



JOHN D. ALDOCK, ESQUIRE

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

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The Historical Society of the
District of Columbia Circuit**

**United States Courts
District of Columbia Circuit**



JOHN D. ALDOCK, ESQUIRE

**Interviews conducted by:
Judith S. Feigin, Esquire
April 8, April 14, May 5, May 11, May 16,
May 26, June 3, July 22, 2010**

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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges of the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Oral history interviews are conducted by volunteer attorneys who are trained by the Society.

Indexed transcripts of the oral histories and related documents are available in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C., the Manuscript Division of the Library of Congress, and the library of the Historical Society of the District of Columbia. Both the interviewers and the interviewees have had an opportunity to review and edit the transcripts.

With the permission of the person being interviewed, oral histories are also available on the Internet through the Society's Web site, www.dcchs.org. Audio recordings of most interviews, as well as electronic versions of the transcripts, are in the custody of the Society.

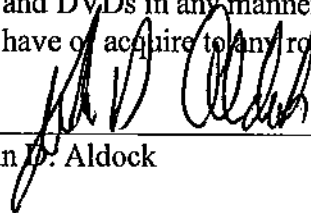
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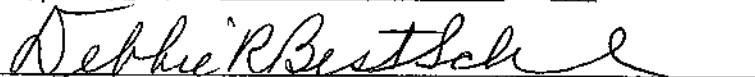
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John D. Aldock

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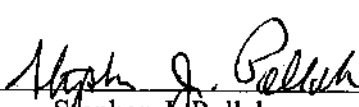


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NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires January 1, 2012

My Commission expires _____

ACCEPTED this 1st day of January, 20 12, by Stephen J. Pollak,
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Stephen J. Pollak

Schedule A

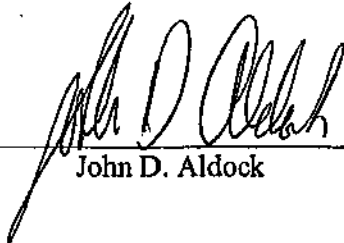
Digital recordings and transcripts resulting from eight (8) interviews of John D. Aldock on the following dates:

<u>Interview</u>	<u>Date</u>	<u>Final Transcript Pages</u>
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Schedule B

The first two sentences of the second paragraph on page 249 of the transcript (interview taken on July 22, 2010), and that portion of the digital recording and DVD relating thereto, shall be closed to all users until January 1, 2022 unless, by written permission, I authorize release at an earlier date.

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John D. Aldock

Historical Society of the District of Columbia Circuit

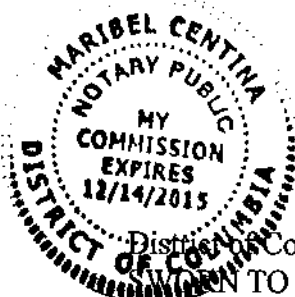
Oral History Agreement of Judith S. Feigin

1. Having agreed to conduct oral history interviews with John D. Aldock for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereafter "the Society"), I, Judith S. Feigin, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the recordings, transcripts and DVDs of interviews, as described in Schedule A hereto, including literary rights and copyrights.

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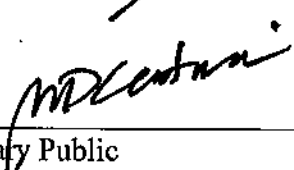
3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.


Judith S. Feigin
11/21/11
Date



District of Columbia: ss

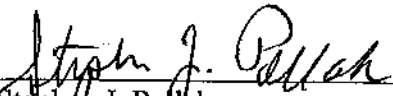
WITNESSED TO AND SUBSCRIBED before me
this _____ day of June, 2008 11.21.2011


Notary Public

My commission expires

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ACCEPTED this 14th day of January 2011
2008, by Stephen J. Pollak, President of the Historical
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Stephen J. Pollak

Schedule A

Digital recordings and transcripts resulting from eight (8) interviews of John D. Aldock on the following dates:

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**ORAL HISTORY OF
JOHN ALDOCK
First Interview
April 8, 2010**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is John Aldock, and the interviewer is Judy Feigin. The interview is taking place in John's office in Washington, DC, on April 8, 2010. This is the first interview.

Ms. Feigin: Good afternoon.

Mr. Aldock: Good afternoon.

Ms. Feigin: Let's just get the framework of time and place, so tell us where and when you were born.

Mr. Aldock: I was born on January 20, 1942, at Doctors' Hospital in Washington, DC.

Ms. Feigin: And did your family live in Washington?

Mr. Aldock: When I was born, they lived in Suitland, Maryland.

Ms. Feigin: Before we get to your immediate family, let's go back a little bit to your ancestors and see how far back that goes and what you know about them.

Mr. Aldock: Not much. I lived with my mother and maternal grandfather for a couple of years during World War II in Silver Spring when my father was in the infantry in the Pacific, probably for two or three years. And then my grandfather died. I never knew either grandmother. They were deceased, I believe, before I was born.

Ms. Feigin: Had your grandparents been born here?

Mr. Aldock: My grandparents were not born here. I think they came from someplace that was either Russia or Poland, depending on what day it was. I believe they came

through Ellis Island. Although I've always meant to check that out, I have not, as yet, done so. I really had no relationship, or memory of a relationship, with grandparents on either side.

Ms. Feigin: Without having a personal relationship, do you know anything about their history, about their coming over, or life before they came over? What they did or anything about them?

Mr. Aldock: I don't. Almost nothing. We really didn't talk about it, which is surprising in hindsight.

Ms. Feigin: Then let's move to the next generation which is your parents. Tell me something about them.

Mr. Aldock: My mother was born in Scranton, Pennsylvania, and grew up in Norfolk, Virginia, and then moved to Washington, DC, before the war. My mother went to college at William & Mary, but I'm not sure if she graduated. I think she left before graduation because of the war.

