

**ORAL HISTORY OF**  
**PAUL C. WARNKE - FOURTH INTERVIEW**  
**MARCH 29, 2001**

This is the fourth interview of Paul C. Warnke in the taking of his oral history as part of the oral history project of the Historical Society of the District of Columbia Circuit. The interview is being taken by William Ross on March 29, 2001. The persons present are Paul Warnke and William Ross.

Mr. Ross: You had some involvement with the local bar. You were on the board. Do you recall who was chairman of the -- was this the old bar association? The private bar association? Or was it the District?

Mr. Warnke: No, it was the District.

Mr. Ross: The District of Columbia Bar. The official one.

Mr. Warnke: Not the Bar Association of the District of Columbia.

Mr. Ross: Right. What was your role -- I'm trying to get you back into that period. What role did you play on the board?

Mr. Warnke: I really don't remember much about it at all.

Mr. Ross: Did you have an important project? Many people don't.

Mr. Warnke: No, I don't think I did.

Mr. Ross: And you attended meetings?

Mr. Warnke: I did. Yeah. I was a very faithful member.

Mr. Ross: Do you recall who was the president at that time?

Mr. Warnke: I don't.

Mr. Ross: And you enjoyed it?

Mr. Warnke: Yes. I left when I went into the government.

Mr. Ross: Yes, I understand you'd have to.

Mr. Warnke: I was on the Grievance Committee for a period of time.

Mr. Ross: I wanted to ask you about that.

Mr. Warnke: I've forgotten who was chairman of the Grievance Committee, a very nice fellow, who since died.

Mr. Ross: Do you recall specific grievances or cases or matters that you were concerned with or engaged you?

Mr. Warnke: No, not really.

Mr. Ross: Does that develop a sense in you about self-government in the bar, in the way in which it's handled, and --

Mr. Warnke: I thought it was done quite well.

Mr. Ross: The question is always the issue between the lawyers' privacy and rehabilitation and the need for the public to be protected and also to have confidence.

Mr. Warnke: I really had the feeling that the cases were by and large very clear cut.

Mr. Ross: Because they don't get that far.

Mr. Warnke: Yeah. There was no -- I can't remember there being shades of gray.

Mr. Ross: Right. According to *Who's Who*, you were on an Advisory Commission to U.S. Commission on Civil Rights from '62 to '66, if I've understood this

correctly. Do you recall that?

Mr Warnke: Yes.

Mr. Ross: Tell me about that if you can.

Mr. Warnke: I remember being on the committee. An awful lot of the issues were black and white. Really black rights.

Mr. Ross: What was the role of this committee, as you recall it?

Mr. Warnke: It was basically an advisory committee.

Mr. Ross: And did you deal with things that the Commission referred to you?

Mr. Warnke: Yeah.

Mr. Ross: So you'd give them advice, you'd give them a reflection no doubt that was cross-sectioned.

Mr. Warnke: That's right.

Mr. Ross: And then you were later on a member of the Governing Board of Common Cause. That was an interesting organization, particularly at one time. Do you have a sense or recollections about that service?

Mr. Warnke: One thing I thought the board was much, much too big. So as a consequence, meetings at the board tended to be very prolonged, and I didn't really enjoy it a great deal and did not accept reappointment. I thought it was very worthy, but rather dull.

Mr. Ross: Looking over this list, and rather than going any further into this, there's quite a number of organizations, but I'm going to take you back generally to the bar and to the judges and lawyers in the bar. You started out in practice three years before I did. I started in '51, and the bar at that time was very different from what it's become.

Mr. Warnke: Oh, yeah.

Mr. Ross: If you got around, you knew just about everybody or knew of them.

Mr. Warnke: You did. It was a much smaller community.

Mr. Ross: And is it your sense that there was more civility in the bar at that time.

Mr. Warnke: Oh, much, much more.

Mr. Ross: That's certainly mine.

Mr. Warnke: People would call you up -- the other lawyer would call you up and say I'd like another 2 days, and you'd say fine, and that was it. And people were very civil to one another in court. I find it revolting, the change. We all had the feeling of being in a common practice and having basically more in common than you had opposed. You didn't identify the client with the lawyer. And now it's quite different.

Mr. Ross: Have you ever thought about what the reason for that change is?

Mr. Warnke: I'm afraid it's money as much as anything else. Back when we first started practicing law, Bill, people didn't make anywhere near as much money -- not close. I think that I started with \$3,800 a year, and when I finally made \$10,000 a year, that was a lot of money. And when I made \$50,000, I was rich.

