Potts had become very friendly during the Eighth Air Force experience. Leach loved to torture Ramsay Potts. After somebody had recited a case, and the discussion of the case then began to enlarge, Leach would say, Well I'm sure we are all interested in what Colonel Potts might have to say about this case. (both laugh) Ramsay said, "Goddamn it, I have to prepare more for these classes than any member of the class because he is always trying to make me look bad!" (both laugh) We had our light moments.

Anyway, after law school, I looked around for a job. I was not on the Law Review, but I had what you would call a B+ and I did not want to go to one of the big law factories in New York because they had evil reputations about the way they treated young lawyers.

MR. HAMROCK: Even back then? (laugh)

MR. ACHESON: Yeah. Besides, I was very interested in doing some government work — public service was very interesting and appealing, and a lot of us in law school were interested in public service. I had a rather technical mind. My father often said that I should have become an engineer because I had a very inventive mind about how to deal with scientific and mechanical engineering problems. Anyway, all of that made me focus on the U.S. Atomic Energy Commission which was brand new. I talked to my father one day; still I was at law school and we talked on the phone. I said, “Dad, do you know anybody at the Atomic Energy Commission who could help me land a job there? It’s a very interesting place, I think I would like to work there.” So he said, “Well, it’s funny, you came to the right place.” He said, “David Lilienthal, the chairman of the Atomic Energy Commission, and Joseph Volpe, the General Counsel, had been working with me because I am chairman of the President’s Advisory Committee on Nuclear Policy.” Dad was then still in the State Department as the Under Secretary and he asked Volpe if they had any openings. He said I had a good record at the law school and interested in the AEC. Volpe said bring him in for an interview So I interviewed with Volpe, liked him and I think he liked me, and before I knew it, I signed up there. The thing that really interested me was to be on forward edge of a new technology that had the potential of changing society. You probably were too young to remember this, but in almost every printed page then involving nuclear energy, there was the phrase “Power too Cheap to Meter,” and another phrase that appeared all the time was “The Atom, A New Servant of Mankind.” (both

laugh) I did not necessarily buy all of that a thousand percent but, that was very appealing. So I went to work there and found that I had contemporaries there, quite young. The agency was brand new and they had a lot of very young lawyers and some of them were very nice, very bright. I really liked it a lot. I had a very good time there and did very good work there, and was praised by my superiors for plain old, you know, research that came up with the right answers. So I thought, you know this could be a good future for me. Then in September of 1949, the Soviet Union exploded its test weapon and overnight the primary mission of the AEC then became military and everything else became a sideshow. Although there were still other applications than military that were interesting, they were now second-tier priorities to the AEC, and that weighed on me very heavily. I thought this is a real disappointment, a real disappointment. I began thinking about moving, but I stayed on and still having a good time there doing interesting work. One assignment that I had there that was particularly interesting. The General Counsel called me in one day and he said, "David, you know we are getting some uranium from Canada, but most of our uranium is supplied by the Union Minière, in the Belgium Congo. The head of the Union Minière is a Belgian named Edgar Sengier, and he is worried about inflation in the United States, and he is worried that his contract really needs to take account of the fact that the U.S. dollar value is going to be going down. He is being paid in dollars. So he has asked for a gold clause in his contract, and I want you to research this and discuss it with me and see if we can come up with some way that we can give Edgar assurance what he is being paid will not go down. I remember saying, Joe, I do not know anything about this, of course, I would be delighted to work with you on this, but just one thought pops in my mind, I remember from my father's experience in the Treasury in 1933, that a gold clause in any contract for the federal government is illegal. Joe said, "Well I do not know anything about that,

but look into it and lets talk.” So I researched the statutes and case law, and sure enough, in federal contracts a gold clause provision was illegal. I went back to Joe and confirmed it. So he said, “Well, David give some thought to something else.” I said, “Well, what about a basket of currencies?” We could pay him in a basket of currencies. Instead of X dollars we will be paying the present equivalent in a combination of Swiss francs and Sterling and French francs, et cetera. He said okay, look into that. So I looked into that and that was perfectly okay, legally speaking. The problem was that it probably did not solve Sengier’s problem because inflation was probably going to happen everywhere after war. At least in a lot of places, and this was not an inflation-proof device. So I went back to Joe and I said, “Joe, what about an escalator clause?” Like the way people pay rent, a lease now will have an escalator clause so the rent will increase by two and a half percent every year because you expect some inflation but you don’t know how much. Sengier had batted down the basket of currencies. We tried this one on him and he batted that down too. I went back to Joe and I said, “Joe, the only thing I can think of now is that we give him a limited opportunity to renegotiate the price, but we need a long-term contract.” So we cannot just say, alright we will pay X dollars this year and we will talk about next year the end of the year, because we need a long-term contract. The reason we need a long-term contract is because the AEC had an appropriation and they have to know how much they can expect to spend on uranium.

Finally, Joe said, “I am going to go to Belgium and talk with Edgar. He said I need a simple device and I need one that will not cost too much. So we basically wrote up a contract that would last for five years with an opportunity to renegotiate the price at the end of each year, limited by a two and half or three percent kicker. If you did not do it within that time frame then you pay the same price for the next year. Joe took that over to Edgar and Edgar said okay let’s

do that. So Joe came back and he said, “Good work David, good work!” (both laugh) That was really interesting to me, and I began to think, Maybe I will stay in the place after all. Then I was moved — Joe had a good policy, which was to move young lawyers around to different client’s divisions in the AEC. Publication, raw materials, international relations, military stuff, security requirements, all of these things, so everybody rotated around, including me. I found most of it pretty boring except for the few things like the ore problem. We got pretty good insurance by increasing our purchases from Canada of uranium and so if Sengier really wanted to screw us, we had a much better alternative from Canada.