My father grew up in New York City. He went to CCNY (City College of New York). He took a correspondence course and got a CPA as an accountant. He came to Washington to work at the Civil Aeronautics Board in the early 40s. My father met my mother in DC. They were introduced by my father's cousin who lived here, and they were married here. My father went off to war shortly after I was born in 1942. He served in the Pacific in the Philippines with General

MacArthur. My father told me nobody liked MacArthur, because he left the Philippines and the troops there, including my father, to continue fighting.

Ms. Feigin: Did your father talk about that?

Mr. Aldock: Yes. He was not a big fan of MacArthur, both because MacArthur “deserted” his troops and because of his later insubordination to President Truman. My father was a sergeant in the infantry. The Philippines was a rough theater of the war.

Ms. Feigin: Do you know any stories about how rough it was?

Mr. Aldock: No, he wouldn’t reminisce about the details. He would talk about that “sonofabitch MacArthur,” what a publicity hound MacArthur was, and how MacArthur’s uniform was always impeccable, while all the soldiers wore uniforms covered with dirt. Those were the stories I remember.

Ms. Feigin: Was your mother working during those war years? What was she doing?

Mr. Aldock: Yes. My mother was a legal secretary for a patent lawyer. My parents socialized with the lawyer and his wife. I do not remember his name, but I knew my mother’s boss growing up.

Jumping ahead, my father worked for a long time for the Civil Aeronautics Board (CAB). He rose as high as one could go without being a political appointee. Then my father left and started a business, a transportation consulting firm, mostly for the airline industry. He often testified as an expert witness at CAB hearings on airline routes. All of the small airlines – feeder

airlines – were his clients. These airlines over time merged into the larger airlines, e.g. Ozark, Republic, Mohawk, etc.

Ms. Feigin: When did he leave the agency?

Mr. Aldock: In the late 50s. When Kennedy was elected president in 1960, my father got a call from Kenny O'Donnell, who was the chief White House appointment man. O'Donnell told my father that Kennedy was going to appoint him to be Chairman of the CAB. At the time, my father was at the Aviation Club with some of his clients, and one of them said, "You should hold a press conference right now." My father said, "Why would I do that? Of course not, that would be rude." The client said, "You don't understand Washington. Hold the press conference." My father said, "No, I'm not going to do that." Twenty-four hours later, O'Donnell called back and said, "I don't know how to tell you this, but we went to Sam Rayburn (then the Speaker of the House of Representatives) and it turns out, Mr. Aldock, that you are registered as an Independent voter. Rayburn said, 'If he's a Republican, we get credit. If he's a Democrat, we'd be doing something for one of our own. He's a goddam Independent, so he's worthless. Pick somebody else.'"

Ms. Feigin: [Laughter] Oh, no!

Mr. Aldock: O'Donnell said, "We can't give the chairmanship to you, but we've got a short time frame to pick someone else, so you can tell us whom to pick, and we'll likely go with your choice, because we don't have time to check out anybody else." My father suggested Alan Boyd, who subsequently became the CAB Chairman. My

father stayed with United Research Corporation, the company he had founded. Some of that CAB history got out as part of the lore, and it made my father a very popular person to hire for a CAB matter. He had a successful consulting business for the rest of his life.

My father died very young. He was a smoker and, at age 62, was diagnosed with lung cancer which subsequently metastasized to his brain. My father's health declined quickly, and he died within a year or so of the diagnosis. Shortly before he died, my father had a meeting with his airline industry group in Nashville, Tennessee. He very much wanted to go and make a final speech but was in a wheelchair and couldn't possibly travel alone, so I agreed to go with him. My father got out of his wheelchair and held onto the podium to make his speech which lasted for more than an hour. He was quite eloquent, and you could hear a pin drop. Everyone knew he was dying. The speech focused on the future of the airline industry, particularly for smaller airlines. Essentially he said, "You're being sold a bill of goods on deregulation. You all think you're going to be bought off by the big airlines. You're making a mistake. If you rally the small cities which will lose service, we can defeat deregulation. Deregulation is not going to be good for the public; it's not going to be good for small town America. In the end, it's not going to be good for you. You are being schnookered. Don't buy it. If you fight, we can win."

My father and I were very close. He was very dear to me. I saw him for lunch or dinner once a week during my entire professional life and, when I married and had children, my family saw my parents every weekend.

Ms. Feigin: Was he bitter about the CAB?

Mr. Aldock: No. My father had a saying that I adopted in private practice. The client has a constitutional right to be stupid. He felt the same way about Sam Rayburn.

Ms. Feigin: [Laughter] Tell me something about your mom. Did she continue to work when your dad came back?

Mr. Aldock: She stopped working when my father left the government. I don't remember my mother working after I was a child. In later years, she was a docent at local museums, including the B'nai B'rith museum and the Kreeger Art Museum. She volunteered for a number of things. She played canasta, mahjong and bridge. My parents were members of a square dancing group; that certainly was not my father's idea.

My parents moved from Clearview Place, Silver Spring, where my mother lived during the war with my grandfather, and built a house at the corner of Indian Spring Drive and Wire Avenue, also in Silver Spring. My father designed the house – he saw himself as a little bit of an architect. I lived there until I left for college. The house is still there, and it looks great.

Ms. Feigin: Your parents went to college, as you said. Do you know anything about their college experiences because, obviously, college then and college now is quite different.

Mr. Aldock: CCNY was a different world. My father would say it was the best education you could get, but it was a city school. If you could get in, it was free. The students

were high achievers. There wasn't a lot of going to bars, parties, football games and activities that I and my contemporaries did in college. My father had a whole set of law books that he read even though he never went to law school. He just thought it was useful for him to know about the law. Getting his CPA without an accounting background took considerable work. I considered him an intellectual. He and my mother read a lot, and both were active in public affairs. They were strong Democrats. My father worshipped Adlai Stevenson – I have all of Stevenson's speeches and several biographies. I remember sitting up with my father during the first Eisenhower-Stevenson campaign, and my father kept saying, "It's going to turn." I said, "I'm tired, I want to go to bed." "No, no, it's going to turn. Stevenson is going to win."