Mr. Ross: You have a lawyer who was partner in Covington and was reputed to be one of the highest earning lawyers in the United States, and I think you know who he was, Paul Shorb. I know something about that because one of the things I did was work on his estate which was somewhat complicated by the fact that he had died intestate. He didn't mean to.

Mr. Warnke: No, he always planned to write a will. As I recall he was running for

a plane and had a heart attack. He was a nice fellow.

Mr. Ross: Oh, he was a lovely guy, and listening to him on the phone with Alfred Slone, who happened to be a client of his, who worshiped the ground he walked on, or seemed to, and he would give Slone advice about his delinquent daughter or anything and everything, and it was all good advice.

Mr. Warnke: He was a bright fellow.

Mr. Ross: And even a little bit of tax law got into it. I used to sit in his office and hear these subjects, as did many of these people who worked for him. One of the things that bothered me -- I was an active litigator for many years -- the nature of the litigation changed, but I was always doing it, so when I started out there were (I'm exaggerating) four men in the District of Columbia Bar whose word you could not trust on a procedural matter. You had to get everything in writing. And when I stopped litigating, there might have been dozens, just dozens of such people.

Mr. Warnke: I really have the feeling that the big change came about with billable hours, and why clients accepted that, I could never understand, because what it did was put a premium on inefficiency and loading up a case with lawyers. Back when Tommy [Austern] and I practiced law, one lawyer was regarded as being plenty. And Tommy just would never accept the idea of billable hours, nor did I, even when I went back into practice. What I did basically was do it on a retainer basis. I had to tell the client what I thought it was going to cost, and if it turned out to be more or less, it made no difference, and I got that from Tommy. And of course from Clark. And the idea of Clark sitting down at the end of the day and saying I spent 15 minutes doing this and 20 minutes doing that --

Mr. Ross: I recall him saying like an English bishop or lord, addressing a client in a conference the few times that I associated with him, that he did not keep time records. If you wanted him, you paid for him.

Mr. Warnke: That's right.

Mr. Ross: Well, it's a change. It didn't happen to the doctors, just legal practice changed, but it happened to us. I'm going to take you back to the courts now. One of the things that happens to D.C. litigators who do federally related work is that most of the cases are tried out of town. Is that your experience?

Mr. Warnke: Very much so.

Mr. Ross: Because, for various reasons --

Mr. Warnke: I tried cases out of town almost all the time.

Mr. Ross: So you don't get the experience with the local courts.

Mr. Warnke: No.

Mr. Ross: And that's really a characteristic of the bar.

Mr. Warnke: Very much so. I had a couple of cases here in town. One before Alexander Holtzoff.

Mr. Ross: Go ahead. Tell me about that.

Mr. Warnke: When I first got up, he said, "Mr. Warnke, stand up straight and button your coat."

Mr. Ross: Did he ever say this to you, "Take your briefcase off the table"?

Mr. Warnke: Yes.

Mr. Ross: People would warn you. Sometimes the clerks would warn you

before you'd be sitting around waiting for the judge to come in and the clerks would come up and suggest that you put the cases on the floor. Are there other judges that you remember?

Mr. Warnke: Pat Wald. I was trying to think what case that was. She was on the Court of Appeals. I've forgotten who the heck the client was. And the judge at the trial was a black female judge.

Mr. Ross: Was it Norma?

Mr. Warnke: I think it was Norma. What was her last name?

Mr. Ross: Norma -- I'll think of it, go ahead. Norma Johnson.

Mr. Warnke: I won the case before her, and it was appealed, and it went to the Court of Appeals and Pat Wald was the Chief, and being a very good lawyer, she held in my favor. Norma Holloway Johnson. I'm trying to think -- Holtzoff, Norma Holloway Johnson, another female judge -- white.

Mr. Ross: I don't recall that name.

Mr. Warnke: I think Joyce Hens Green.

Mr. Ross: Because of the nature of the work I did, I was fairly often in the local Federal Court of Appeals. I argued a lot of appeals, mostly agency or antitrust matters, and my experience over part of that time was I would have to tell the client I'm going to do my best of course, but when the panel walks in, we may have a pretty good idea of whether we've won or lost. It was very striking. Did you experience that?