Interestingly, later after I left the AEC, my father, when he was back in the law firm between stints in the State Department, had a very interesting client, Joseph Hirshhorn, who had acquired the largest uranium rights in Canada that my father had helped him acquire, all in secret. Algom Uranium Mines was the name of the company. My father represented Algom and Joe Hirshhorn and they cornered the uranium market in Canada. My father said, “I never took stock because it was the policy of the law firm not to let lawyers take stock in payment of the fees.” He said, “I could have become very rich.” (both laugh) He said later that he helped Joe sell Algom to Rio Tinto, which is now the largest mining company in the world. Dad said, “I was really well paid for that.” He said it all went to the firm and the firm gave him a little bonus at the end of the year. (both laugh) He said, “Made me feel like an associate again.” (both laugh)

Anyway, a friend of mine at Covington & Burling suggested that since my father was no longer in that firm, but was back in the State Department, it would probably be okay for me to go there if they wanted me. He suggested to one of the hiring partners there that I talk to him, and they invited me to come over and talk to him, and I did, and they signed me up. I was initially

put on a really great assignment working for a man who later became Judge Gesell. Gerhard A. Gesell, who was a very energetic, very bright, imaginative litigation partner specializing in antitrust work. We had three cases going for the DuPont Company at the same time. The *Cellophane* monopoly case, a suit by the Department of Justice, the General Motors case in which the Department of Justice was trying to force DuPont to give up its controlling interest in General Motors. You may not recall it but DuPont owned 28 percent of General Motors. They initially had made that investment when General Motors was a gleam in the eye of an inventor because they thought the automobile might be a market for paint made by DuPont. (both laugh) Anyway, the department was trying to break it up and they succeeded in breaking it up, forcing DuPont to sell. The third case was the large British chemical firm, Imperial Chemical Industries (ICI), was being sued at the same time they were suing DuPont to break up the agreement between those two companies, which the Department of Justice thought was a restraint of trade in products that were made by both companies. That ended in a consent judgment.

The *Cellophane* monopoly case was really fascinating. DuPont had actually created a competitor in the manufacturer of cellophane in this country. There was already cellophane being manufactured in Europe because the whole viscose industry started in Europe and it started with rayon. They were extruding cellulose as a filament and hardening it in acid baths that would come out as a thread and they were making rayon that way. That process was originated by a French company called Comptoir des Textiles Artificiels. Anyway, DuPont had about 95 percent of the American market in cellophane. It had several plants in the United States. It had a big plant in Richmond, and I went down with Gesell to see how it was made. You would see this waterfall of liquid viscose coming down in an acid bath with rollers pushing it forward and the moment it came into the acid bath it was picked up by the roller and passed on

as a sheet — as a transparent sheet. An amazing process. Early in the game, Gerry, who had a lot of imagination, said the only way we are going to win this case is the hardest possible way. We are going to have to establish that the appropriate market in which this case should be judged is something larger than cellophane. So he said we can only do this by developing convincing proof that cellophane competes with other packaging materials and is therefore, a minority factor in that enlarged market. That was such an imaginative and radical undertaking and it seemed to me just fascinating. So I worked on evidence supporting an enlarged market, and we had one marvelous witness who was the director of sales for cellophane and had just retired from Du Pont. We developed our case largely through his testimony and other supporting evidence from competitors. He would go around to all these packaging firms and he would ask them if they would buy DuPont cellophane and these guys would say, Why should I do that, I am buying Goodyear's pliofilm at X dollar a pound! What are you guys going to charge? Or, he would go over to the Celanese Corporation of America who made acetate film, not cellulose film. The packaging firm would say, I am getting a damn good price from Celanese Corporation of America, why should I buy cellophane! Either the DuPont guy would give him a lower price, or he would talk them into buying cellophane by comparing the properties for packaging use of celanese versus cellophane, or pliofilm versus cellophane. But there were also all kinds of other packaging materials like parchment for meat products. We got convincing testimony from a lot of these Goodyear people, Cellonese people and would say, Gosh, I remember going to my customer one day and he said DuPont has just been here with cellophane and they showed me it has these properties that your product does not have and they are giving me a good price, what are you going to do? (both laugh) So we have an array of witnesses from both sides of the competition and the Department of Justice played a very wooden game. They were just saying

Look, we get to define the market and DuPont is dominant in this market. Gerry Gesell would say, What is this dominance? What does it mean to be dominant? What does it mean in terms of power over the market, power over the customer? Then this other evidence would come in. Judge Leahy in Wilmington was the judge trying the case and he was just totally sold. I do not think because he was prejudiced in favor of DuPont, I think it was because he was listening to a very appealing, imaginative and well documented defense against an unimaginative plaintiff's case.

We came to a point in the trial where the government said, DuPont should not be allowed to go forward with this defense because cellophane is a definable market and DuPont is dominant. We said, The consequences of dominance are not present if there are other competing materials and we should be allowed to prove that because it goes to the central issue of competition and power over the customer. I was the guy who was to write up, what we called the "Offer of Proof," and this was my big moment and I poured myself into it and wrote a really convincing document. It was well written and buttressed by all kinds of specific evidence. So we went forward with this and presented our "Offer of Proof" and Judge Leahy said, "No way I can exclude this evidence!" Then we thought we were half way home and then we put on the case and it was really credible, convincing evidence because this DuPont witness, who was a very nice man, very bright guy, had worked himself hard during these sales calls. He had a bad back and he would shift uncomfortably in the witness chair to change his sitting position because of his bad back, and the Judge would say, Oh Mr. Smith, (Bob Smith was his name), Mr. Smith would you like a break? (both laugh) He was getting a lot of sympathy, and finally the judge ruled in our favor on the "Offer of Proof." Then we go weeks and weeks to put on all the witnesses and documents. It was horrible because those were the days when your document

evidence was all photostats, white print on black paper. It just ruined your eyes! Anyway, we put it all on and it was just overwhelming. So the government appealed under the Expediting Act, which meant they could by-pass the U.S. Court of Appeals and go directly to the Supreme Court. One day years after we started, we got a six-to-three judgment in the U.S. Supreme Court saying our market was the market, and we won the case.

Then after that the firm's rotation policy put me in the hands of other senior partners. Most of whom gave me quite boring work. I had been part of a really important case that was important to the firm and I was important to it. I thought that this was dimming my prospects in the firm because this was boring, secondary work that did not excite anybody and the cases weren't important, I just got bored. But you know, I went from partner to partner doing the things that you normally do in a big firm's rotation policy. It was okay, they made me a partner after I had been there for about seven years, which was sort of the standard time.