Ms. Feigin: That was 1952?

Mr. Aldock: Yes. As we know, it wasn't even close. Then in 1956, my father thought, "Well, OK. Adlai's back." My father's view was that, while Adlai didn't win the first election, surely he would win in 1956. "The public can't be that stupid. They're going to go with Stevenson, because he's the smartest candidate we've ever had." My father was quite interested in politics.

Ms. Feigin: Was he active politically?

Mr. Aldock: My father was very disturbed by the Senator Joe McCarthy "Red Scare" period, but other than giving money, writing some letters, and voting he was not politically active.

Ms. Feigin: And just to complete the college years, do you know anything about your mom's college years or what it was like being at William & Mary in that era?

Mr. Aldock: Not really. My mother was very close to her two sisters, and something about the college years, or her early years at some point, caused these three sisters to change the order of their birth. When my aunt died and my cousin obtained their birth certificates, it turned out that my mother's birthday was not on the day that we always had celebrated and, indeed, the year was wrong too. The order of the sisters in terms of who was oldest turned out to be quite different. They all are deceased, and we never unraveled the plot, but it was pretty intriguing. One of my cousins theorized that my mother was a couple of years older than my father and didn't want that to be known. My wife, Judy, shared that speculation, but it is purely a hypothesis.

Ms. Feigin: Could it be the order in which the women married?

Mr. Aldock: Yes, it could have been. We also had an oddity with my father's last name. His name – which was an Ellis Island name – was originally Oldack. When my father tried to enroll in school, it turned out that his sister had graduated as Aldock, because somebody had inverted the “o” and the “a.” She was getting married and didn't care. [Laughter] So that's how we got our name.

Also, my father had no middle name or middle initial until he was drafted by the U.S. Army. The Army told him that he needed a middle initial, so he picked “I.” That worked well until, at some point, the Army said, “You can't have just an initial. You have to have a name.” The sergeant was not interested

in my father's story that Harry S Truman only had an initial. [Laughter] So "Ivor" became my father's middle name, but it was devised on pain of 50 pushups or KP duty.

Ms. Feigin: Interesting. Let's talk about your childhood with your parents. Was the family – which was not overly political – a religious household?

Mr. Aldock: Not really. My parents were Jewish, and they were married as Jews. We went to synagogue on the High Holy days, but not otherwise. At some point, I was told I was being bar mitzvahed and I memorized a portion of the service in Hebrew, but I didn't understand what it meant. That was not a memorable experience for me, and I did not participate in services after I was bar mitzvahed. My parents continued to go to the High Holy day services, and we celebrated Passover dinner. That was about it. I am not religious in terms of formal religion, although I do consider myself a believer in a supreme power. My daughters were not bat mitzvahed and they had no formal religious training, although I did undertake, as a promise to my mother, to teach them the Jewish holidays and the Old Testament. We had lessons every Sunday at home for quite a few years, and I think they enjoyed it; I certainly did. However, we do not belong to a synagogue.

Ms. Feigin: Let's talk about what it was like growing up in Silver Spring in the late 1940s and 1950s.

Mr. Aldock: It was very nice. It was pleasant. It was pretty laid back. There was little pressure in the public schools. No one sought to be a super achiever. Some people did well; others did less well. No one seemed to care all that much.

Ms. Feigin: Who lived in the neighborhood? Was it a mixed neighborhood ethnically, racially, religiously? What was it?

Mr. Aldock: Well, it was certainly mixed religiously, but there was no real black population at that time in Silver Spring. In high school at Montgomery Blair, there was a scandal when the football coach had a man hired as a janitor because his son was a great quarterback. He was our first African American student. Then we got a few more male black students, but they were usually athletes; I do not recall any black women until maybe my senior year. I would say that, when I was growing up, the neighborhood and at least my high school – I don't know about the other local schools – was at most 10% Jewish. This percentage grew to be 25% by the time that I graduated because of white flight from Wilson and Coolidge high schools in DC to Blair in Silver Spring. At Montgomery Blair, about 50% of the people went to college. At Bethesda-Chevy Chase High School, which Judy attended, it was close to 100%.

My elementary school was probably a more interesting place than my high school. I went to Parkside Elementary in Silver Spring. It was, and I believe still is, in Sligo Creek Park. Parkside had a very unusual principal who eventually was driven out by Senator Joe McCarthy and his crowd because she was controversial. One area of controversy was the principal's view that students should have freedom cards starting in the fourth grade. We were awarded a freedom card by a vote of the students, and there was no teacher veto. The students who received freedom cards were not the goodie-goodies or the cutups, because their classmates wouldn't vote for them. A freedom card entitled us to

leave the classroom at any time there was not a test being given as long as we didn't leave the school grounds. We might be handed a rake when we walked out, but we didn't have to use it. We were to commune with nature and spent a lot of time outside. As a result, I print because I never learned to write in script.

Ms. Feigin: You're with the modern generation.

Mr. Aldock: Some kids took their freedom cards very seriously. Many years later Ben Stein, of TV fame and a Parkside alum, wrote an article for the *Washington Post* on his freedom card: how much it meant to him and how he carried it in his wallet as an adult. Whenever it rained, we'd go outside to build dams and see if they flooded. It was great fun, but a problem developed when we got to junior high. I remember getting up from my desk the first week and starting to walk out of the class. The teacher said, "Where do you think you're going?" [Laughter] I said, "I'm bored; I want to clear my head." Consequently, I was sent directly to the principal's office.

We had safety patrols at Parkside. In tune with the times, the patrols were mostly boys. At the high school level, there was home economics for girls and shop for boys.

