

**INTERVIEW OF J. ROGER WOLLENBERG
FOR THE ORAL HISTORY PROJECT
OF THE
U.S. COURTS IN D.C.**

**Interviewed by Jeffrey F. Liss, Partner,
Piper & Marbury, L.L.P., Washington, D.C.
attended by Rebecca Ferrol, Legal Assistant**

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Mr. Liss: Roger what I'd like to do today is take some information on your background, and as you know, and I've previously explained, the nature of this project is primarily to add to the archives of the history of the U.S. Court of Appeals and the U.S. District Court for the District of Columbia. And so, we will eventually want to get to your reflections on those courts and on the judges of those courts as they intersected with your career. But, first, to put that in context, I want to talk about you, and about your life and your career. And that's what I think we'll focus mainly on in today's session. So, first of all, as they say, for the record, your full name, please?

Mr. Wollenberg: James Roger Wollenberg.

Mr. Liss: And Roger, when and where were you born?

Mr. Wollenberg: I was born in New York City.

Mr. Liss: And if you don't mind, the date?

Mr. Wollenberg: May 1, 1919.

Mr. Liss: Was your family also in New York City in the years before you were born?

Mr. Wollenberg: For a few years. My father was working in that area and the family moved very shortly after my birth to Boston. So, I was probably only in New York a few weeks. I've always claimed that I decided it was a nice place to visit and decided to move.

Mr. Liss: Where did you spend most of your childhood years, or did you go from place to place?

Mr. Wollenberg: San Francisco. The family moved out to San Francisco when I was about five and I remained in San Francisco for -- we were residents for many years.

Mr. Liss: Were there any lawyers in your family before you?

Mr. Wollenberg: Not in my immediate family. I had one first cousin who was a lawyer and who was ultimately a state judge and then a federal judge.

Mr. Liss: Who's that?

Mr. Wollenberg: Albert C. Wollenberg.

Mr. Liss: And he sits or was sitting, where?

Mr. Wollenberg: He was a superior court judge in San Francisco and then he was a federal district judge in San Francisco. He's passed away some time ago.

Mr. Liss: And what business or trade was your father in?

Mr. Wollenberg: Well, he did a number of things. He started out as a mining engineer, and he was involved in a mining company up in Alaska for a while. Then he was running an explosives company right before and during World War I. He left that and became founding chief executive officer of the Beacon Oil Company which was an oil company located in New England and which established, I believe the first set of filling stations in the New England area. And he was with that company for a while. His next activity was to be part of the founding of a paper manufacturing company called the Longview Fibre Company, whose main plant is in Longview, Washington. And he was in that position for the rest of his life. He died when he was 93, having routinely gone to his office the day before he died. So he was there at the Longview Fibre Company from 1926-27 until he died in 1979.

Mr. Liss: And your mother?

Mr. Wollenberg: My mother died when I was born.

Mr. Liss: Oh.

Mr. Wollenberg: My father never remarried. I have one older brother.

Mr. Liss: Tell me when you think it occurred to you that you might want to be a lawyer, and what the influences were that led you to that.

Mr. Wollenberg: Well it's hard to reconstruct. I think that I got interested in stories about courts and legal issues at a very young age. And I think that I had a kind of a suppressed interest in becoming a lawyer. And I had the impression, somehow, that my father was not a great admirer of the legal profession. Sometime in the middle of my high school career, when I confessed this

sinful interest, I discovered that he really wasn't against people being lawyers, whatever he might have said about some lawyers that he dealt with. So, I then, in that sense, came out of the closet and admitted that what I'd always wanted to do was be a lawyer. And the reason I can pin it down a little bit in terms of time was that I remember Latin was thought to be sort of important, and when I went into public high school in San Francisco, I embarked on three years in Latin. I don't remember now whether I ever finished the third year. But this was -- I'm going to be a lawyer, oh I have to do the right thing. [Laughter.]

Mr. Liss: Was there anything you read as a kid, or as a college student that added to that? I mean, what sticks in my mind from those days are Darrow, [Justice Louis D.] Brandeis [1916-39], [Justice Oliver Wendell] Holmes [1902-32]. Did any of that cross your screen when you were a youngster?

Mr. Wollenberg: If they did, I can't remember it. I think that my memory is more in terms of the stories that my father told, having had a very eventful life, and being involved in a lot of things, the stories that interested me were the ones that involved legal issues -- not that he was involved in many court cases, but, those were the things that interested me. And I suppose growing up I read stories that involved trials or other things, but I can't remember back to any particular thing that excited me.

Mr. Liss: Were there any role models, like your cousin, or anyone else whom you knew who was a lawyer and whom you could talk to about this? Or were you completely on your own in pursuing this?

Mr. Wollenberg: Essentially on my own in pursuing it. My cousin was a lot older than I. So he was really of a different generation. I would see him occasionally, and certainly found anything that he talked about interesting, but I didn't think of him as a role model.

Mr. Liss: Now, I know because we've spoken before, that you went to public schools in the San Francisco area?

Mr. Wollenberg: Yes.

Mr. Liss: And which schools were those?

Mr. Wollenberg: The Ulysses S. Grant ~~Grammar~~ School and Galileo High School.

Mr. Liss: And the dates I have are 1931 for the grammar school?

Mr. Wollenberg: Yes, I was in a private school for a year or two before I started the public grammar school in the sixth grade. And I think I graduated in **1931**, and **1935** from high school.

Mr. Liss: Those were the depression years?

Mr. Wollenberg: Yes.

Mr. Liss: What do you remember about the impact of the depression on school kids, and what you learned, and what the experience was like?

Mr. Wollenberg: Well, I think that everybody was terribly conscious of what was happening. I don't recall any personal great exposure to kids with major hardships. We were aware of terrible problems from the depression. Maybe it was that we didn't know about those things, or the school that I went to, which was a mixed kind of school, as far as neighborhoods were concerned. It was very much a mixed school, but people that I knew were not in the sort of hardship situation you heard about.

Mr. Liss: The role of the public schools today, obviously, is under great scrutiny and there is great worry about the question of whether we are continuing to create the melting pot and the set of common values that we need to go forward as a nation. That's a leading question, but I wonder if you could reflect on whether the public schools served that purpose when you were in them in San Francisco in the thirties, or whether that's wishful thinking.

Mr. Wollenberg: Served what purpose?

Mr. Liss: The purpose of bringing disparate groups together and inculcating a sense of common values in our nation. Did you have a sense that you can recall, for example, a strong sense of civics and civics education from being in the public school?

Mr. Wollenberg: Not particularly strong. I did grow up and become a public school advocate. I still **am**. The grade school was in a neighborhood where there was not any broad cross section of the San Francisco community. At the high school, as I mentioned before, there was very much gained from vastly different neighborhoods. I do recall the experience of being in classes with different sorts of people than I'd known before. Whether that contributed to the civic sense and so forth, I don't know that I had any great feeling about it at the time. And I don't know what made me as much of a big public school advocate as I ended up being. I think it was mostly the feeling that private schools were depriving the kids who went to them of important experiences more than the public schools were giving

them the great experiences. And I remember growing up thinking that, in the East, people who could afford to would send their kids to private schools. This probably is an over-generalization. And in the West, few people did. But more of the people who went to private schools were people who were thought to have problems of some sort that justified it. Just because you could afford it, you didn't necessarily send your kid to a private school. And I thought that was all very democratic and that the West approach was to be preferred. I also thought and think parents who send their children to private schools obviously have less incentive to support public education.

Mr. Liss: The years at Galileo were when you came out of the closet and said you wanted to be a lawyer?

Mr. Wollenberg: Correct.

Mr. Liss: Did you get any guidance or help from any of the teachers or any of the educational experiences available in public schools? Or was that also separate from your goal of being a lawyer?

Mr. Wollenberg: I can't really reconstruct anything in terms of the goal. Law school seemed a long way off. In those days, certainly, you went through four years of college before you went to law school. And I knew for quite a while that I was going to try to go to the University of California. And I guess I thought in terms of all that comes later.

Mr. Liss: Let's talk about going to the University of California. What did you have to do in those days as a California citizen, to get into Berkeley? What did you have to do? Was it free at that point if you met the standards? How hard was it to get yourself to college?

Mr. Wollenberg: It was extraordinarily easy. I don't remember the grade average that you had to have, but I think it may have been no more than a C average in your last two years of high school. I really don't remember exactly, but it was not a big thing.

Mr. Liss: This was to get into the system, or to go to Berkeley?

Mr. Wollenberg: To go to Berkeley. It was very easy, and the costs were virtually nil. I remember you had to pay a \$50.00 fee for every semester for various things, and that was kind of about it. So there was no strain about getting in. Now, maybe I'm remembering it as easier than it was for people in some situations, but I don't recall ever being in any doubt. Whereas, when it came later to going to law school, that was a little bit different.

Mr. Liss: Roger, were most of the students at Berkeley from California?

Mr. Wollenberg: I think so.

Mr. Liss: Your major was political science?

Mr. Wollenberg: I started out in economics and shifted to political science. I can't tell you exactly when I shifted, but I think it was before I became a junior.

Mr. Liss: Was this with a law career in mind?

Mr. Wollenberg: Yes.

Mr. Liss: Did you find it an interesting pursuit and ultimately related to what you did as a lawyer?

Mr. Wollenberg: Not really. I have to confess that I regarded college as mostly a great place to grow up. I was unduly young for my class. I was just a few weeks over sixteen when I graduated from high school, and a couple of months later I started college, and most people were older, and I found it a place to grow up and meet people and do different things. But I didn't have any great feeling at the time or later that it had been some sort of a major intellectual contribution to the law.

Mr. Liss: Did you have a different feeling about your intellectual experience in law school?

Mr. Wollenberg: Yes, I found that very stimulating.

Mr. Liss: You went right to law school from college, didn't you?

Mr. Wollenberg: Right.

Mr. Liss: Also at Boalt?

Mr. Wollenberg: Right.

Mr. Liss: And it was a little tougher to get in, I take it, than getting into Berkeley?

Mr. Wollenberg: Yes, but not very tough. If you were at the University, and I assume, at any other public college, my recollection is you just had to have a **B** average in your last two years in college, or you had to take the test which had a different name than it does now. It was something other than LSAT. I remember taking the test because I wasn't sure that I would have the B average for the last two years. I think maybe I finally did. I'm not sure.