Mr. Warnke: Yeah. Very frequently. I'm trying to think of a case I had with Joyce Hens Green. The Federal Trade Commission brought a suit to block the acquisition. Owens Illinois was my client. They wanted to buy another glass company, and they brought a

suit in the District Court to try and bar the acquisition. Their main contention was that Owens Illinois had practically a monopoly on soft drink containers, and they did practically make all of the glass containers, but what we concluded was that we ought to prove that glass competed with metal, tin or plastic, so what we did is to bring a whole exhibit into court in which we had shelves with all of the various kinds of bottles. I later had lunch one time with Joyce Hens Green when they had one of those Legends of the Law lunches, and she was talking about -- she remembered that so well. So she turned down the injunction, and of course the Federal Trade Commission brought the case. We tried the case at some length and eventually won it.

Mr. Ross: Who was on the Commission at that point, if you can recall? Was Phil Elman on the Commission then?

Mr. Warnke: Phil was not at that point. Phil had left at that point. I did appear before the Commission several times when Phil was there. Phil was a good friend. We met up at Wellfleet when we were both young.

Mr. Ross: I didn't know that. I worked with Phil in the Department of Justice, more with Oscar Davis than with Phil, then later, much later, he came to my firm and worked as a compensated lawyer. I always found him stimulating and liked him very much.

Mr. Warnke: Yeah. Earl Kintner?

Mr. Ross: I remember Earl. Did you know Jack Howrey?

Mr. Warnke: Not well. I remember I met him first of all when he was with that -- what firm was he with?

Mr. Ross: Well, he was with his own firm, Howrey & Simon.

Mr. Warnke: I know, but this was before Howrey & Simon, and he was arguing, I

think, a 2(f) case before the Supreme Court and he talked with Tommy Austern about it. Tommy and I met with Earl Kintner and Jack Howrey.

Mr. Ross: Jack Howrey, yeah. He was in practice with Lou Gravelle and, who was the other man? Then he went into the government and then he came out and found his firm.

Mr. Warnke: And Paul Simon had been counsel to some antitrust subcommittee.

Mr. Ross: Right. When I was a candidate for admission to the Metropolitan Club, I had been very active in the ACLU and the club had gotten a reputation of turning people like me down, and so I was told by Roger Nelson who was one of my sponsors, that I should talk to Jack Howrey. We had lunch at the Club, and he was polite to me, but I thought he was a little cold and distant. It didn't go very well, and he questioned me about my activities with the ACLU and so forth, and other organizations I might have been in. I figured, well, you win some and lose some. Then his whole demeanor changed. He put his hand on my shoulder and said, you know who was in the office when I first started practicing law? I said, no sir, I don't. He said it was your father, Warfield Ross, and he was the kindest man to me. I was so young and so --

Mr. Warnke: I didn't realize he was your father. Warfield Ross was?

Mr. Ross: William Warfield Ross, yes. I'm a Junior. He was so kind to me and he just took me by the hand and so forth and he looked at me and said, Bill, you can join any club I'm in. It was all an act up to that point.

Paul, I think we've covered the Department of Defense period pretty well and your period of 8 years or so practice with Clifford, Warnke, Carson, etc. firm, and we're about to go into the ACDA/arms control and disarmament period, which is 1977 to 1978. Before I do that, I wanted to, just as a matter of interest, just read you a fairly short section from the then Doris

Kearns book called "*Lyndon Johnson and the American Dream*," which I'm sure you're quite familiar with. This is on page 320, and this is said to be a verbatim account of something that Johnson said to her in '67. It starts out in the paragraph, and I won't read it entirely: "In 1967, McNamara began to move away from the President's policy of escalation." That's a quote and that refers, of course, to Vietnam. Then the next paragraph which is what I'm going to read, and these are in quotations: "McNamara's problem" and this is Johnson speaking "was that he began to feel a division in his loyalties. He had always loved and admired the Kennedys, he was more their cup of tea, but he also admired and respected the Presidency. Then when he came to work for me, I believe he developed a deep affection for me as well, not so deep as the one he held for the Kennedys, but deep enough, combined with his feelings about the office itself, to keep him completely loyal for 3 long years. Then he got surrounded by Paul Warnke, Adam Yarmolinsky, and Alain Enthoven. They excited him with their brilliance. All the same cup of tea. All came to the same conclusion after old man Galbraith. Then the Kennedys began pushing him harder and harder. Every day Bobby would call up McNamara telling him that the war was terrible and immoral and that he had to leave. Two months before he left he felt he was a murderer and didn't know how to extricate himself. I never felt like a murderer, that's the difference. Someone had to call Hitler, and someone had to call Ho. We can't let the Kennedys be peacemakers and us warmakers simply because they came from Charles River." (Appendix attached). As you listen to it, could you comment on it? What reactions does it produce decades later?