Ms. Feigin: The patrols were for traffic on the street?

Mr. Aldock: Crossing the street. That was the most prestigious job in elementary school. Everyone wanted to be a patrol.

My elementary school principal had a special playground built. It was like the JFKennedy playground with poles that you could slide down and ramps of cinder blocks that you could walk up. She enlisted the parents of the students. The idea that the parents would construct the playground and donate the materials was part of Senator Joe McCarthy's view that this woman was a Communist. It was incredible. She had been the principal for about 20 years, but they drove her out. Eventually, her protégé, who was one of my teachers, became the head of the Board of Education in Montgomery County. Many years later, he spoke as if people considered her a saint.

Ms. Feigin: What was her name?

Mr. Aldock: I can't remember.

Ms. Feigin: And what was his name?

Mr. Aldock: Alan Dodd.

Elementary school was idyllic. We were outside half the time. The patrols had a softball team. That also was a big deal. There wasn't much social mixing of boys and girls; we were much less advanced than the kids today. Through elementary school, a boy would have been considered an oddity if the friends he hung out with included girls.

Ms. Feigin: Do you remember what kind of games kids played then?

Mr. Aldock: We only played sports. We would shoot baskets; basketball was very big. Softball also was very popular. I don't think kids played football other than touch football. They played real football in the Catholic schools but not in the public schools. As a result, the public schools always lost those football games in later years. Some boys played hardball in Little League, but I didn't know anybody who played hardball at that age. The focus was on team sports, including track. Very few played tennis or golf. That was considered something the "rich country club set" did.

Ms. Feigin: In elementary school did you play games like marbles and collect baseball cards?

Mr. Aldock: Oh, yes. Marbles weren't so popular, but baseball cards were very big. I had a great collection of cards that my mother later threw away, only to find out that a friend sold his for good money around the time that I went to college.

Ms. Feigin: [Laughter] Did your house get magazines? Do you remember the type of things that came into the house?

Mr. Aldock: We got all the news magazines. My father subscribed to *Time*, *Newsweek*, *US News and World Report*, *Business Week*, and others. We also subscribed to *Life* and a few magazines of that type. My father brought home several papers from work, including the *New York Times* and the *Wall Street Journal*. We had the *Washington Post* delivered to the house. Maybe that's why I became a news junkie as an adult; if I don't read two newspapers a day and watch the news on public television, I feel out of touch.

Ms. Feigin: Did your mom get magazines?

Mr. Aldock: I think *Life*, *Look*, and other such magazines were hers. But I don't recall any other women's magazines or those that were labeled as women's magazines.

Ms. Feigin: Living in Silver Spring, was Washington a place you came to in the early years in elementary school?

Mr. Aldock: Not much. Occasionally, if we were going out to dinner, since the possibilities in Silver Spring were more limited. Not that the choices were so great in DC, but there were more restaurants. To the extent we ate out, we tended to eat at O'Donnell's, a seafood restaurant in Bethesda. Once or twice we ate at Mrs. K's Toll House, which still is located in Silver Spring, although I think you have to have blue hair to eat there now. [Laughter] There was a Chinese restaurant that served chow mein, but it was Chinese-American. Maybe it was in junior high when we were eating out, we would go to the Peking or the Yenching Palace in DC, which were considered exotic Chinese restaurants, because they were frequented by embassy people and had dishes other than chow mein. Sometimes, my father would take us to a steak place downtown.

Ms. Feigin: And we should say there was no Metro then, so how did you get from Silver Spring to DC? Did you have a car?

Mr. Aldock: It took a while. We did have a car, and in summer the drive was hot without air conditioning. I remember my family only had one window air conditioning unit in the house, and it was in a room that I didn't go in. So I grew up without air

conditioning which my children find absolutely astounding. We had a dog, and neither I nor the dog were allowed in half the house. My mother had the view that you didn't use the living room or the dining room for family. [Laughter] They were off-limits, so the house seemed much smaller. I didn't mind, and being an only child didn't bother me either. I couldn't understand what the advantage was to have siblings. My mother asked me once what I would think about a brother or sister and, as she told the story, I put the kabash on that possibility. [Laughter] Apparently it was an open question at the time. [Laughter] I didn't know – for me it was just a question.

Ms. Feigin: What about junior high? Any particular memories?

Mr. Aldock: I went to Eastern Junior High. We discovered girls then but mostly were involved with sports. At Eastern I was a good athlete, in part because I was my full height and weight in the sixth grade. That was a decent size so, in junior high and during my first year in high school, I spent a lot of time doing sports. I played touch football and basketball; we played interschool. I also played in the school band and in a Dixieland band. Junior high was easy; I didn't spend a lot of time on homework.

Ms. Feigin: What instrument did you play?

Mr. Aldock: I played the clarinet and saxophone. My parents encouraged music; they did not play instruments, although my mother played piano as a child. I liked music but, by the end of junior high or early high school, I figured out that I didn't have enough talent to pursue it further. I could play jazz and could read music put in

front of me but, when I was told to play in the key of G and to improvise, I had no idea what to do. That was the end of my music career. My mother sold the saxophone when I went to college. Another bad economic move because it was worth a lot of money. [Laughter] I've been interested in listening to music ever since, particularly jazz.

Ms. Feigin: Was it as segregated as you remember elementary school?

Mr. Aldock: Yes, I don't remember any African Americans. I don't remember anybody whose first language wasn't English. We certainly didn't have what Montgomery County today has: a host of international people. The county schools when my children attended had lots of children of diplomats and IMF, World Bank, and embassy parents. This must have been a later phenomenon, at least for Silver Spring. I didn't know anybody with a foreign background.

Ms. Feigin: And where did you go to high school?