But in any event, I took the test to be on the safe side. So, when I say it was more difficult, it was more difficult than not having to do anything.

Mr. Liss: Right.

Mr. Wollenberg: You had to at least have a B average for the last two years, or to have done satisfactorily -- whatever that meant -- on this test.

Mr. Liss: I note that you were the Editor-in-Chief of the Law Review. How did that come about? Did they have competitions like they do now?

Mr. Wollenberg: No.

Mr. Liss: Did you volunteer, or how did that go?

Mr. Wollenberg: No, it was straight grades to get on the Law Review. And, I think that the Law Review board of the previous year -- the editor and assistant editors, or whatever they call them -- chose or recommended maybe to a faculty supervisor, a choice of the Editor-in-Chief. The fact that you were number one in the class in grades wouldn't necessarily lead to being Editor-in-Chief. But I suspect that it was a major plus. The first question was whether the person who was number one in the class was suitable for Editor-in-Chief in terms of personality and getting along with people and contributions to the Review previously. So that there was a little mixture of criteria, and therefore, I wasn't sure that I would be made Editor-in-Chief and was gratified and relieved that I was.

Mr. Liss: I take it from that you were number one in the class through the first two years? Isn't that when the selection was made?

Mr. Wollenberg: There may have been one time or part that I wasn't, but I was first by the time of the selection.

Mr. Liss: Now something must have happened with your level of intellectual interest because you were struggling to get the B average to get in.

Mr. Wollenberg: I really wasn't struggling.

Mr. Liss: Oh, you weren't struggling?

Mr. Wollenberg: No, I was growing up. I was not struggling.

Mr. Liss: But here you walk into Boalt and you're number one in the class, so something was really clicking.

Mr. Wollenberg: Yeah. You hate to psychoanalyze yourself, but I think that one is interest in the law and two was the fact that I really believe that my father had convinced me without being very insistent about it that this going to college, growing up and all of that stuff may be okay, but there should be a time at which you start really forming. And so, I actually went to law school feeling this is different. This is for real.

Mr. Liss: Do you remember being particularly stimulated by certain tough subject areas in law school? Or courses?

Mr. Wollenberg: Well, I probably should be ashamed to mention this, but I found the property course fascinating just as a matter of the gymnastics of it. And we had a property professor who was a real academic, probably hadn't spent more than five minutes or five months in any kind of legal practice before his academic career, was regarded generally as just sort of a professorial fanatic, but I found his class fascinating, just an intellectual game.

Mr. Liss: What's his name? Do you remember his name?

Mr. Wollenberg: Warren Ferrier. F-E-R-R-I-E-R.

Mr. Liss: I take it at that point, which is, you graduated in 1942, so this is 1939-42. I'm going to bet there was no such animal called communications law?

Mr. Wollenberg: Right, never heard of it. And as a matter of fact, I never had a course in administrative law. If there was an elective in administrative law in later years, there were more mandatory courses then than there are now. If there was an elective of administrative law, I don't particularly remember. And I wasn't particularly thinking about administrative law, or thinking about that at all.

Mr. Liss: Well, we'll get to how you came to become a communications lawyer. But am I correct in assuming that that wasn't on the screen at all at this time? Not an area you had thought about?

Mr. Wollenberg: Absolutely. It was not an area. I always call this one of the accidents of fate.

Mr. Liss: That's usually how it happens. What was it like on the Law Review? Was there more faculty supervision than there is today? Because my understanding is that most schools, students are off on their own these days on the Law Review.

Mr. Wollenberg: It didn't seem to me that there was an enormous amount. There had to be a faculty advisor on any note or anything that was written for the Law Review by a student. My recollection is *fuzzy* on it, but I think there was some faculty member who had kind of general responsibility for the review and something to say about policy and selecting articles, or that sort of thing.

Mr. Liss: Was there any article that was published under your tenure that you recall?

Mr. Wollenberg: No.

Mr. Liss: Either with fondness, or with the opposite?

Mr. Wollenberg: No. I think that I have at home the reviews that were published in my time and, if I can find them, I will look through and remind myself.

Mr. Liss: Did you write a student note during your career there?

Mr. Wollenberg: I wasn't required to write a lot, and I wrote very little, but did a fair amount of work on the review. But you weren't writing your way into it. We used to refer to recent decisions as "the little short things," and notes as "comments," or something like that more substantial. I don't think I ever wrote a substantial piece. I think I just wrote recent decisions.

Mr. Liss: You've kept your ties with the school?

Mr. Wollenberg: Yes.

Mr. Liss: I understand you were awarded a distinguished service award by the school recently?

Mr. Wollenberg: Yes. I suspect that that is a recognition more for financial contributions than for great civic things.

Mr. Liss: Have you tried to make a special effort to attract Boalt graduates to the law firm?

Mr. Wollenberg: No. We have a recruiting system in which we visit a few schools, because you can't visit them all. And Boalt has always been one of the ones that we have visited. And for some years, I used to participate in those visits and go to Boalt and Stanford. I certainly tried to encourage people that were talking to us then, but I've never made any special effort to attract Boalt people *as* such. We don't have a whole lot of Boalt graduates here. We have more Harvard, and Yale. I went through law school at a funny time when people were going off to the service and there were a lot of

uncertainties in life, but my impression was that most of the Berkeley law students' ambition in life was to practice in California. And in recruiting I had the same impression. Stanford, I think, has always been a more fruitful place for us recruiting than Boalt. Although I don't have the statistics, we probably have hired more people from Stanford, just because there are more Easterners who go to Stanford Law School who want to come back east.

Mr. Liss: Where were you on Pearl Harbor Day?

Mr. Wollenberg: I was sitting in an apartment with several law students, studying for my evidence examination, which was to take place on the eighth of December.

Mr. Liss: How did you hear the news?

Mr. Wollenberg: Somebody came in the apartment and said something. Our first reaction was we're studying, don't bother us. We were focused.

Mr. Liss: Being in California, was there any sense of this sort of thing as a possibility out on the West Coast, or was this a complete shock that the Japanese had attacked?

Mr. Wollenberg: I don't know. You're kind of buried in law school things when you're there. There certainly was a lot of reaction afterwards, when California became a tense place in terms of were the Japanese servants going to knife their employers, and, as you know, the really horrendous internment policy that was adopted.

Mr. Liss: Right. By then I guess you were in the Navy.

Mr. Wollenberg: I was in the Navy.

Mr. Liss: Well, you had another semester to go after Pearl Harbor.

Mr. Wollenberg: Right.

Mr. Liss: How did that change life in law school and everyone's outlook once we were at war?

Mr. Wollenberg: Well, for me there were immediate things because I was due to be drafted toward the end of December and instead, volunteered for what's been called the 90-Day Wonder Program, in which you went in as an apprentice seaman and went through an indoctrination course and a midshipman course and became an ensign. So I ended in the Navy rather than being drafted in the Army. Also, then I could continue in school until I was

called. And in fact, I didn't have to go until April 15. In those days school ended the middle of May or something like that. So the school patriotically threw in the last semester without my having to take finals.

Mr. Liss: Oh you left right before the end of the . . .

Mr. Wollenberg: At the end of the final semester of law school.

Mr. Liss: I see.

Mr. Wollenberg: And when I came back, the state patriotically decided that the people whose progress towards the bar had been interrupted by service would have forgotten everything that they ever knew, and so should not be required to take the bar. So the state threw in the bar exam. And I didn't get caught up by my sins until years later in Washington, D.C. where they weren't interested in this kind of reciprocity [laughter] and I had to take the D.C. bar about 13 years away from first year law school.

Mr. Liss: I see.

Mr. Wollenberg: So, I paid for my sins. The effect of Pearl Harbor in the law school, I would say was dramatic because there were a lot of people in the law school who were infected by the whole history of World War I and the "merchants of death." I remember there were a number of people who went around wearing this little Oxford oath, "I will not die for king or country." In other words, there was a good deal of anti-war hysteria and those thugs in Britain and France are just trying to get us in the war to fight for them.

Mr. Liss: This was pre-Pearl Harbor?

Mr. Wollenberg: Pre-Pearl Harbor.

Mr. Liss: Right.

Mr. Wollenberg: After Pearl Harbor it was another story. People who had opposed the draft and were sure that Roosevelt was trying to get us into the war. There was a complete and total turnaround. And, of course, we had reserve people in the school who had to go sooner, and people who left to enlist voluntarily, people who left somewhat under the gun as I did. There was just all the difference in the world in the attitude.

Mr. Liss: Did most of your class go off for war around the time you did?

Mr. Wollenberg: Well, I don't have the statistics on it. My recollection is that our class at the beginning, when we started in 1939, the class was about 108. I think the graduating group was somewhere in the high fifties. But, in those days, a certain number of people flunked out, and other people left to go into the service and so forth. And, a number of people who went into the service came back and became a part of the quest in a later year. So, it's kind of hard for me to reconstruct how many of the class members went into the service about when I did. Obviously, it was a significant number.

Mr. Liss: Were there any women in your class?

Mr. Wollenberg: There were originally two women in our class. One flunked out; the other of whom graduated and had a significant career.

Mr. Liss: Who was that?

Mr. Wollenberg: I think her final married name was Doris Brin Walker.

Mr. Liss: Any of your classmates go on the bench in federal or state?

Mr. Wollenberg: Yes. I probably can't list all of them. But, Dick Hayden was a state judge, and there were some others. I imagine we had probably three or four more judges.

Mr. Liss: I understand you served from 1942 until after the end of the war in the military?

Mr. Wollenberg: Yes. I got out in February 1946.

Mr. Liss: And you were assigned to different ships?

Mr. Wollenberg: Yes.

Mr. Liss: All in the Pacific?

Mr. Wollenberg: Yes. That was because they asked in midshipman school where you want to serve and I thought it'd be nice to be in the Atlantic. I said Atlantic, the Navy made sure that we didn't get spoiled.

Mr. Liss: Where were the ships stationed?

Mr. Wollenberg: Well, they moved around. I was on two transports and one small sea plane tender. The first ship that I was on carried troops up to the Aleutians. Actually our troops were sent in to conquer the Island of Amchitka, an island pretty far out in the Aleutians, but the Japanese had all left before

we got there, which was a good thing. On these other ships, I got briefly to the Philippines and Saipan. I never got to Japan.

Mr. Liss: Did you run into much combat?

Mr. Wollenberg: No.