Mr. Warnke: Well, in the first place, Adam was not in the government at that point. Had not been for some time.

Mr. Ross: That's Yarmolinsky.

Mr. Warnke: Adam and I were good friends. I never thought of him as being particularly against the war. Along with most Americans, he eventually began to decide that it was a mistake, but early on, I know we had some arguments about it right toward the beginning. I was not in the government at that point, but I thought the entire idea of getting involved made no sense because I didn't see any American interest being jeopardized there. And Alain Enthoven was, of course, another one of McNamara's people. He and I were friendly. We were not particularly in collusion with one another, and I can't recall talking much. I knew he had his difficulties about the war.

Mr. Ross: The instinct of the whole paragraph is Johnson's concern about the Kennedys.

Mr. Warnke: That's correct.

Mr. Ross: And dislike of them in some way.

Mr. Warnke: Intense dislike.

Mr. Ross: And feeling competition and also a kind of word -- is this correct -- a kind of sense of Johnson that he was southern boy, Texas boy, below the track. They were New England aristocrats.

Mr. Warnke: Yeah. And there was some basis for that. There's no question that Bobby Kennedy didn't think much of Lyndon Johnson, and Johnson didn't think much of Bobby Kennedy.

Mr. Ross: Johnson, of course, is one of the world's most interesting and mysterious politicians.

Mr. Warnke: And he and I had almost no contact. I think I mentioned that to you before.

Mr. Ross: Here he's putting the whole question of Vietnam in the context of his differences with the Kennedys when he is President of the United States -- one of the most powerful men in creation.

Mr. Warnke: That's right.

Mr. Ross: I know history is very much interested in this, and it will go on being fascinating and books and books written about it, but I just thought I might get you on record -- what does this say -- you didn't have a lot of close association with Johnson, but you were close to one of the most important men, if not the most important man.

Mr. Warnke: I was very close to McNamara.

Mr. Ross: What is your reaction to this. What does this say about this man?

Mr. Warnke: I think the problem was that when he became President of the United States, he didn't know anything about foreign affairs. That had not been his field, and I think that he was afraid that he was going to make some kind of ghastly mistake and he relied very, very heavily on people like Bobby Kennedy, like McNamara, like Dean Rusk. Kennedy put together a foreign policy team. Johnson had heard them, and he thought they had to be right, and as a consequence, he made a lot of mistakes.

Mr. Ross: Another person, perhaps, would have said, well, there's some good, smart men in there, but I need my own man, and have gotten his own group of experts, but Johnson did not do that.

Mr. Warnke: He did not do that. The closest thing to it was -- who was that guy

who was his administrative assistant for many years -- a young fellow.

Mr. Ross: Well, it was McPherson and -- I don't want to guess. At any rate, there was an administrative assistant that he relied on in the foreign policy area?

Mr. Warnke: In every area. But he really had a feeling that people like McNamara and Dean Rusk really knew exactly what they were doing, and it very badly troubled McNamara.

Mr. Ross: McNamara had, over time, developed some understanding of the President's psychology, would you say?

Mr. Warnke: Yeah.

Mr. Ross: And being as intelligent and experienced as he was, you're saying that he realized that the President was perhaps not in the position to have the kind of judgment about foreign affairs as he so clearly did in the domestic field.

Mr. Warnke: That's exactly true.

Mr. Ross: And what you do about that if you're the Secretary of the Department of Defense is rather hard to see.

Mr. Warnke: Very difficult. And part of the problem, of course, was that Dean Rusk was a true believer until he died. I used to see him down at the University of Georgia because my brother taught down there and I'd go down there from time to time, and we got so that we were on friendly terms, but he never quite got over the idea that I had been a traitor because I turned against the war.

Mr. Ross: Well that's a very curious point of view, but seems to me there's still people today who had the idea.

Mr. Warnke: But the idea that somehow Adam and I were in cahoots just is not true.

Mr. Ross: Why do you think Johnson identified the three names?

Mr. Warnke: I don't know. I can't figure out why he brought in Alain Enthoven.

Mr. Ross: Tell me about him.

Mr. Warnke: Alain was very, very bright. He was the Assistant Secretary in charge of systems analysis and was very highly regarded by McNamara and he was very good.