Mr. Aldock: I went to Montgomery Blair, which, at that time, was not a magnet school but just the neighborhood school. I rode my bike in the early years before I turned sixteen. It wasn't that close, but it wasn't that far, either. I participated in a lot of sports the first year. I did JV football, JV basketball, and track. I had stopped growing so I was too small for the football team. I broke some bones tackling and hitting the tackling dummy.

To give you an idea of the county, I do remember one JV football game. Blair was playing Walter Johnson High School, which just had been built. Walter

Johnson was named after the famous Washington baseball pitcher. To get to the school we took a bus over dirt roads for hours. The game was delayed to get the cows off the field. Today, of course, it is a suburban area in North Bethesda. I remember that game because, when the coach sent me in, I wasn't wearing half my pads. I played so infrequently that it never occurred to me to be ready, and I went in there thinking that, if I had to tackle somebody, it was going to be rough. That was the end of my high school football career.

I stayed with track a little longer and was quite successful at it. I could run a very fast 100-yard dash, but I had asthma and, when they tried to move me from a 100-yard runner to the 220- and 440-yard distances, it did not work. I could finish but I would vomit after every race. That seemed hardly worth the effort. I believe my school athletic career ended by my sophomore year of high school.

Ms. Feigin: Do you remember stores, restaurants, Peoples Drug Store? Do you remember them being segregated in any way?

Mr. Aldock: No, but I think they were not segregated because there were no minorities trying to get in. I was a soda jerk on weekends at a pharmacy in Four Corners in Silver Spring. I drove a little jeep to deliver the prescriptions and the ice cream. We also made hamburgers behind the soda counter, probably my first and last effort at cooking.

Ms. Feigin: You delivered to people's homes?

Mr. Aldock: Yes, we delivered to people's homes. I never saw a black person inside or outside, but that particular pharmacy wouldn't have been segregated – I knew the man who owned it; that would not have been his way. I'm not sure the county was tested. I know my wife, Judy, who is two years younger, moved from Alexandria, Virginia, because it was segregated everywhere, and her parents couldn't tolerate that. They pulled her out of school after eighth grade and moved to Maryland. In third grade, Judy was told to stand in the corner because she didn't go to church. In Judy's experience, it felt like attending school in the Deep South. This was Virginia in the 1950s, but I didn't see any of that in Maryland high school.

Ms. Feigin: So you graduated in 1960?

Mr. Aldock: I graduated in 1960. I gave little thought as to where to go to college. My father insisted that I go, and I agreed, but the guidance counselors were not helpful. At Blair, 50% of the students went to college, and half of the college-bound went to the University of Maryland.

Ms. Feigin: Before we get to where you went, I want to ask one more question about the 50s. Rock 'N' Roll, any impact on your life?

Mr. Aldock: Yes. There was a DC version of Philadelphia's *American Bandstand* called the *Milt Grant Show*. I was on the *Milt Grant Show* on television on more than one occasion, and I was a good dancer. We called it the "Jitterbug." The idea that you would dance without holding your partner's hand so that, if you were separated, you could have been dancing with somebody else would have seemed

odd. I still dance the same way. I haven't learned a thing or lost a thing. I never learned the styles like the "Twist" that started when I was in college and have continued today. I thought modern dance was crazy and the hell with it. Music and dancing were very popular, and I still have the hit records and many of them on CDs which I have received for donating money to public television: Frankie Avalon, Buddy Holly, Bill Haley, Roy Orbison, etc.

Ms. Feigin: In those days, of course, before the iPods and all the new technology, everybody walked around with transistor radios.

Mr. Aldock: I had a transistor radio. Listening to sports was popular, and I would listen to the baseball games. The Washington Senators were as bad as the Nationals but they were our team. [Laughter] Football wasn't big; the Redskins mania came later. At least I don't remember those games. We would listen to the transistor radio for baseball and rock music. My parents had no problem with rock music; there were no issues. They didn't like it but didn't care that I was listening to it. They would shake their heads the way parents always do about the music of their children.

Ms. Feigin: "Kids these days!" [Laughter] How did it come to be that you went to college where you went?

Mr. Aldock: I looked through a lot of catalogues. I came to the conclusion that it should be a coed school with a student body numbering 3,000 to 7,000. More than 7,000 seemed like a lot of people even though I went to a big high school. Schools of

less than a couple of thousand seemed too small. There weren't many schools that fit that profile.

Ms. Feigin: We should say, because I think the younger generation may not know, that most of the Ivies were all male.

Mr. Aldock: Yes, there were few coed schools in the Northeast. While I had very good grades, I had mediocre SATs. I was active in my class. One of the schools I applied to was Cornell.

Ms. Feigin: That was a coed Ivy.

Mr. Aldock: Also, I applied to Stanford and Northwestern. I didn't get into Stanford, and my parents, I think, weren't interested in Stanford because it was too distant. I'd never been far from Maryland.

Ms. Feigin: So not much travel when you were growing up?

Mr. Aldock: We went to Vermont on vacation, New York, and maybe to Florida one time. I went to several summer camps in New England and worked as a waiter. Card playing was the main pastime for the waiters. Apart from camp, we also played a lot of poker and learned to be quite adept at it. We played with other students who were wealthy but weren't good, and it paid.

Ms. Feigin: In college?

Mr. Aldock: No, in high school. We would play weekly within our own social group, but we also would back one of our group to play in games with kids who had plenty of money.

Ms. Feigin: Where would you find the rich kids?

Mr. Aldock: There were some well-off folks in Bethesda.

Ms. Feigin: Back to college.

Mr. Aldock: I didn't get into Stanford; I was accepted by Cornell, Michigan, and Wisconsin, but they were too big. So I went to Northwestern. I had never been to Chicago and didn't know anybody there. Some classmates from my high school went to Duke, which was popular as was Wisconsin. A few went to the Ivies. Others went to small New England schools. When I went to Northwestern, it was my first trip west of West Virginia.

Ms. Feigin: You were there at an incredibly tumultuous time in the country's history. First thing was the election in 1960.