Mr. Liss: You were a gunnery officer I noticed, at least on the Dorothea Dix?

Mr. Wollenberg: Yes.

Mr. Liss: And what was your position on the other ships?

Mr. Wollenberg: Oh, I was just a junior officer. On the first ship I was to be a boat officer.

Mr. Liss: Was the war, to use the phrase of the day, a defining event in your outlook on your life and your career?

Mr. Wollenberg: I'm not sure what makes something a defining event. I suspect to make something a defining event, you'd have to have either a big change in outlook, or some enormous reconfirmation of outlook. And I can't recall that it was anything but **an** interim period with interesting experiences that went on what seemed like a very long time. And as it came to an end, I sort of had the feeling, a little bit like when one gets, gee now I'm going to get pretty serious about something.

Mr. Liss: Once you volunteered, your service was mandatory through 1946?

Mr. Wollenberg: Yes.

Mr. Liss: They told you when it was okay to go, I guess. And there weren't defined periods for how long you were in for?

Mr. Wollenberg: No, I think you were signed up for the duration. And obviously you could get out for illness or family hardship or something. But, barring those things, you were just there for the duration. Once the war was over you didn't immediately get out. The war was over on whenever V-J Day was and I was off on the ship. They didn't rush to let people out.

Mr. Liss: I was curious about that because Japan surrendered in August of 1945 and you were on the ship until 1946.

Mr. Wollenberg: Right.

Mr. Liss: And that was just the transition out, I guess.

Mr. Wollenberg: Yes. So I came back in time to take a bar cram course, because the legislation hadn't quite been passed yet to admit me to the bar without an examination.

Mr. Liss: Well, I guess you had your law degree at that point. Do you remember any reflection during the war years as to the direction you wanted your legal career to take, or what you were going to do as a lawyer when you got out of the Navy, or was that all in cold storage?

Mr. Wollenberg: It was very much in cold storage. I think I said to you earlier that as I look back on my career, I think there's a great deal of accident about it, and in saying that, I'm saying that I wasn't one of those people who said, "here is my goal, and here is how I'm going to get there." I, to some extent, drifted as opportunities arose that looked attractive, and took them. And I lucked out. But when I came back from the service I was offered a temporary job in a law office which didn't feel that it had a vacancy, but I was offered a temporary job while I was going to be studying for the bar, so I took it.

Mr. Liss: This was when? In 1946?

Mr. Wollenberg: Yes. Presumably in March.

Mr. Liss: And this was in San Francisco?

Mr. Wollenberg: Yes. And so, I took it. And then the law ~~firm~~ decided that it really did have a vacancy, and offered me a permanent job. And I took it. And then I got the opportunity to go back and be a Supreme Court Clerk. I'd always had dreams of being on the Supreme Court, and so, I left there to become a clerk for Justice [William O.] Douglas [1939-75]. And this is typical of a long series of opportunities arising and my taking them, rather than my setting out and saying, "how can I become a Supreme Court clerk?"

Mr. Liss: The law firm of the Office of Jessie Steinhart?

Mr. Wollenberg: Yes.

Mr. Liss: And what kind of practice did he have?

Mr. Wollenberg: Corporate.

Mr. Liss: Not litigation oriented?

Mr. Wollenberg: No.

Mr. Liss: And how did this opportunity to Clerk with Justice Douglas come about?

Mr. Wollenberg: Professor Max Radin, who was a very well known professor, was a friend of Douglas. And Douglas, who didn't like to get involved with personnel matters, turned over to Radin the responsibility of picking his clerks every year. And the only condition was that they had been to a law school in the Ninth Circuit which was Douglas' assigned circuit. He liked to think of himself as from the State of Washington. And Radin picked them. So Radin called me one day and said "How would you like to become a clerk?," and I thought it was unbelievable, and said, "gosh!" And he said, "well you've got it," and I thought that was unbelievable.

Mr. Liss: There was no interview?

Mr. Wollenberg: No interview. Radin, obviously, was calling me on the basis of past credentials.

Mr. Liss: Sure. Had you been in touch with Radin since you'd been back from the war?

Mr. Wollenberg: No. I never had any personal relationship with him. I took **an** enjoyable course with him in my first year when he taught legal history and made us all memorize the names and dates of all the kings of England so that you'd know when a particular case was cited, the timing of it. That was the excuse for it. We all had to memorize them, because it was the first question on his exam, his final examination. He was a very colorful guy.

Mr. Liss: Is it gone from your memory? The kings and queens?

Mr. Wollenberg: Mostly. You're not going to ask me to recite those things

Mr. Liss: I'm not going to ask you to. I had to do it, and it's long gone from my memory.

Mr. Wollenberg: I used to have a kind of a ritual of William, William, Henry John [laughter] . . .

Mr. Liss: Right.

Mr. Wollenberg: That's about as far as I can go.

Mr. Liss: Well that is an amazing story. Douglas at this point must have been about what, seven, eight years on the Court?

Mr. Wollenberg: Just about. I always forget, but I think maybe [Justice Hugo LaFayette] Black [1937-71] went on in 1939 and Douglas went on in 1940, or

something like that. And this was the '46 term of the Court. So, I suspect he'd been about there six years.

Mr. Liss: And he was a pretty young man for being a Supreme Court Justice, as I recall.

Mr. Wollenberg: Yes. He was, when he was appointed, and I think he was the youngest appointed since Story who was appointed under 40 or something and Douglas was maybe just 40 or 41. And he had a couple of kids in school.

Mr. Liss: The stories are legion -- you don't have to say it, I'll say it, at least in the later years, of Douglas having somewhat tempestuous relationships with his clerks. Was he like that in the early days as well when you clerked with him?

Mr. Wollenberg: Well, no. But, I would question a little bit the reputation of tempestuous, at least at the time that I went to work for him because I went through the trouble of talking to some ex-clerks to try to prepare myself, and the impression that I have was that he was thought of as relatively cold and uninclined to be "buddy buddy," or be a mentor of clerks in the tradition of Holmes and [Justice Felix] Frankfurter [1939-62]. So that I went there with the feeling that you shouldn't take it personally. It's this guy's privilege not to be a mentor and, therefore, you shouldn't think that this is personal. And I never found him to be unfriendly or difficult in any way.

Mr. Liss: Did you find it true that he chose not to serve the mentor's role?

Mr. Wollenberg: Oh, absolutely. And the social -- if you want to call it that -- the social thing was limited to an invitation at the eleventh hour for Thanksgiving in the Douglas home and Christmas in the Douglas home, so you'd better not make other engagements, but you didn't really know you'd be invited. And I had lunch with him once at a counter in a restaurant a walk from the Court on a Saturday, but the social intermingling was limited to those.

Mr. Liss: Now, physically you were in the same chambers?

Mr. Wollenberg: Oh yes. And had very nice offices.

Mr. Liss: And how did he use his clerks? Typically, what types of tasks did you and the other clerks perform?

Mr. Wollenberg: It was just one clerk, you understand, in those days.

Mr. Liss: Oh, I'd forgotten that.

Mr. Wollenberg: Yes. The Chief had three clerks because they had some extra responsibilities on in forma pauperis cases, but the other Justices had only one. Different Justices function differently, obviously. Douglas' clerk essentially wrote memoranda on the appeals and petitions for cert., not memoranda after argument. He didn't have his clerks go to the argument. In fact, he wasn't enthusiastic about seeing you there. So that it was, initially, it was writing cert. memos. And then, when he had an opinion -- and he wrote as many or more opinions than anybody -- when he had an opinion, it would be given in draft form to the clerk to check and supply suggestions and do any research that he asked for. But, it was not a writing function.

Mr. Liss: He wouldn't even turn a section over to you and say "handle this section in draft form"?

Mr. Wollenberg: No. And I think that my best recollection is that I wrote one opinion in the entire year. The Court in those days had a tendency to take Federal Employer Liability Act cases where plaintiffs would win with juries and then the appellate courts would throw out the verdicts. The Supreme Court would reinstate the verdicts because the justices thought that the somewhat conservative appellate courts were interfering unduly with an opportunity to get to a jury. So they weren't very exciting cases, and I was given one of these cases where the votes were unanimous and the opinion was pretty pro forma but I did write that. And [Judge] Louis [F.] Oberdorfer [1977-], who was Black's clerk, and I were given a joint assignment of writing a dissent for Black and Douglas on a case. It was a fairly substantial case at the time but it was nice -- not a big dissent. We worked together, one of us writing and the other one commenting, we were sort of in it together and that was kind of fun. And those, to the best of my recollection, were the only two writing experiences in terms of anything that might have seen the light of day with my hand.

Mr. Liss: Judge Oberdorfer clerked in exactly the same period you did?

Mr. Wollenberg: Yes.

Mr. Liss: And was that when you first met him?

Mr. Wollenberg: Yes.

Mr. Liss: And he has been a life-long friend since then?

Mr. Wollenberg: Yes.

Mr. Liss: Do you mind if we digress a little bit and talk about him now?

Mr. Wollenberg: Sure.

Mr. Liss: Tell me what Judge Oberdorfer was like as a law clerk, as a fairly young man when you met him.

Mr. Wollenberg: Well, it's hard to go back, when you have known and seen people a lot over the years. I would say that he hasn't changed a whole lot. He had a young family at that time, and, of course, his wife is still going strong and his kids have all grown up, and he has grandchildren. And I really don't think of him as changing a whole lot. He was very much interested in the intellectual aspects of things then and still is. He and his wife were quite social and had a lot of friends -- a lot of people. Very friendly to a single clerk like myself. Very pleasant.

Mr. Liss: Did you have a sense then -- and I realize it's hard, as you say knowing them your whole life but -- did you have a sense then as to whether he was someone who wanted to become a judge, or was someone who fit the mold in your mind as a judge, a future judge?

Mr. Wollenberg: Not particularly. We used to talk in a very inconclusive way about plans to start a law **firm**. I remember he coined the phrase for it -- a joyous venture, and nothing ever came of it. But, I didn't have any feeling at that time. We all think of ourselves as, that'd be a nice thing to do. But I didn't think that particularly at the time.

Mr. Liss: Now you came to practice with him later, and we should talk about that down the road, when you and he practiced together for many years, I assume, at this **firm**.

Mr. Wollenberg: No, it was simply a few years.

Mr. Liss: Well, let's see, I guess that's right. You came to this **firm** in 1962?