When Jack Kennedy started running for President, I decided I had enough of this boring work and I told the firm that I would like to apply my accrued leave and take a leave of absence for some additional time to campaign for Jack. They said okay, but they were not all that enthusiastic about it, but they sort of said well, okay. (both laugh) So I became a part of a team of three people, one of whom I had already become friendly with, to go to New York in September, remain in New York until Election Day and run Jack Kennedy's campaign in the five-county area of New York. So the three of us did this and it was fascinating! It was great, great, fun and influential in the campaign because of the importance of New York. The name of the game obviously was to rack up enough votes in the city, that is Brooklyn, Manhattan, and Rockland County, to offset the Republican vote upstate and Sussex County, and in Staten Island.

So we did that and Jack won the popular vote in New York by a whopping margin. He won the electoral vote of the United States by a hairsbreadth.

The first time he came through New York after we had taken up residence there, two issues had emerged very suddenly, one was the Catholic issue. He was going to come to New York, and the Catholics, of course, expected him to meet the Cardinal. We said to him, that's okay, you have to do that. The big question would be whether you kiss his ring or shake his hand. (laughs) Jack was getting a lot of pressure from both sides on that issue and my group urged him to shake his hand, don't kiss his ring. He agreed. I remember Jack was quite cynical. Unlike Bobby, who had a bad reputation as a sort of a McCarthyite at one time, that is Joe McCarthy, not Gene McCarthy. But, later as events proved, Bobby was a really sincere public servant who cared deeply about helping the country and doing things in public service. Jack was pretty cynical about public service, he was very thoughtful about doing things for Jack. The other issue was that Martin Luther King was just put in jail and the issue was whether Jack would gain more votes from the civil rights community, black community, from liberals generally, than he would lose from conservatives if he appeared to be sympathetic to Martin Luther King. We had a lot of people who had made quick surveys of that calculation. Finally we said to Jack, we think our advice — and was not sure if he would take our advice — but our advice was, do not roil up the southerners, or the conservatives, by visiting King in jail, but call him up and sympathize with him and say what you will do to help him out and tell him you sympathize with the civil rights cause that had led to his incarceration. Even that was a risky thing, but there was no question but to doing something sympathetic to civil rights will, even in political terms, pretty soon become the right thing to do and you might as well start now so you don't have to reverse course on that issue later. My feeling, individually, and I said this to Jack

and to Bobby, the worst thing that can happen to a politician is to have to climb down from issues that he has embraced. If you approach civil rights as if it's a big civil disturbance and you are against it, it will not be more than a couple of years from now and you would have to climb down from that position. What the risk is tomorrow morning will be a very different thing two years down the road. If Jack wins the election, you don't want him to have to climb down on that issue as he faces his next campaign. Anyway, Jack agreed with all of that and called up Martin Luther King in jail, and a good story on that broke all over New York, and the nation, actually.

The nation did not care too much about the Catholic issue because I think the nation by then had pretty well decided that Jack was a bad enough Catholic. So it wasn't really important anymore. So we stayed in New York until the Nixon/Kennedy debate on television, which we watched, of course. Jack acquitted himself very well. Nixon did not acquit himself well and the momentum quickly rose in Jack's favor as a result of those debates.

MR. HAMROCK: I'm curious when you signed on to the campaign did you specifically asked for the New York area? How did you end up in the New York area?

MR. ACHESON: No, they asked me. I forgot to tell you that, in 1956, I had done advance work for Stevenson. I had covered Providence for him, and part of Kentucky for him, and Jack's people were looking for advance men who had experience. Curiously, I was asked by Johnson's people to do advance work for them. I was considering that until the very next day, I was asked by Jack's people to do advance work for them. I decided I would do it for Jack. I did not really like LBJ. Never did. So that's how I got into that. They asked me specifically to do New York because they were assembling a team for that and they felt there was very little time

to be lost because it was a big area,. It was an important area and we better get our people up there right away.

We stayed at the Biltmore Hotel, now defunct. There is not even a building there representing the Biltmore. They tore it down. The Biltmore was also the headquarters of the state and New York County Democratic chairs. Mike Prendergast was the State Democratic Chairman, and Carmine DeSapio was the New York County Chairman. We worked very closely with them. Hardly had we arrived in New York when the reform Democrats, who were trying to bring about good government in New York, and were trying to oust DeSapio and Prendergast, sought our help, and we sought their help. It became clear to the three of us in New York that we had a difficult situation there because both the Prendergast-DeSapio machine, and the reform Democrats, really expected Jack Kennedy to play their game, and the reform Democrats wanted to use Jack as a rally magnet to raise money to beat the machine in '61. The machine wanted to use him as a magnet to raise money to defend themselves against the reform Democrats. Marietta Tree was a friend of mine and she was a big wheel in the reform Democrats, and Senator Lehman was the father figure of the reform Democrats. Of course, Prendergast and Carmine were both after us to schedule rallies for their constituencies. It was clear to me that we had to make the same deal, and make it very open with both. We could not have suspicion. We could not become an enemy of either faction. We met with the leaders of both factions. We had to play this very straight: We are here to get Kennedy elected. We are not here to concern ourselves with the internal political factions of New York. So the deal would be the same for the reform Democrats and for the machine. We would get Jack to their rallies. The financial split would be fifty-fifty with both camps. We will not involve Jack with any rhetoric that tilts one way or the other. We said, "Look, this may disappoint you, but that's just the way it has to be."

Marietta was a very doctrinaire liberal. Mike and Carmine understood this immediately — Marietta felt this was outrageous. She said, “Jack’s an educated man! He should be for good government in New York!” I said, “Marietta, he will not be anything if he is not elected, come on!” (both laugh) She said, “David, you are certainly no friend of the reform Democrats.” I said, “I am not going to attempt to defend myself against that charge. I am not here to be a friend of either faction, now come on.” I said, “In any event, Kennedy will certainly bring people to the rallies of both factions, and what the advantage will be I cannot possibly predict, but you would be a lot better off than having nobody come to your rally. Come on, accept it for Christ sakes!” Finally, she grudgingly agreed, she did not become unfriendly. She was Endicott Peabody’s granddaughter. Her brother, Chub (Endicott, II) who was governor of Massachusetts later in life, was a friend of mine, and her younger brother was a classmate of mine at Groton, and I knew her pretty well. She was always showing up at Groton when we were kids. I remember dancing with her at the prom. (laughs) She was a big shot in New York, and she felt that you were really a bad person if you were not a reform Democrat. So I just took my lumps.