Mr. Ross: Had he been a prior associate of McNamara?

Mr. Warnke: No.

Mr. Ross: Was he an academic or a scientist?

Mr. Warnke: I guess he was a scientist. He came from California, went back to California, I think went back to the University of California. He was a devout Catholic.

Mr. Ross: There's a sense here that I get that Johnson, for whatever reason, thought that McNamara was being misled by the three of you.

Mr. Warnke: Yeah.

Mr. Ross: Led astray. Bad influence.

Mr. Warnke: To the best of my recollection, the three of us never met and never had any close conversations about the war. I knew that Alain had his doubts about the war. That became clear because I did meet with him along with the other Assistant Secretaries on quite a regular basis, and Alain had the same view that almost everybody did. The only one I can recall that had a different view was Johnny Foster. Johnny was a true believer in the war and continued to be. But most of the others had concluded it was a terrible mistake, and I think were a little

reserved in pointing out just how strong they felt about it because they figured poor Johnson had been led into this. The President assumed Kennedy knew what he was doing and we were Kennedy's close advisors.

Mr. Ross: And he perhaps needed time to come to these conclusions himself.

Mr. Warnke: But it seems to me that what he ignores is that I get in fairly late. I was not involved in the early part of even Johnson's Administration. I got in, I think it was in --

Mr. Ross: Well, you came in in '67 according to this summary I did.

Mr. Warnke: I think I was first approached --

Mr. Ross: Well, you became General Counsel.

Mr. Warnke: That's right. In '66, and I think in the Fall of '67 I became General Counsel. So that was fairly well along.

Mr. Ross: Well why don't we turn to or move ahead from '69 to '77, and in the interval, you'd been practicing law. We talked about that. Then you become the Director of ACDA in Carter's Administration. Can you tell me how that happened?

Mr. Warnke: Yeah. I met with Carter -- well I met with him first before he was elected, when he was a nominee, and he invited a group down to Georgia, and we met with him in his hometown in Georgia, and that would have been Paul Nitze -- I'm trying to think of who else -- the guy who became Secretary of Defense in the Carter Administration -- the guy had been Secretary of the Navy in the Johnson Administration. Harold Brown. And Cyrus Vance.

Mr. Ross: And so the three or four of you got together with Carter.

Mr. Warnke: Yeah.

Mr. Ross: Were you talking about arms control?

Mr. Warnke: We were talking about foreign policy generally, including arms control. Paul and I expressed different points of view, and I think that's where Paul first began to resent me, and I believe that then Paul was very interested in getting a high position in the Carter Administration, and was bitterly disappointed when he didn't get a big job. He didn't get along with Carter, and Carter didn't like him. It was just as simple as that. Paul had a -- I don't know quite how to call it, but -- not a snobby streak, but his shoes were a lot whiter than Carter's, and I think Carter had a feeling that he really kind of looked down on him, which was not true. But that was the beginning of the friction between Paul Nitze and me.

Mr. Ross: Could you summarize what was the difference -- you both were saying things -- Carter was asking questions. Very intelligent things. Quick study, but with limited background in this area. And you were speaking up, as were the others, you and Nitze. How would you frame the difference between what you said, the two of you, you and Nitze?

Mr. Warnke: Well, I think Paul had much more of a feeling that we were properly involved in Vietnam and that it had not been a mistake. I think to some extent he saw it as part of the conflict between the United States and China, and I didn't see it that way at all. It turned out that the Vietnamese and Chinese had always been enemies. They didn't like one another, and they didn't think there was any type of plan by Peking to undermine us. I think that to some extent they were intrigued that we got so involved and weren't unhappy about that.

Mr. Ross: Sorta coming into their neighborhood.

Mr. Warnke: And not knowing what we were doing.

Mr. Ross: Did you talk about the Cold War and about the Soviet Union, as you can recall? You probably did.

Mr. Warnke: Yeah. Paul Nitze saw everything in terms of the U.S./Soviet relationship, and anything that was bad for us was good with the Soviets, and vice versa. I think he had the feeling that if we drew back on Vietnam, that would be regarded as a victory for the Russians.

Mr. Ross: And this was then in the context of, among others, the ongoing efforts in arms control, and so I would think that must have come up to some extent.

Mr. Warnke: It did.

Mr. Ross: Did Carter have any views about arms control at the times he came into office that you're aware of?

Mr. Warnke: I think he was very much in favor of reaching some kind of accord with the Soviets.