Mr. Wollenberg: Yeah, this **firm** started in 1962 . . .

Mr. Liss: Right.

Mr. Wollenberg: . . . and he was not a part of it, because he was off as an assistant attorney general in the Kennedy administration, Assistant Attorney General for Tax. But he was connected with the people that founded this **firm**, and, in a sense, he was somewhat involved in my getting to know them. And one of the two predecessor **firms** was the **firm** of Cox, Langford, Stoddard and Cutler. He was a member of that **firm** before he was appointed to become assistant attorney general. When we started this **firm** with about half the people from Cox, Langford and another **firm**, he wasn't available to be a

part of it because he was off in the Kennedy Administration. And he came with us, I guess probably in 1964, because it was after Johnson was in. And so he was here from 1964 until whatever point he was appointed to the bench.

Mr. Liss: Well I think he was a Carter appointee, so it would have been sometime between 1976 and 1980.

Mr. Wollenberg: Right. It was a number of years.

Mr. Liss: Well, we'll come back to him and your impressions of him as a judge. Although, were you able to practice before him given your relationship?

Mr. Wollenberg: No. He adopted, and I was one of the people that urged him to do this, he adopted a policy of not working on any case in which this firm was involved. Judge Gesell never followed that policy. He was willing to sit on Covington cases, but Lou had this long-standing relationship with the firm and a predecessor ~~firm~~, and it just seems life is too short. So, if he gets assigned to a case and finds out that this firm is involved in it then he will recuse himself before it starts. And, of course, we would tell him any time that he was assigned to a case that we were involved in.

Mr. Liss: We'll come back to him probably at our next session. Just returning for a few minutes to your clerkship. Were you able to form any impressions about Justice Douglas' interaction with his colleagues on the Court, or specific colleagues?

Mr. Wollenberg: Yes. I wasn't present during any interaction. He was not someone who got his clerk involved in that way. But I had the distinct impression that he was a loner and a fellow who was intellectual in outlook and that similarity of approach that led him and Black and [Justice Wiley Blount] Rutledge [1943-49] and [Justice Frank] Murphy [1940-49] to come out on the same side of quite a few cases. And, undoubtedly, they must have had conversations as well as commented on each other's opinions, as all of the Justices did: "I'm on your side, but will you change this so I can go with you?" I mean that's the nature of the game. But I had the impression that he was a loner, that he would write opinions very fast. He took on a lot of opinion assignments, and he would circulate them. And I just had the feeling that there was very little of cooperative give and take, which didn't mean that he didn't respond when people suggested something, but I didn't have the feeling that it was a chatty collegial kind of thing, he'd write a note back and forth or whatever. Now I may have been terribly wrong about it because I wasn't personally present. I was aware that he was not a Frankfurter enthusiast. My predecessor clerk warned me that

Douglas didn't want to see his clerk hanging around Frankfurter because Frankfurter encouraged clerks to hang around, and he would have dialogue with them, and I think that part of it was that he was professorial and he missed having students, and part of it was his general desire to proselytize everybody -- other Justices, their clerks, everybody.

Mr. Liss: Do you think the gap between them was driven by philosophical differences, or differences of style, or both?

Mr. Wollenberg: I think both. But I think that the great men who've had spectacular careers and been smiled upon by the President and placed on the Court are, in some degree, inherently competitive in a situation if they are ordinary mortals with ordinary ego. And I think that Douglas probably regarded Frankfurter as somebody who was constantly trying to do things with the White House and otherwise. And Frankfurter, I believe, had a low opinion of Douglas as a person.

Mr. Liss: Though he was a loner, were there those with whom he was relatively closer? Obviously Frankfurter was not one.

Mr. Wollenberg: Yes. I had the impression at the time that it was just Black.

Mr. Liss: And was Black different from Douglas' style and personal style?

Mr. Wollenberg: Oh yes.

Mr. Liss: More collegial, more open to ordinary contact?

Mr. Wollenberg: Yes. I think that Black was very much a product of his experience as a Judge and as a Senator and somebody who ran for office. I think he was very much wrapped up in the cardinal principles that he had absorbed along the way. And they may have been principles that he arrived at as a matter of principle, and they may have been principles, like the rest of us, arrived at to kind of fit with our talents. A principal example of that, I would say, is his enormous enthusiasm for the jury, which I always attributed to his enormous success as a jury lawyer. Plus, the fact that he was a plaintiffs lawyer, and the courts in those days in Alabama probably tended to be more conservatively inclined and the juries were more sympathetic, as always, to the plaintiffs. And so it became a cornerstone of Black's philosophy in life. He'd been in the Senate and he'd done all kinds of things in the Senate, some of which he'd been much criticized for. And I think that contributed a lot. I never had the feeling that Douglas was that much a product of his background experience. When you look at his experience as a professor -- and he had a pretty dramatic career in the

SEC -- but he hadn't had an enormous public life experience of a kind that Black had. And I think that affected Black's philosophy tremendously. Black was a lot more outgoing.

Mr. Liss: Did Douglas carry with him some of those fundamental principles that you referred to? I mean, he is viewed as a liberal icon. Did you have a sense he was driven by underlying principles?

Mr. Wollenberg: Yes, I think to a considerable degree. But he certainly wasn't a knee-jerk liberal.

Mr. Liss: Was not.

Mr. Wollenberg: Was not a knee-jerk liberal. In other words, each issue was one that he'd evaluate for himself, and he was naturally accused by people of having had the presidential bug and, therefore, being affected at some point by how a decision would look as to whether he might run. But all of that was long after my time. And it's the kind of thing that people get accused of. I mean, if you're going to be on the Court and even flirt with the idea of running, then you're wrecking the whole independence of the judiciary concept, and people are going to say anything you do is for that purpose. As I say it wasn't part of my experience, anyway, but I personally doubt that Douglas was doing that sort of thing. And he did have a chance to be a running mate of Truman and turned it down.

Mr. Liss: Maybe I'm misremembering, but I thought he also had an opportunity, or at least there was talk -- of running as vice-president with Roosevelt in what would have been, I guess, the last term. Am I misremembering?

Mr. Wollenberg: No, I think you're right. I think that there was a lot of legend about Roosevelt sending a message he had two people and Douglas was the first one and, somehow or other, by the time the message got delivered Truman was the first one and Douglas was the second one, and, therefore, it was all a swindle and a steal. But I don't know whether there was anything ever to that.

Mr. Liss: But none of the political ambitions were swirling when you were there in 1946 and 1947?

Mr. Wollenberg: If they were, I wasn't aware of them.

Mr. Liss: Did he or you have exposure during that time to any of the federal judges in this district or on the D.C. circuit?

Mr. Wollenberg: He may well have. I didn't.

Mr. Liss: I know that Judge [David Lionel] Bazelon [1949-93], and I guess it was Justice [William J.] Brennan [1956-90] were part of a crowd that hung out together. Did you know if Justice Douglas in any way hung out with any of the federal judges in the district?

Mr. Wollenberg: Not that I'm aware of. He had a close relationship with [Justice] Abe Fortas [1965-69] who had been his clerk. But Abe Fortas wasn't on the bench at that time, and when he did get on the bench, he got on the Supreme Court.

Mr. Liss: Okay. Your clerkship with Justice Douglas lasted a year?

Mr. Wollenberg: Yes.

Mr. Liss: And you went next to the Antitrust Division?

Mr. Wollenberg: No.

Mr. Liss: No.

Mr. Wollenberg: I went to the Department of Justice, but it was the Alien Property Division.

Mr. Liss: I see.

Mr. Wollenberg: You mentioned Bazelon. At that time, Bazelon was the head of the division.

Mr. Liss: The head of the Alien Property Division?

Mr. Wollenberg: Yes.

Mr. Liss: Now what did that division do?

Mr. Wollenberg: It basically was enforcing the Trading with the Enemy Act. The Trading with the Enemy Act permits the government to vest the assets of any enemy aliens. And, after the war they were still in the vesting situation even though the war was over. There were big political issues about women who had dual citizenship, who were married to an American but were still German citizens. There were issues as to whether their property should be seized. And there were all kinds of legal cases. I was in the Appellate Section which dealt with law cases. The first case that I ever argued in court, I think, was in the Supreme Court of Alabama, and it was a will case in which the alien property custodian, having vested the interest of one of the legatees, was interested in the will being upheld; and someone else was attacking the will which had been made in Germany as

being no good. So, my first case was in defending a will so that the United States could get the money. A very noble case.

Mr. Liss: How did you happen to wind up in that office after your clerkship?

Mr. Wollenberg: Well, I had an offer to go back to the law office in San Francisco, and by that time I had a reluctance to go back to San Francisco. And I had met my future wife, and got enamored of Washington. I was the example of how people always say Washington is full of people who came here for one year and were here for the rest of their lives. I had become interested in government and working in government and had become somewhat enamored of the exciting people who'd done exciting things. So that I became interested in the possibility of a government job, and the Justice Department Alien Property Appellate Section was just fine as far as I was concerned. I had no great desire to be a trial lawyer. The down side was that alien property is a pretty uninteresting way to spend your time. But that was the job that surfaced. And I seem to remember that Lou Oberdorfer had something to do with getting me the contact that had somebody interested in me for the job. So that was what happened. I went into alien property. I was there for a year and a half or something like that and then got a chance to go over to the Antitrust Appellate section, and that was more interesting.

Mr. Liss: Did Justice Douglas have any role, or was that the sort of thing he wouldn't be involved in, helping his clerks get placed to the next job.

Mr. Wollenberg: I didn't ask for his help, and I would have been deterred from doing so, because he gave me advice, unsolicited, but he gave me advice -- what you ought to do, what people ought to do, is go home and put down roots, which privately amused me because never had a man put down fewer roots than William O. Douglas. But since I had decided I didn't want to go home and put down roots, I was interested in working in Washington. It didn't occur to me to say "can you help getting me an interesting job?" It probably should have occurred to me, but it didn't.

Mr. Liss: Now, was David Bazelon the head of the office when you arrived?

Mr. Wollenberg: When I was there, yes.

Mr. Liss: And did you have to interview with him?

Mr. Wollenberg: I think I did. And the thing that I remember best was that he was saying in effect, whether he said it directly to me, or it was passed on to me -- he said in effect, "your credentials are fine, but listen, Buddy, we've got an

election coming up and we'd like somebody to say that you're kind of okay as a Democrat."