Anyway, that was the way that panned out. Earlier, I would say in the mid-1950s, I had become a member of the Democratic Central Committee of the District of Columbia, and they were always pushing for various things to happen in the DC Government. They were pushing for the DC representation of the Congress, and they were pushing for legislation that would help the District, and doing it under a certain amount of lobbying on the Hill for that cause. I was fairly active in all those endeavors. Gerry Gesell was also a member of the Central Committee. After I had completed my campaign work with Jack, the Central Committee asked me if I would like to be the United States Attorney for the District of Columbia, which they thought could happen if I wanted to do that.

MR. HAMROCK: Before we get into this part, would you like to take a quick break?

MR. ACHESON: Yeah, I would.

MR. HAMROCK: So we will go off the record for the moment.

MR. HAMROCK: We are recording again. I had just indicated, I was going to ask Mr. Acheson to give me the approximate years of his law school graduation and the various employments we just discussed.

MR. ACHESON: I graduated from law school in 1948, having started in January of 1946, and having run straight through two successive summers, which was brutal. Seven semesters were required for graduation at that time. I do not know why there was seven, but there were.

MR. HAMROCK: And you indicated that graduation was May 1948?

MR. ACHESON: Yes.

MR. HAMROCK: And I believe you told me that immediately thereafter you went to work in Washington for the Atomic Energy Commission?

MR. ACHESON: Correct. Oh, you say immediately, my wife and I were looking for a place to live and finally found one and got it painted up and accomplished our moving during the summer of 1948. Actually, I think I started working in September. Maybe even in August.

MR. HAMROCK: I believe you told us during your last recording about your first home in Washington, is that correct?

MR. ACHESON; My first home in Washington was a rental — you mean after the graduation?

MR. HAMROCK: Yes, after —

MR. ACHESON: 3422 Q Street, N.W. I drove by it frequently in the last several years. I always remember it quite fondly. Georgetown, you know, was very different then. It was not so elegant. It was not so sort of ultra, in terms of real estate values. Across the street from us there was a frame house with a big yard on the north side of Q Street between 34th and 35th, and there was a big yard with a chicken wire fence, and they kept chickens inside the chicken wire fence. (both laugh)

MR. HAMROCK: Oh, my. (laugh)

MR. ACHESON: But we had a good house. We had an English basement, a second floor with a nice living room, bathroom, a dining area, kitchen, and third floor with two bedrooms and an attic. We had to do a lot of walking up and down stairs, of course. (laugh)
Now, what else did we omit?

MR. HAMROCK: Well, I wanted to confirm that the years you worked with the Atomic Energy Commission ?

MR. ACHESON: I started in the late summer of 1948. I left there in late autumn of 1950, when I started with Covington. My very first day of work at Covington was to start on a field trip with another lawyer to Richmond to visit the cellophane plant.

MR. HAMROCK: And I believe you said that you worked at Covington through 19—
I guess left in 1960 to work on the campaign?

MR. ACHESON: Yes. I was made partner, I think in 1958, '57 or '58 — I think it was '58.

MR. HAMROCK: One other question we mentioned in the break that I thought I would ask would be, any reflection you have on sort of the political life in DC?

MR. ACHESON: Yeah, a very good question. The District of Columbia at that time was governed by a three-man commission. A chairman, who was a personal friend of mine at the time. A major general in the Army Corps of Engineers who oversaw what you might call the logistic aspects of the governance of the city, the highways, the upkeep, and the infrastructure. Then another civilian commissioner who was more concerned of the financial side and appropriation by Congress and all that stuff. It actually ran very well. It has been traditionally criticized as being an un-democratic mode of government, but the city was well kept, well run.

MR. HAMROCK: Who was the chairman that you mentioned?

MR. ACHESON: The chairman at the time I became U.S. Attorney, was Walter Tobriner. A very nice man. A lawyer. A very bright guy who was quite attuned politically, and I enjoyed working with him a lot. We became quite good friends.

Now where did we leave off? I had just been nominated to be U.S. Attorney.

MR. HAMROCK: Actually, you had just been approached about seeing if you were interested?

MR. ACHESON: Yep. I indicated that that would interest me and in due course, it happened. I would say in due course because it did not happen in January when Kennedy took office because there were other candidates who wanted to be considered. The appointment was probably not the highest thing on the agenda of the White House. The multiplicity of candidates — not a lot of candidates — but there were at least one or two that I recall had some interest in it, and that took a little sorting out. But by March it was all but a certainty that I would be appointed. Then a really bizarre complication arose. Senator Robert Carroll of Colorado was the chair of the Senate Judiciary Committee, and he had just finished a long vendetta with the New York Port Authority, and there was a man whose name I am trying to recall, but I am

having trouble with it, who was the chairman of the New York Port Authority who had been subpoenaed to appear before the Congress, before the Commerce Committee. He had refused to answer certain questions. There was, at that time, on the books of the U.S. statutes, a law that said that anyone who did not respond to a subpoena, or answer questions under subpoena before the committee of the Congress, would be subject to citation for contempt of Congress and if that contempt citation was issued, the United States Attorney was required to put the citation before a grand jury and seek an indictment. Senator Carroll then had one question for me. If I should become United States Attorney, and such a citation was presented to me, would I put the matter before a grand jury and seek an indictment? Now this had just occurred so it was clear what he had in mind was bringing the chairman of the Port Authority down again and getting a refusal to answer questions again and getting a citation. I decided the smart thing to do, when I was told that I would be asked this question on confirmation hearings, I decided that I would go to Byron White who was then the Deputy Attorney General, and say, Byron, this is going to be asked, now the statute says I must prosecute, but of course, I am subject to the oversight jurisdiction of the Department of Justice, and if the Justice Department does not want to seek prosecution, what do I do? I need an answer one way or another. I do not know whether I would be able to give an answer that Senator Carroll will like. I remember Byron, who was a very approachable guy, very nice guy, very easy to work with, very quick and very bright, he said, "Oh, Christ, that matter has come up again?" So, I said, "I guess so." He said, "Well, I am from Colorado and let me talk to Bob Carroll." So he talked to Carroll and he said, "Acheson is subject to the instructions of the Attorney General. If the Attorney General instructs him to put the matter before the grand jury he will. If the Attorney General instructs him not to then he will not. If he should seek to do it anyway, he will be fired." (both laugh) So, Byron called me back and he