Mr. Aldock: My father was a bit nervous about John Kennedy. He did not like Joe Kennedy Sr; he thought Joe was pro-Nazi and corrupt, so he was worried about the son. Kennedy was very articulate and charismatic. My father, however, still wanted Adlai Stevenson to run again even though he knew that wasn't going to happen. My parents supported Kennedy but not with enthusiasm. I was more excited. I didn't know much about Joe Kennedy Sr, and John Kennedy looked great to me after eight years of Eisenhower.

Ms. Feigin: Was it a big deal on campus?

Mr. Aldock: It was a big deal on campus, but the student body at Northwestern in those days was both conservative and apolitical. I considered myself middle-of-the-road – a relatively conservative Democrat – but most students at Northwestern were the children of Midwest Republicans. I remember a history professor who basically said that Franklin Roosevelt was a Communist which was unbelievable! Generally, we had good professors, but he was an exception. The students were not wrapped up in the 1960 election and also not that focused on the civil rights issues of the time. There was a minority group who followed all of this, but I don't think it was the majority.

Ms. Feigin: Was college well integrated?

Mr. Aldock: College was well integrated for athletics. Northwestern had Division I sports teams and therefore needed African Americans to be competitive, but you were hard pressed to find more than a few African American women. All of the athletes were on scholarships. We did have a decent percentage of foreign students, including a handful of Africans and others of color. The sports teams at Northwestern found it difficult to compete with the larger state schools, although Northwestern did have a couple of good years with Ara Parseghian as the football coach. He beat Notre Dame twice, which is the reason Notre Dame later hired him as their coach.

The fraternity dominance at college came as a surprise to me, which shows how much research I had done on the college I was going to. [Laughter]

There were fraternities and sororities which Jews could not join. That was a shock to me. I never had encountered anything like that and I was not ready for it. I went through rush week and met some nice guys who asked me to join their fraternity. I accepted, but the next day they said, "Oh, my goodness, we didn't realize that you were Jewish. We can't take you." I remember calling home and telling my father, "I picked the wrong school. Can I leave now?" He said, "Well, I think you've got to stay a while." [Laughter]

Ms. Feigin: So that was your first real brush with anti-Semitism?

Mr. Aldock: Yes. I had heard about anti-Semitism in high school, but it never had any real consequence for me. I just thought that that guy was a boor and moved on. But it was the first time I had experienced it personally. I didn't care that much about the specific fraternity; I just didn't like the idea of being rejected.

Ms. Feigin: Did you join another fraternity?

Mr. Aldock: I eventually joined another one that was largely Jewish and had the only African American in the fraternity system who was not a member of the all-African American fraternity. During my third year, I became president of the Intra-Fraternity Council. At a Greek school like Northwestern, it was second to being student body president. One year ahead of me, our student body president was Dick Gephardt, former majority leader of the House of Representatives (1989-1995). I am not sure why I ran for the office except that I thought I could win. Also, I was offended by the hazing, which wasn't terrible but was stupid. I ran on the ticket of abolishing fraternity hazing, so I was the faculty candidate if nothing

else. We actually were largely successful at cutting it out the year I was president. In my final year, I moved off campus with a friend and essentially dropped fraternity activities.

My girlfriend through much of college belonged to Kappa Kappa Gamma (KKG). She was the social chairman, and her sorority would arrange dinner dances with my fraternity. The national of KKG brought pressure on her to stop having social events with a largely Jewish fraternity.

Ms. Feigin: Because her sorority wasn't Jewish?

Mr. Aldock: Yes. We all thought it was amusing. None of the students took it seriously.

Although Northwestern was not political, Kennedy's assassination was a major event. Most of the students were children of upper-class Republican business executives, but the death of Kennedy moved them.

Ms. Feigin: How so?

Mr. Aldock: I don't know. Perhaps because he was so young and charming, Kennedy's death was traumatic, while the deaths in the civil rights movement of people they did not "know" were not.

During my college years there was a whole culture of young college students going south to protest segregation. Nobody from Northwestern that I was aware of was participating. Students were into the folk songs and protest music but not really involved in the movement itself.

Going to Chicago was part of our nightlife as much as events that were happening on campus. Everybody was into alcohol even though it was then a dry campus. We had to go into Chicago or keep it hidden in Evanston. We basically went to bars in the city that would serve us. We went to Second City, which was the predecessor to “Saturday Night Live”. We enjoyed Unos and Dues deep dish pizza which, for me, was a great eating experience.

I made life-long friends at Northwestern. My freshman dormitory hall housed about twelve students. Six of them were on full, non-need based scholarships. They were bright guys. I was not one of them. While we were in different fraternities and were active in different things, we kept in touch during those four years and have continued our friendships during the past 50 years.

After graduation we wrote letters to each other every Christmas. We would Xerox and then mail them, because there was no e-mail. Today, we e-mail and also get together with spouses for a long weekend every year or two at some nice venue. This September we are meeting in Asheville, NC.

Even though all of the people in the group are from different backgrounds, we are very close. One is a Mormon, who runs a mutual fund in Salt Lake City, Utah. The others include a professor at Boalt Law School, a high-tech entrepreneur who works out of his house in upstate New York, a retired business professor, a financial adviser, a former GE labor executive, and a couple of lawyers. We had a favorite professor join us for a few of the early reunions. I’ve kept all of the annual letters which are interesting to read as a reflection of the

changes in our lives. We all were going to be millionaires or president at the beginning. Then people got married and had children, and the letters focused on family. There was also a period when satire and humor dominated the letters. Now, everybody is thinking and writing about what they are going to do after retirement.

Ms. Feigin: Before we leave college, what did you major in?