Mr. Liss: Were you able to get your Democratic credentials squared away? How does that work?

Mr. Wollenberg: I'm trying to remember. I had the problem of having been briefly a Warren supporter in California when my cousin -- the one I mentioned earlier -- was a Warren floor leader in the State Assembly for the Republicans. I don't remember just what I did to get certified as one who had reformed and became a Democrat, but I made it.

Mr. Liss: Well tell me about David Bazelon as a boss and about how much contact you had with him and what he was like.

Mr. Wollenberg: I had essentially no contact with him as a boss. In the Appellate Section, there were strong leaders, and we did our litigation job, and I'm sure that Bazelon decided important policy questions because he was very much interested in policy. But I never had any direct contact with him of any sort.

Mr. Liss: In your work?

Mr. Wollenberg: Right. Or socially, or anything.

Mr. Liss: Did you have an opportunity to observe him? And what was the hall talk about the type of lawyer he was, the type of supervisor he was?

Mr. Wollenberg: I'd had the impression that he was supposed to be a very bright guy in Chicago as a lawyer, but I think I had sort of a disenchantment that he was a tremendously political guy, and you got the feeling that maybe his great success as a lawyer in Chicago was because he married, I don't know Jake Arvey's niece or somebody. The more I saw of Bazelon, the more he struck me as kind of imperious, not a judicial temperament. But his instincts probably weren't bad. He's always been given a certain credit for pioneering the view that the Constitution can be used to strengthen the insanity defense. That was his kind of great claim to fame on the bench.

Mr. Liss: Did you have occasion to appear before him?

Mr. Wollenberg: I did at least once.

Mr. Liss: Is he someone who made any sort of a mark in your field, communications law or administrative law generally that sticks with you?

Mr. Wollenberg: Not at the moment. I will think back on it and try to answer that at some point. He had an extraordinarily low opinion of the FCC which was not unique. From his point of view, FCC Commissioners in those days were just tools of the special interests. I later went to work for the FCC and when he heard that, as I recall, he made a face. However, one time relying on our past connection, when I was president of the Communications Bar Association I persuaded him to come and give a speech at the annual dinner.

Mr. Liss: And the speech came off well?

Mr. Wollenberg: Yes.

Mr. Liss: I'm going to stop this session, but I'm just going to make a little record that will help me in planning the next one, and we may as well leave the tape on. I think soon enough in the next session, although I suspect we'll end up with at least three sessions, in addition to talking about your career, we will talk more and more about your impression of the courts here and the judges. And just so I can do a little homework. Off the top of your head, and subject to supplementing it later as we talk, who are the judges who come to mind whom you know, or have experience with, or have made a mark in your field, whether or not you know them? Because those are the people I'm going to want to ask you about.

Mr. Wollenberg: Judge [James Skelly] Wright [1962-88] certainly made a mark. He's not there any more, but he certainly made a very giant mark on me. And I remember my own experiences with the attitudes of Judge [Elijah Barrett] Prettyman [1945-62] back in his days. I think he made a substantial mark. Again, I want to go back and think about those.

Mr. Liss: In terms of those people whom you know personally whom you might be able to talk about in addition to Judge Oberdorfer, whom we've spoken of and Judge [James] Robertson [1995-]who was your colleague, is there anyone else about whom you might have reflections that would be useful to preserve?

Mr. Wollenberg: Well, let me think about that.

Mr. Liss: Okay. Fair enough. It is noon. We've gone for a little more than an hour and a half and this ends the first session.

Session 2: February 8, 1996

Mr. Liss: I want to pick up, Roger, where we left off last time. I guess the first thing I want to say is you've had a chance to look at the transcript of our last interview, and I just wanted to see if anything occurred to you that you wanted to add, change, or correct?

Mr. Wollenberg: No. The only thing that occurred to me was that somewhere in the course of the last interview the question of who from our firm had become judges, and I wasn't able to reel them off. I can do that now. Lou Oberdorfer on the United States District Court in the District of Columbia, Jim Robertson on the same court, [Judge] Noel [Anketell] Kramer [1984-] on the Superior Court of the District of Columbia and [Judge] Ray[mond C.] Clevenger [111] [1990- 3] on the Federal Circuit. Those to the best of my recollection and knowledge are the only people from our firm who have become judges.

Mr. Liss: Well they are all distinguished people. Since we're doing the history of the D.C. Circuit and the Federal District Court here we probably won't talk about Judge Kramer and Judge Clevenger, but I'm sure we'll want to say a little more about Judge Oberdorfer today. I thought we might finish up the description of your practice first, though. We'd gotten you through the Antitrust Division position, and you had just gone to the FCC when we last stopped. So why don't you tell us what that job consisted of when you were Assistant General Counsel for Litigation at the FCC.

Mr. Wollenberg: It consisted of having the responsibility, of course under the General Counsel, of defending the orders of the FCC when they were appealed to court. Appeals from the decisions of the FCC go to the United States Courts of Appeals. Licensing cases go to the D.C. Circuit, and other cases can be brought in any circuit where the petitioner has residence. We had a number of appeals going at all times, and it was an interesting period at the Commission. The Commission had recently completed its long running proceeding to set up a table of allocations for television stations which it was planning to handle in a different way from the way that it had handled radio station licensing in an attempt to have channels allocated around the country in an orderly fashion, rather than leaving the determination of where a particular frequency would be licensed to competing applicants.

Mr. Liss: Had that been the situation before the Commission acted, the allocation was simply determined by the various applicants?

Mr. Wollenberg: With respect to radio, it was almost haphazard in the sense that existing stations were entitled to protection from interference from new stations,

unless the Commission was prepared to find that some interference should be allowed. And, therefore, applicants for new stations would attempt to pick a location and a frequency where they could be given substantial power and height of antenna without running into interference problems, so the AM station allocation more or less grew randomly through individual proceedings. And when it came to television, the Commission decided that it could proceed in a lot more orderly and logical way if it set up an allocation plan for the whole country which would give due regard for the way the population was, due regard for licensing stations in communities that didn't have any and so forth. And then, people could apply, but they had to apply for a channel where it was allocated. If they wanted to come into the District of Columbia and Channel 4 wasn't occupied, they could apply for Channel 4. But they couldn't apply for some channel that wasn't allocated here. That new approach was challenged in court. One of my early cases was defending it, and it was upheld as a procedure by the court.

Mr. Liss: Was that challenged in the D.C. Circuit?

Mr. Wollenberg: Yes.

Mr. Liss: Do you remember your panel?

Mr. Wollenberg: No.

Mr. Liss: [Laughter] That leads me to a more general question. In the early 1950s when you arrived at the FCC, I guess this was your first regular exposure to the area of practice of communications law?

Mr. Wollenberg: I had a little exposure when I was in the Antitrust Division. Because under the complicated system of review of FCC orders, licensing cases are brought with the Commission as the respondent in an appeal. Cases other than licensing cases were brought under a procedure inherited from the Interstate Commerce Act, in which, originally, cases were fought in three-judge district courts, the United States was the defendant, and the FCC was both a defendant or an intervenor. So the Justice Department, the Attorney General, had control of that litigation because the United States was a defendant. Eventually that jurisdiction shifted to courts of appeal, and eventually the FCC was named as the first respondent and the United States as the second respondent, but the Justice Department, even to this day, is involved in that kind of review proceeding against the Commission and controls what it wants. When I was in the Antitrust Division Appellate Section, we had the role of advising the Solicitor General on the position that the Justice should take in these appeals. So that I got to

working with the people at the FCC General Counsel's office while I was at Antitrust, and that helped lead to my being offered the job as Assistant General Counsel for litigation at the FCC.

Mr. Liss: Now, was there an animal known as a Communications Bar at that point in the early 1950s?

Mr. Wollenberg: Yes. There was. There were people, law firms, who devoted themselves almost entirely *to* communications practice, and, of course, large law firms that simply had a communications department. But I remember when I first went to the FCC that there was an annual picnic held by the Communications Bar Association at the Vienna country place of one of the leaders of the Communications Bar, and the members of the Bar would come, and the Commissioners would come, and the lawyers at the Commission. They had a picnic every year of that sort.

Mr. Liss: How large a group would you say the Communications Bar was back then?

Mr. Wollenberg: Well, it's hard to estimate because it depends whether you consider all of the lawyers in all of the firms who worked in the area. And I would have no way of knowing how many lawyers would work in a particular firm. But, a wild guess, I would think somewhere between 100 and 200, comprised of the lawyers who were significantly involved, not their assistants or associates, but who were significantly involved in their practice before the FCC and in conducting the many hearings that were held before hearing examiners of the FCC and pursuing or defending appeals from FCC lawyers.

Mr. Liss: I know it's larger, but do you have any sense for how much larger it is today?

Mr. Wollenberg: It's a lot larger, and there are branches of the Communications Bar Association in New York, and Chicago, and probably Los Angeles. A few years later when I got in private practice and actually was the president one year of the Communications Bar Association I think we had around 500 members, and I think there are probably some thousands now.

Mr. Liss: When you were arguing cases at the FCC, did you have a sense whether the circuit judges viewed these cases as exciting, involving new technology, or to the contrary, technical and boring?

Mr. Wollenberg: It's hard to answer, but my recollection is that their emphasis, as I suppose mine, was on the administrative law aspects, rather than the technology

aspects. The technology, I suppose, is always more complicated. But it's a great deal more complicated in this day and age with Internet and computer technology and so forth. In those days, the issues really were related to broadcasting stations and broadcasting licensing. And while there were technical questions about interference, they weren't mind boggling.

Mr. Liss: This question now really stretches beyond the time you were at the FCC --

Mr. Wollenberg: I **was** only there a couple of years.

Mr. Liss: I understand. And we started to get into this last time, but are there judges from this circuit who you feel made a particularly significant contribution in the field of communications law, whether or not you've argued before them?

Mr. Wollenberg: You mean whether or not I helped them?

Mr. Liss: Whether or not you showed them the way.

Mr. Wollenberg: I'm sure that there were. I'd want to go back and look before trying to identify many of them. I think certainly Judge Prettyman, and Judge [Henry White] Edgerton [1938-63] and Judge Wright. And I'm sure others made contributions.

Mr. Liss: Let's talk about Judge Wright for a little while. Both in terms of his acumen with communications cases, and more generally, give me some of your impressions of him.