said, "Well, I talked to Bob and he said to me, 'Well thanks for being so candid, Byron.'" He said, "I don't think I need to ask Acheson that question." My confirmation was a breeze. After confirmation, I asked Felix Frankfurter if he would swear me in, and all of my new staff and I gathered in Felix's chambers, in the Supreme Court and he swore me in, and they made a little talk which I will not soon forget. Anyway, he said, "David, remember that you will have it in your power in your criminal jurisdiction to ruin people's lives." He said, "Of course, you must do your duty as the law sees it, but remember you have that power. Always exercise it with consideration." I thought it was very good advice. And what he was too tactful to say outright, I am fully clear what he meant. He meant, Don't be one of these prosecutors who like to collect scalps. I took that to heart. In fact, I had early opportunity to exercise that judgment.

I had a Deputy, a bright, attractive, black lawyer who later came to grief, and I will deal with that later. My office had about 52 lawyers and some small supporting clerical staff. The head of my Criminal Division was an old hand. A younger guy was head of my Appeals Division, a pretty senior guy was head of my Municipal Court Division, which was where criminal cases started. Criminal cases could start with an information which would originate in the Municipal Court, now called the Superior Court. Of course, indictments would originate in the U.S. District Court before the Grand Jury. The head of my Criminal Division came to me with a case, the name of which I do not recall, and the question was, is a small corporation involved that had done some things that were not good and he wanted to indict the corporation. I said, "John, why the corporation? Why not the individuals who did these things?" He said, "Well the corporation has more resources and can pay a big fine." Well, it was a small company that had some employees who were honest law-abiding citizens, and two or three principals who were the sources of trouble. So I said, "John, I do not see why we don't just indict the people

who caused the problem.” He said, “Well the corporation is a legal entity so they caused the problem.” I said, “No, the people who caused the problem were the individuals who made that happen. Now, if we indict the company and they pay a big fine and the company is liquidated, you have stockholders, you have employees who are then out of work and out of money, and they have done nothing wrong. I do not see it makes any sense to indict the company. Lets just indict the individuals who made the decisions.” He shook his head as if I was announcing some radical departure from common sense and justice. He said, “The policy has always been to indict the corporation.” I said, “John, the U.S. Attorney makes the policy and we make it case by case, and we have just decided this case.” The word went around pretty fast that I was not necessarily going to follow the old pattern.

The next challenge that I had was a number of criminal cases had been prosecuted, gone to the jury, come back with a verdict of guilty, trial under Judge Holtzoff, who is famous for his arbitrariness. There was a saying at the time, that was on appeal. The appellant would say, we have several grounds for appeal, and of them is the case that was tried by Judge Holtzoff. In this case, Judge Holtzoff had sentenced the defendant to death in a criminal case. There had been a defense of insanity, and temporary insanity in the Court of Appeals, and three judges on the panel of the Court of Appeals had reversed the verdict on the grounds that Judge Holtzoff did not correctly charge the jury under the so-called *Durham* rule. The *Durham* rule in the case earlier decided by a panel under Judge Prettyman, had held, if the defendant has a mental disease or defect, and the criminal act was a result of the disease or defect, then a defense of insanity must be part of the charge to the jury. So a conviction was reversed by the Court of Appeals. The Court of Appeals panel consisted of Judges Henry Edgerton, David Bazelon, and Charles Fahy, who are known as the three musketeers of the liberal wing. So I summoned a meeting of my

criminal trial attorneys and said now we must not fall into this trap again. We know that there are judges on the Court of Appeals that are looking for a reason to reverse cases where there is a death penalty imposed. If those cases are reversed, they must all be retried, or forgotten. Now, we do not have staff that can waste a lot of time here. We do not want to try cases two or three times. So, I want to put all of you guys on notice, except in a really heinous case, you are not to request the death penalty because in many cases that will simply assure a reversal and a retrial. There was a lot of grumbling and these guys were looking at each other and very quickly the word was going around and picked up by the *Evening Star* newspaper, that said "Is Acheson soft on crime?" I caught a whiff of this. So I made a talk to the Bar Association, in which I said we had to adopt a more pragmatic approach to these cases or a lot of capital cases are going to be tried multiple times and we do not have the staff to do it, and the dockets are running behind. I told my people: I do not want any of you guys thinking that your reputation as being tough on crime really depends on your asking for the death penalty. We are not playing the posture game here, we are trying to get through our criminal traffic. After having to say that two or three times, they began to understand it. Then I realized I was dealing with a staff that were really used to doing things the wrong way. So I had to really be quite aggressive in turning it around. I had another meeting with them and said, Look, we are not instruments of the police. We are lawyers and we have to conduct ourselves as lawyers, and we have to look for results as lawyers. We are not playing cops and robbers. We are not trying to characterize ourselves as tough-on-crime personalities for the local press. I really want to get over this mentality that we follow what the cops want us to do, or the FBI. There was a lot of grumbling about that.

Finally, though it began to catch on, there was another issue. The police in the pre-enlightenment days were very quickly getting confessions after an arrest without giving