Mr. Aldock: Northwestern at the time – not anymore – had an undergraduate business school, and I thought that made practical sense. Since I wasn't sure, I enrolled in the undergraduate business school but also majored in literature. I had read a bit so I thought I was pretty good in literature. But I encountered a freshman English teacher who asked, "Who's read this? Who's read that? Who's read this other book?" The other students' hands were going up, but I hadn't read any of the books that she mentioned. [Laughter] She noticed that I hadn't raised my hand so she assigned me a reading list. As a result, during my college years I read from Jane Austen to Emile Zola. I became very well-read. I also took courses in European literature. Before college I never had heard of Camus, Proust, Mann, Kafka, Malraux, or Gide. I really enjoyed those classes.

I had a favorite professor named Gene Lavengood, who taught business ethics. He was the one who came to several of our reunions. In later years, Professor Lavengood used to give fundraising lectures for Northwestern entitled "Did JP Morgan Go To Heaven?" [Laughter] I think he was the biographer of Wright Patman. Lavengood was a delight.

Ms. Feigin: When you graduated, the Vietnam War was raging. Was that any part of the college experience?

Mr. Aldock: No. It was very minor in college. It became huge in law school, particularly when students started being drafted out of my class. That focused our attention. But in college it was less of an issue, even with me, and I was more political than most.

Ms. Feigin: Did you work summer jobs?

Mr. Aldock: I worked every summer. I was a soda jerk at a pharmacy in the early days. I sold sewing machines in Anacostia during my first year in high school; I was on commission and made a lot of money. It made my parents laugh that I was a salesman selling sewing machines, since I couldn't sew on a button.

Ms. Feigin: Was this a door-to-door thing?

Mr. Aldock: Door-to-door, but there were leads. The customers had expressed some interest. Almost all the neighborhoods I was assigned were in the black community. I'm not a great driver, so the fact that I found my way around was remarkable. Then I worked several summers for Senator Hubert H. Humphrey.

Ms. Feigin: Tell me about that.

Mr. Aldock: I worked for Humphrey during college and law school. In 1963 during my junior year of college, I went abroad for the first time. That was a significant event. There was an organization called AIESEC, which is a French abbreviation. It still

exists and is an exchange program for business students. At the time, American students got jobs in Europe, and Europeans got jobs in the United States. Several of my friends applied, so I signed up. I was sent to Rotterdam in the Netherlands.

Ms. Feigin: This is during the academic year or summer?

Mr. Aldock: Summer of my junior year in college. This was my first trip abroad. I arrived in Rotterdam on a Sunday. I had the name of somebody to meet but, of course, the school was closed and nobody was there. I met a Dutch student who took pity on me and took me out drinking all night. I got awfully sick. Monday, somebody who recognized my name showed me to my housing.

I worked for The Holland American Steamship Line. I would take a ferry out to the offices which were in the middle of the port. The company had sponsored a Dutch student who got a job in Chicago, and I got the job there. It was not a serious job, and I had no real duties; I was supposed to observe and have a good time.

I did have one task. The Holland American Line provided ships to bring U.S. American Field Service students to Europe. All the high school students who were going to Europe would come over on an old World War II troop transport ship. They would arrive in the port in Rotterdam, and I would be in charge of the group meeting them. I had a megaphone and a carnation. I would supervise a Dixieland band and Dutch students who wore carnations and carried their bags. When the U.S. students got off the boat I would say, "How about those Yankees?" or whatever. [Laughter] The kids would say, "The Dutch are

unbelievable. He sounds just like an American. He's absolutely fluent."

[Laughter] Since there was only one boat arriving every other week, my boss suggested I travel every week to a new city. I essentially traveled for three months. On several of these trips, I joined other Northwestern AIESEC students.

We took one trip to East Berlin, where we ran out of gas on the autobahn and had to be pushed through Checkpoint Charlie. That experience was memorable. Although the guards thought it was pretty funny, we didn't. That week we saw people get shot trying to climb over the Berlin Wall. We heard Willy Brandt give a speech that was interrupted by gunfire while we hid under a car.

Ms. Feigin: Did you have any trouble getting into East Berlin?

Mr. Aldock: We were told that it was a bad idea although, if we went only to certain places, didn't stay overnight, and had the right currency, it was plausible but stupid. So we went. When we ran out of gas on the East side, we were thinking maybe they were right.

Ms. Feigin: We should say that Willy Brandt was the mayor of West Berlin at that time.

Mr. Aldock: He was. I remember leaving Vienna and chasing some French nurses. We eventually lost them and arrived at a border town between Austria and Yugoslavia in the middle of nowhere. The guard was asleep but, when he woke up, we were detained there for quite a while. It was scary since the guard did not speak English and probably suspected that we were spies.

Ms. Feigin: Again, for people who may not realize, Yugoslavia was then behind the Iron Curtain.

Mr. Aldock: Yes. It was scenic and cheap and friendly to Americans and a wonderful country to visit. Judy and I went to Greece and Yugoslavia for our honeymoon. Those three months addicted me to travel. Since 1963 I've taken trips abroad at least once a year: first alone, then with Judy, and then with Judy and the children from a very early age. We still travel every year. In 2010 it will be to Egypt and Jordan, and 2011 will be our second trip to India.

Ms. Feigin: What did you do the summer after your first trip abroad?

Mr. Aldock: I think I worked in Hubert Humphrey's office.

Ms. Feigin: What office did Humphrey hold then?

Mr. Aldock: He was a senator. I went first to Senator Eugene McCarthy's office, because somebody I knew had an "in" there. McCarthy's aide interviewed me and said he did not have an opening, but Hubert might. At that point, McCarthy and Humphrey were pretty friendly, unlike the split between them later over the Vietnam War. I got a job with Humphrey as a gofer, and I kept getting hired again and again.

Ms. Feigin: This was a summer job?

Mr. Aldock: Yes.

Ms. Feigin: And when you say you were hired again each summer, you would go back?