Mr. Wollenberg: I think he was a very strong-minded man of strong convictions, which he did not have any particular tendency to reevaluate. I think that his experience as a district judge in the South gave him somewhat of a slight martyr complex because he was so much criticized and ostracized for some of his race-related decisions that the common intelligence was that he couldn't have been comfortable being appointed to an appellate court unless he was out of the South. And that's why he ended up in the D.C. Circuit. And I think he was very much **an** idealist, and the things that he believed in were noble. But I think if one were to classify judges as to whether they were judges given to activism or judges in favor of great restraint, it would not be hard to classify Judge Wright as an activist.

Mr. Liss: I'm interested in how that characteristic played itself out in the communications field.

Mr. Wollenberg: Well, one example would be CBS v. FCC where the Court, through Judge Wright (Judge McGowan dissenting) held that a broadcast licensee is barred by the First Amendment from following a general policy of refusing “editorial advertising,” that is paid broadcast time to present positions on public issues. Arguably this holding created a new constitutional right of access and severe limitation on the power of broadcast licenses over decision as to programming on their stations that went far beyond previous statutory and FCC imposition of restrictions and duties on broadcasters. The dissenter deplored what he regarded as creating a “constitutional straitjacket.” The Supreme Court reversed.

Mr. Liss: What was wrong with Judge Wright’s approach, according to the Supreme Court?

Mr. Wollenberg: Chief Justice Burger’s opinion suggested that the restrictions on broadcasters would mean that journalistic discretion would be lost to rigid limitations of the First Amendment. He coined the now famous phrase that, for better or worse, editing is what editors are for.

Mr. Liss: I suppose implicit in all of that is the judgment that the FCC would be entitled to some discretion in how it supervises the station’s management of these issues.

Mr. Wollenberg: Yes.

Mr. Liss: I don’t know if you’re being circumspect, or if I’m reading things into your comments, but it sounds as if the activism that you described as being reflected in Judge Wright’s approach is one that you would not agree with. Are you saying that he was inclined to let his personal views override soundjudicial judgment in administrative law?

Mr. Wollenberg: That’s a tough question because when people talk about soundjudicial principles, it is very much in the mind of the beholder. Some of our most greatly-respectedjudges of history have been real activists. John Marshall was surely as great an activist as you could ever find in inventing the doctrine of judicial review; it’s hard to find in the Constitution something that says that the Supreme Court has the last word. So that when people calljudges activists, in a way it’s a pejorative term, meaning that they were activists in some way that I don’t agree with. I didn’t mean to say that about Wright. I really feel that it’s a question of degree. In other words, alljudges purport, or try, or somewhere in between, to be judicious. And I merely think that Wright because of his tremendous belief in his own soundness and rectitude, was more willing to reach out than somejudges who are not so completely sure of their own decisions.

Mr. Liss: No value judgment intended on your part in that statement.

Mr. Wollenberg: That's right. I remember when some people in Congress didn't like the things the D.C. Circuit was doing with its exclusive jurisdiction in review of Commission licensing cases. And there was talk of -- let's send those out to the hinterland. I remember hearing Wright on a social occasion saying with great force that our court is the only court that understands these cases and it would be the end of the world to send them up to the hinterland. Now, that wasn't a very tactful remark being that it was a social occasion. But, it was a deep belief on his part that, I think, went over to other things. He knew what the true answers were and he had a certain impatience with those who did not.

Mr. Liss: Beyond this one example, was he important in pushing a body of communications law in a certain direction over the tenure of his career?

Mr. Wollenberg: Well, I'd have to review that a little bit. I would think probably yes, but that's an impression. And I guess that I would want to check it because you tend to remember the cases that you've been involved in and, as you might have discerned, I was involved in CBS v. FCC, representing the broadcaster position against the Democratic National Committee which had been refused paid time.

Mr. Liss: I assumed that. And I assumed that it was on that occasion that you disagreed with Judge Wright, at least professionally?

Mr. Wollenberg: I disagreed with him all the way.

Mr. Liss: Right.

Mr. Wollenberg: I even thought the Democrats were rather foolish to be fighting this. If you ever establish the notion that anybody who had enough money could buy time, any time, and as much as he wanted, and because the candidate's the best judge, it was my view that the Democrats were not in a position to benefit from such a rule.

Mr. Liss: Or that, ultimately, the other party would benefit more.

Mr. Wollenberg: Yes.

Mr. Liss: Right.

Mr. Wollenberg: In other words, it's not a good argument for the Democratic party to be making.

Mr. Liss: You mentioned the social occasion on which you heard that remark by Judge Wright. Did you come to know him off the bench?

Mr. Wollenberg: No this was one occasion, and I can't remember when it was. It was some sort of a dinner or something, a small dinner, where there were only half a dozen people present and the subject turned to this particular bill, and I was startled at the vigor he showed on the subject.

Mr. Liss: Because he felt it deeply.

Mr. Wollenberg: I think he felt everything deeply.

Mr. Liss: Do you remember arguing other cases before him?

Mr. Wollenberg: Not off hand. I'd have to check.

Mr. Liss: Okay. Let's go back to your career. After the FCC, what happened?

Mr. Wollenberg: I went into a small, established communications law firm.

Mr. Liss: But your name was added as a part of the firm name?

Mr. Wollenberg: Yes. I suppose it's true of small firms anywhere, but small communications firms have a practice of having several individual names in the firm name, since some clients felt better when they were dealing with someone with a name in the firm. And a lawyer who'd been there had his name in the firm, so a few weeks or months after I arrived, my name was added.

Mr. Liss: Was the firm called Haley and Bader before you arrived?

Mr. Wollenberg: No, it was Haley, Doty and Shellenberg before I arrived and then Mr. Shellenberg left. And then it became Haley, Doty and Wollenberg. And eventually, Mr. Doty died. So, during my last years in the firm it was Haley, Wollenberg and Bader.

Mr. Liss: And the firm was almost entirely a communications law firm?

Mr. Wollenberg: Entirely.

Mr. Liss: What was the nature of its client base? Did the firm specialize in particular areas or particular segments of the industry?

Mr. Wollenberg: Well, in those days it was mostly broadcasting and the clients were mostly broadcasters. But actually the firm had one little client who later became a household word in the common carrier and the communications industries.

It's now named MCI. MCI began as a firm that wanted to be licensed to provide services between St. Louis and Chicago, and this was heresy as far as the notion of common carriage being a monopoly function, and the idea that AT&T would be confronted with a competitor was contrary to the more conventional thinking of the time.

Mr. Liss: And, as a result, were they ever authorized to provide those services?

Mr. Wollenberg: Yes. They were eventually authorized to provide the service with court litigation and all the rest. This was after my time at the firm that this happened.

Mr. Liss: During that period did you find yourself in court very often? Whether trial or appellate?

Mr. Wollenberg: Not very often.

Mr. Liss: And, as I understand it, you then joined Wilmer, Cutler & Pickering in 1962. What happened to the Haley firm at that point?

Mr. Wollenberg: Nothing happened to the Haley firm. Wilmer, Cutler & Pickering was formed in 1962, and I was one of the founders. I was a part of it when it was formed. **And** my desire to make the shift was partly a desire to get into a firm that was not exclusively involved in communications.

Mr. Liss: Were you the only partner from the Haley firm who moved over at that time?

Mr. Wollenberg: Yes.

Mr. Liss: And were there other founders who were doing communications law, or were you the communications practice?

Mr. Wollenberg: Well, there had been some. The rest of the people who founded it came from two law firms, and one of those law firms had done some communications work. The other one had not, as far as I know. So that in terms of one who most recently had been working full time in communications practice, I was the only one of the founders who had, but there were other people there who had been involved in communications cases we had.

Mr. Liss: What were the two law firms from which the other founders came?

Mr. Wollenberg: Wilmer and Broun, which was historically a Cravath offshoot. Mr. Wilmer had been a Cravath partner who had set up a Cravath office in

Washington. And when World War II came along, he was a reserve officer and closed the office and went into the service. And when he came back, the office was reopened as an independent Washington office but, nevertheless, was very much a Cravath correspondent here. And everybody at Wilmer and Broun came to the new firm in 1962 except Mr. Broun.

Mr. Liss: And how many lawyers was that, roughly?

Mr. Wollenberg: Well, the total of our starting number of lawyers was 19, including me. The others were more or less half Broun and half from Cox, Langford, Stoddard and Cutler. And of the Cox, Langford, Stoddard and Cutler firm, half of the people in that firm came to Wilmer and Broun. The other half stayed in what then became the firm of Cox, Langford and Broun.

Mr. Liss: Where did Mr. Pickering come from?

Mr. Wollenberg: Wilmer and Broun.

Mr. Liss: You were, in some sense, the principal partner doing communications work at the beginning of this firm's history. Is that fair?

Mr. Wollenberg: I think that's fair.

Mr. Liss: And today your firm has a practice of how many lawyers doing communications work?

Mr. Wollenberg: You know I'm never able to answer that question because it varies so to speak from day to day. I would think that there are probably 3 to 5 partners who work on communications a substantial amount and then varying numbers of associates when needed.

Mr. Liss: In terms of the tasks, not the substantive law, but the things you do as a communications lawyer, is today's practice significantly different than the practice in the early and mid-1960s, or is it largely the same?

Mr. Wollenberg: Well, I think there have been some significant changes. There used to be a lot of long, time-consuming evidentiary hearings. And there was a period when the FCC was encouraging people to come in and challenge broadcast licenses at renewal time as a way of pressuring licensed broadcasters to perform more in the public interest, so that they would not have to fear challengers. It was actually an encouragement by the Commission. So that a lot of people came in and challenged licenses; hence there were hearings and a lot of activity. This has declined over the years as the Commission's attitudes have changed. And the culmination is in the Act

that was signed by the President today which actually eliminates comparative hearings against renewal applicants. When a station comes up for renewal, if the FCC considers that the station may not have been operating in the public interest, or according to the law, or whatever, the Commission could put that station through a hearing and if it finally decides renewal of the station's license should be denied, then it will deny the renewal, and others can come in and apply and could have hearings. But that's a very different kettle of fish from when people would come in at renewal time and say the licensee has done a lousy job and I could do a better job. Today meant the final end of the comparative renewal proceedings as we've known them over the years. *So* this is a culmination of the trend that for quite a while now competing license challenges just haven't been profitable. There are competing applications pending now because some people never give up. And the Commission doesn't much get around to setting the hearings and so forth, but that's now all over.