detainees a chance to talk to a lawyer. So confessions were being offered in evidence and then they were being bounced by the Court of Appeals because they were not advised. I talked to a couple of trial attorneys in Criminal Trial Division, to whom this had happened, and said, Why did you do this? You know as well as I do that an unadvised confession was going to be bounced by the Court of Appeals after we tried the case, and probably cannot retry the case because you are not going to be able to overcome the fact that the evidence proceeded from the confession. They began to get that message, and I kept saying, Do not go to the grand jury with a nonadvised confession. Just don't do it! If the police ask you to do it, say that is not your job and you have been told not to do it. Pretty soon the newspaper began carrying this debate and I had the opportunity to meet with the editorial staff of both the *Evening Star* and the *Washington Post*. *The Star* wanted me to be tougher on crime and work by the old methods, and the *Post* wanted me to be cognizant of new judicial rules. I began getting some traction from the local papers. Finally, I had one meeting — I had several meetings with them, but you know, you never can do this all in one meeting, you have to keep repeating. One meeting I said to them, “The next guy who gets a conviction with a nonadvised confession is going to be transferred to the Appeals Division instead of the Trial Division, and he will have ample opportunity to explain to the Court of Appeals why he does those things.” (both laugh) Eyebrows went up and everybody looked around like that, and, by God, one of the senior trial attorneys did that almost the following week, and I called him in and I said, “Hal, listen, I told everybody, and you were there, and you as of today, are being transferred to the Appeals Division. You better make damn sure that your colleagues in the Trial Division are not sending you unadvised confessions.” So I began to split the team, you know, that way. I said, “Your fitness report shows that you had a lot of reversals from your conviction. You are not going to get a merit promotion.” Slowly, but surely, they all

began to — and the guy I remember his name was Harold Titus, whom I transferred to the Appeals Division, said, “Well, I am going to have to seek my rights under the Veterans’ Preference Act.” So I said, “Hal, look, I am a veteran and I know that Act pretty well and I don’t think you have the right to challenge your reassignment. You have a right maybe not to be reduced in grade, maybe you have a right not to be fired, but you do not have a right not to be transferred. Same pay, same grade, different job.” He took it and finally said, alright I will do it. Then he turned out to be a really good appeals attorney, and he really got religion. Now they knew I was going to do it. Everyone of them knew they could be next and they changed almost overnight. I felt that was a big win for me.

Another problem was the insanity defense. I mentioned it earlier, I had been there about two years. The American Law Institute of which I was a member, considered at one meeting the issue of criminal liability, and criminal responsibility. They did not like the *Durham* rule any better than I did, and they put me on a committee to consider a new test of criminal responsibility. We defined that test in a way that was adopted formally by the American Law Institute, and that test was this: The defendant may have a mental disease or defect, but those can be greater or lesser, and if the defendant has retained the capacity to distinguish right from wrong, in spite of a criminal mental disease or defect, then he is responsible for his act. So the capacity test became the new test that the ALI proposed. The first case under the insanity defense that went through the Court of Appeals, I called Archie Cox who was the Solicitor General now, and a friend of mine, because he had been labor law professor at law school. I said, “Archie, I have an opportunity to present the ALI, criminal responsibility test now to the full court for the petition for rehearing en banc. I cannot do that unless you approve of our petition to the full court, because that is the rule of the Department of Justice that the Solicitor

General passes on the petition for rehearing en banc. So he said that this is a good reason to approve of the petition for rehearing. We went up to the full court — I argued the case myself and we had a long discussion, and we had one new judge on that court and we got a 5 - 4 majority. Then two more of the old three musketeers, retired, Fahy, Bazelon and Edgerton were the three. Edgerton was the first to retire, then Fahy retired, then Carl McGowan was put on the court. He was an excellent judge who happened to be a friend of mine.

Another case of the same issue came up and we petitioned for rehearing and went back again, and got it. I argued that case again, and we won again with a heavy majority, and that was now the rule of the Court of Appeals. Then I discovered that arguing appeals was a lot of fun and I started arguing a lot of appeals. I must have argued ten a year. I became very good at it actually. I was a damn good appeals advocate. Archie Cox learned of that and he asked me to argue a tax case in the Second Circuit, which I did, and won. Then he asked me in my last year as U.S. Attorney to argue a Supreme Court case, which I did and won that five to four. So, I had a pretty good time. I had my office under control. I had quite a number of retirements of older lawyers, and the authorization of a couple of new places on my staff. I reached out to very young graduates of very high caliber quality, like people who were on the Law Review from a good law school. The word went out quickly in those places, Harvard Law School, Stamford, and Yale. I got young lawyers who had been on the Law Review there, and word went out very quickly among judicial clerks. You could have a lot fun if you came over to my office. In the space of two years, the majority of my staff were those people. Warren Burger and I had become friendly when he was on the Court of Appeals. He told me once — I had argued a case in the Court of Appeals, he was on the panel, and he asked me to come up to his chambers afterwards and he said to me, “Why didn’t you take the position and argument that I had taken in

that earlier case X against Y?” I said, “One simple reason, I need a majority. My job is not to vindicate the position of the single judge, my job is to just try to win cases, and it was clear to me that the majority was not going to go your way.” He said, “Things are really changing a lot around here from what I understand, I don’t think I could get a job on your staff.” I laughed about that. Pretty soon all of the judges were beginning to say to me, You really organize an office here that does terrific work. We had a few protégés like Tony Amsterdam. Have you ever heard of him?

MR. HAMROCK: I know the name.

MR. ACHESON: You would ask him a question about 4:00 o’clock in the afternoon and he would stay down there all night and he would have a well-reasoned, written and typed answer for you by 9:00 o’clock. He was just amazing! Another star on my staff — I still see him around town — Rezneck, Dan Rezneck. Do you know him?

MR. HAMROCK; No, I don’t know him.

MR. ACHESON: He was a superstar, and they were both such nice guys. Very friendly, civil, sophisticated guy, people you would like to have lunch with. I was not only having a great time, I was arguing a lot of cases myself. I was wining most of them. I had a great staff. I really thought that this was probably the best job I would ever expect to have in my life.

One funny thing I have to tell you. David Bazelon and I — I knew most of the judges on a first name basis, though I addressed them formally in public, and in court, of course. So one day Dave Bazelon called me — he was the Chief Judge of the U.S. Court of Appeals. He asked me to come up to his chambers and have lunch with him in his chambers, and we got lunch from the judges’ dining room sent up, and we sat there, and we had a beer at lunch and I said, “Well,

Dave, you asked me to come up here and if there is anything I can do for you, I would like to feel I could do it.” He said, “Well there is something I would like to discuss with you.” He said, “You know President Truman appointed me to this court when I was so young (he comes from Chicago) that I have been on this court now for over 30 years.” But, he said, “I am not yet 65, so I do not have the age requirement to retire.” He said, “I have been here for a long, long, time and I am sort of interested in doing some different things. I have other interests and I would like to be able to retire with full retirement pay, but I cannot for a while. It has occurred to me, I was thinking the other day, I bet my friend Dave Acheson would really be glad to see me retire.” Of course, he was our chief problem in terms of reversing convictions. He said, “Do you think you could bring yourself to support an amendment to the retirement legislation that you could call the Bazelon Retirement Bill, and maybe the Attorney General would think well of the idea, and if I could retire just because I have been here that long, regardless of age I would like you to do that, and the Attorney General would have an opportunity with the President to appoint a new judge, and maybe it would be good for everybody?” So I said, “Well, Dave, it would be a shame if you were to think that we would be eager to see you retire. If you want to do that, I would be willing to talk to Bobby Kennedy and see what he thinks, and if he wants me to go up with him or without him, or if he wants to go up himself to see Senator Eastland, Chair of the Judiciary Committee.” Then I said, “I would be happy to do that, and I will certainly talk to him. I will talk to him today if you want me to.” He said, “Please, I really would appreciate that.” So I called Bobby, we had become very friendly by then. Anyway, I talked to Bobby about Dave Bazelon’s request. He said, “You know it is not a bad idea, and he probably has earned retirement in any sort of equitable sense. But, the statute is the statute and if we try to change it, a lot of people will say, ‘These prosecutors are trying to get rid of a pro-defendant judge,’ and

that is not good and it doesn't look good, and lawyers will not like it, the Bar Association will not like it, and the liberal judges would resent it. I think it is just going to cause more trouble than it would be worth." He said, "Actually you've tamed Bazelon pretty well." Just enough of the judges had turned over so that in a halfway decent case, I can get a majority. I said, "Yeah, I think you are right, that would be my judgment also." So he said, "Well, tell Bazelon that you tried." So I called Dave back and said the AG did not think it was a good idea, and I told him why and he said he thinks he could understand that and we forgot the whole thing.

Fairly early in my tenure, my office had occasion to produce an indictment of two big-city political bosses, either in Philadelphia or New Jersey somewhere. Being Middle Atlantic big city bosses they were, of course, Democrats. They were guilty of all kinds of things involving the Federal Wire Fraud Act and the Federal Mail Fraud Act, and we got indictments and got a big press. Bobby called me up that time and he said, "Dave, you got a really good story on those indictments to those political bosses. But," he said, "I have a question for you, do you think you could ever find it in your heart to indict a Republican?" I said, "Bobby, if you can show me an eastern big-city boss who is a crooked Republican, you can bet that I will indict him." He said, "Well they are pretty hard to find but maybe I can scare one up."

One other thing to tell you about my tenure there. Within a few weeks after I took office as the U.S. Attorney, it was clear that the docket in both civil and criminal cases was running late, and in criminal cases it was an urgent problem because of the speedy trial requirements in the Constitution. On the civil side it was a problem because justice was really being denied and in some of those cases you would not get to trial until over a year after the pleadings were filed, and then witnesses could be dead, they die or they could be moved out of town and all kinds of problems could occur. I went up to see Chief Judge McGuire, Matthew McGuire, who was the

Chief Judge of the U.S. District Court, and said we have got to do something about this docket. It is awfully slow, and it is getting worse and the backlog is building. I said, I am not saying this in any spirit of criticism of the court, I am just saying I am going to try to do my part to speed it up, and I am submitting to you my belief that this could be an embarrassment for the court if we cannot speed it up on the court side. He always took anything I said about his jurisdiction as implied criticism. He bristled a little bit and I said, "Matt, I am not placing blame anywhere, I just wanted to tell you that I am concerned about this problem, I will cooperate in anything that we can both do to fix it." He said, "It's very good of you, Dave, always very good of you to come up and give me your wisdom." (both laugh) I said, "Please, I am just saying this is going to be a problem and it will embarrass both of us if it isn't fixed." He said, "Message understood." Then he stood up, clearly indicating that the session was over, so I left. Within a few days I was asked to make a speech to the Bar Association. So I said to myself, Okay, I am going to use some dynamite here. I told my Deputy, and he said, I don't think you ought to do that. I said, "What can they do to me!" So, I went to the Bar Association to make a speech and was received very well. I said, I think it is pointless for judges or government lawyers to try to place blame on the other side and I am certainly not going to do that. I do, however, have a suggestion. The U.S. Judicial Code provides that if a judge qualifies for, and seeks, senior status, he will be granted it, and can then be available to continue to sit on the docket, with chambers, with a clerk, handling trials or appeals, as the case may be, and can be assigned either in his own jurisdiction or do another jurisdiction and sit on cases there under the direction of the Chief Justice of the United States. We have here a situation in which we have almost half of the U.S. District Court is now eligible for retirement. If any number of those should elect senior status they could continue to hear cases and try cases here or elsewhere. New judges will then

be appointed to take their places, the active seats that they have vacated, and you will then, in effect, have enlarged the court without going to Congress for new legislation. I would be foolish if I did not see this as an opportunity for very effective action, duly action to relieve the docket of congestion. I got a big hand, a lot of applause and questions, and everybody seemed to think that was not a bad idea at all. I said in my speech, toward the end of my speech, to avoid any misunderstanding, I want it clearly understood, because I have made this suggestion, I feel that I could not accept any appointment to that court. That sort of took them all by surprise. The next day, Matt McGuire called me up to his chambers and he was very angry. He said, "You had no right to make that suggestion! This is a matter for the court to decide whether it should seek that kind of remedy." I said, "Matt, the last time I looked this is a free country, and I can make this suggestion." "Well," he said, "a lot of people around here are saying you want to open up a place for yourself." So I said, "Did you read that line in my speech?" The text of my speech was in the newspaper this morning. He said, "What line?" He had not read the speech. So I read it for him. He had a copy of that newspaper on his desk. He said, "Oh, I didn't notice that." I said, "Well, you would be doing us both a service if you would tell anyone else who did not notice it that I disqualified myself for that reason, and it is proper that I should." So that problem erupted with a 24-hour cycle and disappeared. In fact, I was nearing the end of my tenure and Nick Katzenbach, who was Attorney General, asked me if I would accept a judicial appointment on that court. I said, no. He said, why? He had forgotten if he ever knew, about this disqualification line in my speech. So I told him that and then I said, "Besides Nick, I am not cut out for judicial life. I would be restless, and I would want the phone to ring and it wouldn't and I just don't want that."