Mr. Liss: Other than that significant change in the nature of the practice, and putting aside substantive law changes, have the other tasks remained essentially the same?

Mr. Wollenberg: Well, I think that the technological and economic development has resulted in a lot of new struggles of one kind or another, new industries and struggles between industries. There wasn't any cable industry when I started to practice, and when it began it was called "community antenna television." It was called community antenna, because the idea was that everyone couldn't put up a 200 foot antenna on his roof, so the community people would get together and put up an antenna, and then you would bring in a distant broadcast signal by microwave. And then you would send it by wire to everybody's house. But the cable industry and the broadcast industry have areas of tension and areas of fighting, and in **1992**, the Congress passed a new deal type of law to regulate the cable industry. It was the only bill that was ever passed over President Bush's veto. It imposed all kinds of restrictions and rate regulations on cable, and now almost all of that is gone with today's act -- the wars between cable and broadcasting and the fights for position -- and now we're talking about satellite transmission of programs. In other words, modern technology has produced a whole lot of areas of rulemaking and lawmaking and friction and litigation, that was just not around when I began. For example, one of the big things that we've been involved with over the years in our present firm has been the successive, very elaborate regulations that the FCC has proposed after years of rulemaking in what have been referred to as Computer Inquiries. There's Computer Inquiry 1, Computer Inquiry 2, Computer Inquiry **3** and maybe there will be a Computer Inquiry 4 one of

these days, in which the FCC attempts to make rules in these new areas. And then there are appeals of those rules to court. **So**, it's a very different practice than it was.

Mr. Liss: The more we talk, the more I see that that's the case. I should state for the historical record here today that Roger's reference to today's telecommunications law is literally meant to be today. That is, just by coincidence we happen to be conducting this interview on the day on which President Clinton signed the Telecommunications Act of 1996.

Mr. Wollenberg: Right.

Mr. Liss: Whether that will prove to be seminal is something for whoever reads this interview in the decades to come to opine on, but it is literally the day of the signing, and that explains the reference that Roger has made a couple of times to today's act.

Changing subjects, did you overlap at the very beginning at Wilmer, Cutler & Pickering with your old friend Judge Oberdorfer?

Mr. Wollenberg: No. He was appointed by Kennedy as Assistant Attorney General for the Tax Division in 1961 after Kennedy became President. And our **firm** was started in 1962 while Oberdorfer was at Justice. Although he had been in the Cox Langford predecessor **firm**, and although he joined us later, he was not in it at the beginning -- in Wilmer Cutler.

Mr. Liss: And then he joined you and you overlapped until he became a judge?

Mr. Wollenberg: Right. And I hope I was right in the transcript last time when I said I thought he came to us in 1964.

Mr. Liss: So that means it would have been a period of, well more than a decade that you practiced law with him?

Mr. Wollenberg: I guess that's right. He was appointed by Carter.

Mr. Liss: Tell me about what you recall about Judge Oberdorfer as a law partner.

Mr. Wollenberg: Well, we didn't have a great number of areas where we were involved on work because he was in the tax area. He had been in the tax law **firm** before he was appointed as assistant attorney general. He was head of the tax division and, of course, had a lot of experience in the tax division.

Mr. Liss: And had you stayed in touch with him from the time the two of you were co-clerks?

Mr. Wollenberg: Yes.

Mr. Liss: So he had remained a friend?

Mr. Wollenberg: Yes.

Mr. Liss: Were you instrumental in having him come to the **firm**?

Mr. Wollenberg: Oh, no, because he had been a member of one of the predecessor **firms**. He'd been in Cox Langford and, so, certainly knew very well all of the Cox Langford people. And probably knew the Wilmer & Broun people from one thing and another in Washington.

Mr. Liss: We have a sense -- those of us who have practiced before Judge Oberdorfer -- what he's like on the bench and **as** a judge. Being a law partner is a different function. And I think it would be interesting, not with respect to substantive law, but with respect to how he interacted as a lawyer in private practice, to call on what memories you have of that.

Mr. Wollenberg: Well, I can't contribute a whole lot. I think that he was always very much interested in making sure that the **firm** did everything to maintain a high reputation and take all the steps you need to eliminate or avoid the mistakes whenever you can. In other words, I think he had a strong institutional sense of the **firm** and was interested in the governance of the **firm** being a very careful kind of thing. And that really is all that I particularly remember.

Mr. Liss: Was he involved in the **firm's** governance?

Mr. Wollenberg: Well everybody was. It was small, and we had a small executive committee, and then we had **firm** partner meetings all of the time. So everybody was involved.

Mr. Liss: And did he sit on the executive committee any time?

Mr. Wollenberg: I don't recall. At one time we had a rotating executive. In the very beginning we had a very small executive committee consisting of Wilmer, Cutler & Pickering. And then we made it a larger committee. I don't remember at what point it was.

Mr. Liss: What reflections can you offer about the role of a tax lawyer, or the preparation to become a judge provided by being a tax lawyer. That's not a traditional route to become a trial judge on the federal court, and Judge Oberdorfer spent a good deal of his time being a tax lawyer.

Mr. Wollenberg: It seems to me that he got himself involved in some litigation experience at the firm. I don't remember what it was, and it might well not have been tax. His father was a lawyer, and he grew up with a strong feeling about the practice. His father did a lot of trial work and so forth down in Alabama. And I suspect that he had an interest in possibly going on the bench at some point and he sought out and participated in litigation. So that I don't think that his experience fitting himself to be a judge was limited to tax. And, of course, he also got whatever he got out of his own clerkship. But, it'd be interesting to know. My recollection is he was involved in quite a bit of litigation.

Mr. Liss: I assume a time came when he told his partners he was interested in becoming a judge. Do you remember that happening?

Mr. Wollenberg: I don't remember particularly until it was thought that he had a major chance, or it was settled that he would be appointed and accepting confirmation and all of that. I remember helping him along with others and worrying about the strategy and all of the rest of the confirmation, but I don't remember his expressing the view before.

Mr. Liss: Given who he was, was it in any way a surprise to you to learn that he would become a judge?

Mr. Wollenberg: No.

Mr. Liss: Did he have at that time, qualities that you think would recommend him for the proper judicial temperament?

Mr. Wollenberg: Yes.

Mr. Liss: And they were?

Mr. Wollenberg: Wanting to get to the bottom of any kind of a legal question intellectually. And also wanting to find one's way through the precedents in a way that was a result that one could feel good about.

Mr. Liss: Would you describe him, on the continuum of Job-like to impatient, as more or less a patient man? Because that job, as you know, calls on one's patience from time to time.

Mr. Wollenberg: Yes. And never having seen him in action from the bench -- I gather you have -- I don't think I'm as well qualified as you or other lawyers who have seen him in action on the bench. I'm sure that all of us in that situation would be internally impatient because there's a lot of bad lawyering, a

lot of posturing, a lot of boring, trying cases. And I just haven't any idea of whether he appears on the bench as a patient person or not.

Mr. Liss: You mentioned a few minutes ago helping him out with confirmation strategies. Do you recall what the issues were that he was dealing with, what he was concerned about, and whether his concerns were exaggerated or not?

Mr. Wollenberg: I don't think they were exaggerated. I don't remember particularly, but I think when I talked about strategy, it was whether he was going to be able to get the Senator from the state where he was living to help. They're always full of political questions. Or the fact that he had been an Assistant Attorney General under Bobby Kennedy in the Kennedy Administration would mean that some people would look at him in terms of whether they liked the Kennedys or not. All kinds of nuances that shouldn't be relevant, but they seemed to be.

Mr. Liss: You mentioned at the beginning who some of the other people were who had become judges from the firm. In general, what was the reaction around the firm when any of the potential judges actually stepped up? How does having these judicial candidates affect the life of a firm?

Mr. Wollenberg: I can't remember for sure on Noel Kramer because she was an associate. And I have a feeling that she left the firm and took a job at Justice at the U.S. Attorney's Office or someplace. And so, she wasn't leaving the firm to become a judge. So that leaves only three -- Oberdorfer, Robertson and Clevenger. And I think that we were generally enthusiastic about the idea in all three cases because we knew they were things that they wanted to do and we thought that they would do well. And it was an honor for the firm.

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Mr. Liss: Roger, we had spoken a fair bit about Judge Oberdorfer already, I just wanted to see whether, on reflection, there was anything else you wanted to add by way of personal or professional impression of him.

Mr. Wollenberg: I don't really think so. As I mentioned in our last interview, Judge Oberdorfer has followed, I think, the very wise policy of staying out of any cases that this law firm has been involved in since he's been on the bench and, therefore, I have not been involved in any case before him. I don't know that I've ever sat in court when he was presiding. And the nearest that I can say about following his judicial career is that I've occasionally read an opinion of his, or occasionally read an opinion when the Court of Appeals reviews one of his cases just as a matter of interest. I

think in the previous interviews I made clear that I thought that he has an excellent temperament to be a judge because I think that he's very intellectual and very thorough, and that he attempts to get to the bottom of any issues. But after some of the hyperbole in current political campaigns which has suggested that judges appointed by Democratic presidents are all ultra liberals, I was interested to see that Judge Oberdorfer had thrown out the case that the Federal Election Commission was attempting to bring against Speaker Gingrich. I don't know that that proves anything, but I thought it was kind of interesting.

Mr. Liss: Do you remember whether Judge Oberdorfer has ever had occasion to foray into your area of law -- communications law -- since he's been on the bench?

Mr. Wollenberg: There was at least one case some years ago. Needless to say, our firm was not involved.

Mr. Liss: I would imagine not being on the Court of Appeals he would not have many opportunities to do that. Let's talk about one of our most recent additions to the bench, Judge James Robertson who was a partner of yours for many years. Do you remember when you first came to meet and know Judge Robertson?

Mr. Wollenberg: I don't. It was a long time ago. As most people who come to the firm he was an associate for years until he became partner. And I don't remember the date.

Mr. Liss: Did you work much with him?

Mr. Wollenberg: Not very much, no.

Mr. Liss: My recollection is that Judge Robertson had a civil rights background and worked in Mississippi in the Sixties. Do you know any of that background?

Mr. Wollenberg: Yes. It was while he was with the ~~firm~~. He wasn't with the ~~firm~~ when he was down in Mississippi, but the Mississippi episode occurred during his career in the ~~firm~~. I remember that he did quite a lot of work when he was here in representing what was then, I think, called the Automobile Manufacturers Association, on safety issues. And at some point, maybe because he tired of that work or because of idealistic principles, he went off and worked in Mississippi, as you mentioned, for the Lawyers' Committee for Civil Rights. And he moved his family down there and took the physical and other risks that were involved in those days in

pursuing what was not regarded as a terribly acceptable approach in Mississippi. I can't tell you how long he was down there, but I'm sure it was more than a year. Then he came back to the firm.

- Mr. Liss: How was his desire to do this received at the firm?
- Mr. Wollenberg: Oh, everyone admired him, I think, because it was a gutsy thing to do.
- Mr. Liss: And was he welcomed back with open arms, when he came back?
- Mr. Wollenberg: Sure.
- Mr. Liss: From what you did observe, how would you characterize his qualities as a lawyer?
- Mr. Wollenberg: Well, he's bright and hardworking, and he has an ability to cut through the chaff to get to the wheat.
- Mr. Liss: Did he strike you as someone with the types of qualities that you would associate with a potential judge?
- Mr. Wollenberg: Yes. I would anticipate that he would be a very comfortable judge for lawyers to practice before because I think that he would be very clear about what he wanted in terms of keeping cases moving, and, at the same time, he would avoid any appearance of hostility in dealing with the lawyers before him. Again, I haven't seen him in operation in the short time he's been on the court.
- Mr. Liss: What was he like with his partners -- and I'm trying to relate that to how he might be with his fellow judges?
- Mr. Wollenberg: Well, as you mentioned earlier, and I confirmed, I didn't work with him very much, so I'm really going more on reputation that he was an easy person to work with. And under the "civil liberties" heading, I do remember that when there were the serious riots in Washington in 1968, the firm got involved in providing a lot of volunteer lawyers to defend or advise some of the large number of people who ended up in jail as a result of those riots. My recollection is that Jim coordinated all of that very energetically and successfully as an organizer in providing large numbers of volunteers from the firm to help out. He actually got me to do one of the cases; that's why I remember.
- Mr. Liss: Oh. A criminal case?
- Mr. Wollenberg: They were all criminal cases.

Mr. Liss: Did you end up trying it or pleading?

Mr. Wollenberg: It's long ago, but my recollection is that the judge listened to the charges and dismissed the case, not through any magnificent skills of mine, but that he was fairly bored with the whole thing.

Mr. Liss: This is the Superior Court?

Mr. Wollenberg: It must have been.

Mr. Liss: Did Judge Robertson participate in a significant way in firm governance?

Mr. Wollenberg: He may have been at some time on the Executive Committee of the Firm, which in those days had some permanent members and some rotating members. I don't think he was ever on it during the time that I was on it. One thing that I do remember that he did, under the head of governance, was function as a sort of ombudsman for associates one year, which meant that in the endless efforts in the firm to maintain high morale among the associates, I think he was the person who interviewed associates and listened to their complaints and came up with appropriate proposals to improve our practices or hang the associates, as the case might be.

Mr. Liss: Do you recall knowing of his interest in becoming a judge other than immediately before the time he went on the bench.

Mr. Wollenberg: No.

Mr. Liss: When he was in the hunt and then nominated, do you remember anything about the nomination and confirmation process?

Mr. Wollenberg: Not really. The dramatic thing about it was that appointments and confirmations were being held up in those days, and I think he was confirmed in the hundred and eleventh hour after which no one appointed by President Clinton would be confirmed to the bench.

Mr. Liss: This was prior to the November '94 elections.

Mr. Wollenberg: Right, the revolution that occurred.

Mr. Liss: Okay. Well, is there anything else you wanted to add about Judge Robertson before we move on?

Mr. Liss: You had mentioned two other judges with whom you had some acquaintance, and they were Judges Prettyman and Edgerton -- both, obviously, great names in the history of the Court of Appeals. Let's start

with Judge Prettyman. Why don't you tell us first, how you came to know him.

Mr. Wollenberg: My recollection is that I simply had various cases before him, I think going back to 1952 and '53 when I was Assistant General Counsel of the FCC and, therefore, was defending -- or attempting to defend -- FCC decisions before a very skeptical Judge Prettyman.

Mr. Liss: Elaborate on his skeptical nature in those cases.

Mr. Wollenberg: Well, I think he approached FCC decisions that came before him with a feeling that the Commission might not always have dotted the "i's" and crossed the "t's" on required procedures. And the one that I remember most vividly was that there was a provision in the Communications Act which calls, or then did call, in explicit terms for an evidentiary hearing. And I can still remember Judge Prettyman requiring me to read this provision of the act aloud to him.

Mr. Liss: This was in oral argument?

Mr. Wollenberg: So that he was sure that I understood it.

Mr. Liss: You were taking the position that an evidentiary hearing was not required?

Mr. Wollenberg: I was taking the position that the order I was defending, which had refused a hearing, was really okay. I really developed a great deal of respect for Judge Prettyman because, even though he gave lawyers a hard time, he was, basically, very thoughtful and considerate and really listened to lawyers. He had that good combination on the part of a judge of being able to press lawyers, but not turning it into a duel, which some judges do. Such a judge comes in with a preconceived notion and batters the lawyer who's representing the position the judge doesn't want to prevail, so that it's almost as though the judge were trying a case against the lawyer. And Prettyman was never that way.

Mr. Liss: He was searching without being intimidating?

Mr. Wollenberg: Yes. I'd put it that way.

Mr. Liss: Now, you were a pretty young lawyer at that time. When you knew Judge Prettyman was going to be on a panel, did you look forward to it, or did it make you nervous?

Mr. Wollenberg: Well, happily, the policy of the court then (that is not carried out very well now, because if you're clever, you can figure out the panel that sat

yesterday will sit tomorrow) was to conceal the identity of the panel until the drapes were drawn and the panel came in. And I can remember cases where the panel came in, and you'd say "Let's claim sickness" or something. But you didn't have this terrible anticipation because of this judge being on the panel, because you didn't know who it would be.

Mr. Liss: Well, I'll change the question. When you stood up and there he was, what was your reaction, if you remember?

Mr. Wollenberg: Well, I think one tends to judge these things in terms of the judgment that one eventually reached. And the judgment that I eventually reached was highly favorable, but I don't remember whether I felt intimidated by him in the early days.

Mr. Liss: Did your favorable judgment spill over also into your view of his written work?

Mr. Wollenberg: Yes. I thought it was clear, and he knew exactly where he was going.

Mr. Liss: And did you sense he had a particular interest in communications cases?

Mr. Wollenberg: I don't think so. I was working in communications and handling a number of cases, and he had his fair share. I don't know how they assigned cases in those days, whether he had anything to say about whether he got them or not.

Mr. Liss: Did you know Judge Prettyman off the bench?

Mr. Wollenberg: No.

Mr. Liss: So you never had an opportunity to socialize or see him?

Mr. Wollenberg: No.

Mr. Liss: At that time, do you remember any other judges on the bench with whom you were similarly impressed?

Mr. Wollenberg: I can't think of any. I would have to go back and look through the list of judges at that time.

Mr. Liss: But he's clearly one who occurred to you when we spoke before.

Mr. Wollenberg: Right. I remembered him, and I'm sure that I'm influenced by the fact that, in due course, he came to know who I was and remembered other cases when I'd been before him. And I once had the experience when, I

think, he might have been getting a little old -- but, in any event, in **an** oral argument that I had no part in but was sitting in the audience, he raised some question from the bench and wasn't satisfied with the answer that he got from the lawyer and said, "Wollenberg up there probably knows the answer to this question." [Laughter]

Mr. Liss: Do you remember the question?

Mr. Wollenberg: No, but that's when I thought he might be getting a little old. [Laughter] But it was very flattering.

Mr. Liss: That is very flattering. Well, the last judge that you had mentioned was Judge Edgerton. And why don't you tell us first why he came to mind.

Mr. Wollenberg: Well, I think it was simply the impressions that I had as a lawyer practicing in Washington at that time, rather than the kind of individual experience of being before him as I had had with Prettyman. I had the impression of Judge Edgerton as being a very strong-minded judge with principles that he was prepared to carry as **far as** he possibly could and that he had no strong tendencies toward judicial restraint. I don't mean by that that he was favorable to some people and against other people, but I mean I had the impression that he had what might be described as causes he pursued judicially as much as he could. And the one I remember best was that he apparently was a regular rider of public transportation; which I think, at that time, was probably street cars in the city of Washington. And there was a time when the street cars had arranged to provide entertainment for the passengers which included loud music and commercials. I think maybe they put on broadcast station programs. And my recollection was that Judge Edgerton was violently offended by this as a person being forced to listen to this noise and found many innovative reasons why it was illegal.

Mr. Liss: Which were?

Mr. Wollenberg: I couldn't repeat for you the exact analysis. I'm not prepared to say that it was wrong, but I couldn't help but feel that it came more from his resentment at being a captive audience

Mr. Liss: Any other causes that you can remember to which he was particularly devoted?

Mr. Wollenberg: No. I just think that he was very much identified with what might be called general protection of procedural rights and, I think, rights of those accused of crimes.

Mr. Liss: He has had an award named after him by the ACLU of the National Capital Area. Each year there is a Henry Edgerton award given to someone.

Mr. Wollenberg: So the ACLU felt the same way about him.

Mr. Liss: So, obviously, the ACLU feels the same way. Did you ever appear before him, that you can remember?

Mr. Wollenberg: I don't think I did. I may have been on a brief in a case. I don't remember arguing before him. If I did, it would have been only a Stay Motion or something.

Mr. Liss: These impressions, then, come from talking with other lawyers around town and reading opinions?

Mr. Wollenberg: And reading opinions.

Mr. Liss: Right. It sounds a little bit like you're describing characteristics that you might attribute to Judge Wright as well, based on our conversation from last time. Am I off base?

Mr. Wollenberg: No. I think that's a fair statement. And I don't know how long Judge Edgerton was on the bench, but I have the feeling that Judge Wright may have had more opportunity to stress his views in decisions that got a lot of attention. Maybe because he was there longer.

Mr. Liss: Well also because the law was developing in those directions.

Mr. Wollenberg: True.

Mr. Liss: More in Judge Wright's time than in Judge Edgerton's.

Mr. Wollenberg: True.

Mr. Liss: More avenues were opened in that direction.

Mr. Wollenberg: Right.