So then the very last year I was in office, Archie called me up and asked me if I would like to argue in the Supreme Court. I said I would love a case in the Supreme Court. So he said, this is not a gimme — in golf terms — this is not a gimme, this is a case that might be hard to win, but it is a very interesting case and it is one that has not really been definitely decided. Certainly not by the present court and not for a long time by the Supreme Court. I said, “What is it about?” He said it is a criminal case in which an informant advised the Bureau of Narcotics about the possession by a certain person of illegal narcotics. On the strength of that, a written affidavit was prepared by the government signed by the informant and on the basis of that a search warrant was issued, narcotics were recovered, an indictment obtained against this party and at the trial, the defendant asked for the disclosure of the secret informant. The prosecution declined. The trial court declined. The Court of Appeals reversed and said the informant must be disclosed. The case then came to the Supreme Court to ask for reversal of that decision. So, I said that it sounds like a damn interesting case, I would love to argue that case. Archie said, in a couple of previous cases that my staff has looked into, they told me this has always been a controversial issue and a lot of good arguments on both sides, so prepare yourself that it could go either way. I think you will really have a good time with it, and I would like to see what you can do with it. I said, fine, I’ll do it. He said, this case is on the summary docket of the Supreme Court, which allows for a thirty-minute argument. He gave me the date and I started preparing for the argument. I did a lot of work, believe me, and I got a lot of help from Archie’s staff, and they gave me the moot court, you know the murder board treatment, which was very effective and well done. So I was really ready. I went up in my tail coat, striped pants, that I borrowed from my father, happily the same size as myself. But, the day before I went up to the argument, they moved me to the plenary docket. I now had an hour’s argument with only one day to

prepare for the added time. I kept asking myself, What should I be doing to prepare for a longer argument? I did not want to embarrass myself by stopping after thirty minutes, and I was not quite sure what else I should cover because it look to me as though I was covering everything pretty much for a thirty-minute argument. It probably would be different in an hour's argument, except being on my feet longer. Finally, I said screw it, I think I am prepared. I was still nervous about what would was expected of me that would be different for a one-hour argument. Anyway, I went up there, dressed to the nines. Chief Justice Warren could not have been more gracious. I had been admitted to the practice of the Supreme Court some years before, and I had actually come to know Chief Justice Warren socially, a little bit, not intimately but a very, very, nice, very civil gentleman, and I liked him a lot. Frankfurter was no longer on the Court. Black was on the Court. Byron White, I remember all the others. I started out and gave a nice crisp definition of how the case came out, and what the issues were. Then I started into the issues and immediately I got a question. I answered it as crisply and succinctly as I could, but without leaving anything out. Another Justice disagreed with that answer and he asked me another question and I answered that. Pretty soon it was clear that I was getting questions from the entire court. Not one Justice did not ask a question. Several of them, at least two pairs were asking questions as a form of debate between themselves through me. I was kept on my feet one hour and forty-five minutes. I was beginning to sweat, and finally Chief Justice Warren said, "Mr. Acheson, we have imposed grievously on your time, so if you wish to take another fifteen minutes to cover anything you have not had a chance to cover, the Court willingly extends that opportunity." Some little bird in my head said, turn it down, turn it down while you are ahead. I said to myself, If I turn it down, I think they would like that better than anything I could say in the added fifteen minutes. So I said thank you Mr. Chief Justice, I think the issues have been

adequately ventilated, and I respectfully decline. They smiled broad smiles and I really knew that was the right answer. And then a couple of the Justices nodded like that, you know. I thought I had done the right thing. Then Archie had called me within two hours and said his staff had been there and said I had made an excellent argument in very difficult circumstances. He said maybe you ought to come over and work for me. I really liked that, but I thanked him and that was it. About 3:00 o'clock in the afternoon, I was working in the office still in my tailcoat, getting ready to go home and have a martini, and all of a sudden I felt a pain in my foot as if I had been shot. A sharp pain, throbbing, horrible pain that really felt like a gun shot, and I thought what in the hell! I look down at my foot and I could see that my ankle had swollen up. I did not know what it was but I hobbled out to a taxi and decided to leave my car. I was sure I could drive, but the Deputy helped me out into the cab and I went home. I called my doctor and described my symptoms. My doctor said, "Dave, please accept my congratulations, you now have the disease associated with the unusually intelligent, namely gout." I have been taking a medication ever since, and it is very effective. My father had gout and he controlled it with medicine. I will tell you a story briefly about that. I went to a garden party at the British Embassy a few years after all of this, with my wife, and my father was there, and I went up to the bar on this nice pleasant day outdoors in the garden. There was a bar, wine bar, champagne, and I went up to get a glass of champagne for myself and my wife. My father was standing there with Allen Dulles, and Allen Dulles had his foot wrapped up in bandages. I came up behind them and spoke to them both and I heard my father say, "Allen, what's with this bandage all over your foot?" Allen said, "Dean, I have gout and I have to keep it bandaged up so that I do not have a sharp contact with my foot. It can be very, very, painful." Dad said, "God, Allen, I have gout too but I have controlled it with Benemid. Why don't you take Benemid instead of

wrapping up your foot?" Allen said, "You don't understand, gout is supposed to be the disease of the exceptionally intelligent. Now everybody knows that you are exceptionally intelligent so you don't need to wrap up your foot, but nobody knows that I am exceptionally intelligent so I wrap up my foot just to remind them." So, that really concluded my time in the U.S. Attorney's office. If there is anything you think I have omitted, I can fill it in.

MR. HAMROCK: What year did you leave the U.S. Attorneys office?

MR. ACHESON: 1965.

MR. HAMROCK: Why don't we do this, since we are running just of three hours, let's go ahead and stop today, and we will schedule another time.

MR. ACHESON: I can complete the entire thing easily in another session.

MR. HAMROCK: Fair enough, but this will also give me a chance to check my notes to see if there are any follow up left about your time.

MR. ACHESON: To cover anything we missed, you mean?

MR. HAMROCK: Exactly. That would be good. Alright, so we are going to go off the record now. It is 1:20 p.m. on Friday, February 26, 2010. Thank you very much Mr. Acheson.