Mr. Aldock: Yes. Each summer until, if we jump ahead, I ended up with Humphrey in the '68 election. That's because I had the prior history that allowed that to happen. I had worked for him at least three summers in college and law school.

Ms. Feigin: Can you tell us anything about him?

Mr. Aldock: Humphrey was a great man. He talked too much and was too loyal, but he was a great politician. Humphrey would keep a person on his staff despite an alcohol problem; he just didn't want to fire anybody. That was a fault, but those are good traits. He was a very caring man and a public servant of the highest order. He was smart and public spirited. Unfortunately, we do not have people from either party of his quality today in the United States Senate. John Kennedy stole the West Virginia primary in 1960 from Humphrey, and then Lyndon Johnson destroyed Humphrey's candidacy in '68. But for those events, Humphrey would have been president and he would have been a good president.

Humphrey was a natural politician. I remember my mother was in a crowd at a Humphrey political rally. It was clear she was going to go up and talk to Humphrey and say, "Of course, you remember my son," which, of course, he did not. But Humphrey had the knack of knowing that this woman was staring at him and had something to say. So he walked down to her and said, "Good to see you." She said, "You remember my son?" Humphrey said "Of course I do, a great young man." [Laughter] As far as my mother was concerned Humphrey and I were best friends, even though he had no idea who I was.

Ms. Feigin: Do you have any memory of what the Senate itself was like in those days?

Mr. Aldock: Well, the Senate was packed with giants of both parties. You had Jake Javits, Fulbright, Proxmire, Russell, and Moynihan. These were serious people of stature. Today, we have a bunch of pygmies.

Ms. Feigin: And when you say men —

Mr. Aldock: Yes, there were no women.

Ms. Feigin: You worked for him through college and then —

Mr. Aldock: While in law school I had one legal job, and the others were with Humphrey. My first year in law school I worked for one of my father's friends, Ray Rasenberger, who was a CAB attorney. The DC firm was Scoutt & Rasenberger. They were terrific lawyers and great guys. While both have retired, I believe the firm still exists. I think I worked for Humphrey my second and third years.

Ms. Feigin: Tell us about your choice of law school and how it came to be.

Mr. Aldock: I gave a little bit more thought to law school than I had given to college. I had very good grades and mediocre LSATs. Not bad but not good enough for Harvard, Yale, or Stanford, which I perceived to be the best schools at the time. I was competitive at the next level: Columbia, Pennsylvania, and Michigan. I wasn't interested in a DC school. That was out of the question. When I got into the University of Pennsylvania, I accepted even though I had never been to Philadelphia.

Ms. Feigin: Just to back up for one minute, we should say that the draft was going on then, correct? The war?

Mr. Aldock: Yes, the draft was going on but, for my first year in law school, they were honoring educational deferments. That soon changed.

Ms. Feigin: Not continuing academically was not really an option in terms of the draft, was it?

Mr. Aldock: Right, but I didn't go to law school for that reason. I always was going to go to graduate school. In those days, students didn't take off time between college and graduate school. I was going to get a graduate degree, and I already had an undergraduate business degree. What else was I going to do but go to law school; I was not going to medical school or to become a professor of English literature.

Actually, for a brief moment I thought about being a writer. While at Northwestern, I had a tutorial with Bergen Evans, a well-known professor who had a TV show at the time. It was one of these great courses where the student meets with the professor every week and talks about what to read, reads the book, and then returns to talk to him about impressions of the book; each week he suggests another book. If I liked an author, Evans would give me a book I had never heard of and say, "This one is better." I remember telling him I might be interested in being a writer of fiction. Evans said to me, "You don't have much time to think about that." I asked why. Evans replied, "You'd better drop out of school now and start driving a milk truck. If you get any more education, you won't be able to write anything. [Laughter] You'll sound like all the people you

read. If you think you're going to go to graduate school and then write, forget it.”
So, like my music career, my literature career ended there.

I subsequently took a course called “Law and Politics” with Professor Rosenblum, who also taught at the Northwestern University Law School. The course was taught at the professor’s house, and I enjoyed it. My father was pushing law school. His view was that, since I had a business degree, an MBA made no sense, and I should go to law school.

Ms. Feigin: So you applied to?

Mr. Aldock: I don’t recall but at least Michigan, Columbia, and Pennsylvania.

Ms. Feigin: And why did you choose Pennsylvania?

Mr. Aldock: I think it was the highest-rated law school that accepted me. I didn’t know anything about Philadelphia. It was smaller than Michigan, and I’d been in the Midwest. So I thought I might as well go East and probably did not give it that much thought at the time.

Ms. Feigin: And by the time you got there, there was the war issue on campuses, I think. Was that an issue at Penn?

Mr. Aldock: Yes, very much so. The students came from mostly East Coast schools where political consciousness was much greater than at Northwestern. The first year all we did was work. The idea was to make the Law Review and, in those days, the

Law Review was the top 20 students by grades. Everybody worked hard and it was very competitive, but I got lucky and made the Law Review.

Ms. Feigin: Before we get to the Law Review, tell me about your class. Were there women?

Mr. Aldock: There were four women in a class of several hundred. They were considered oddities. The women were not crusaders. They were quite laid back and less competitive but they all did well. They probably were more qualified than the men. There were two African Americans. I didn't know anybody who spoke another language as a native language.

Ms. Feigin: What about the faculty?

Mr. Aldock: The faculty were all white males, not a single woman. It was a reflection of the times that nobody thought it was odd.

Ms. Feigin: What about Law Review?

Mr. Aldock: The rule was that we had to write a long note and a short comment for the Law Review. It soon became clear to me that the Law Review experience was going to be miserable. We all were going to write something obscure that nobody would read. We were going to obsess over footnotes and how to do the Blue Book citations. I decided to meet my obligations and move on. I picked as my note topic, "Due Process and the Selective Service System." It was a mediocre piece of work but became a best seller. [Laughter] I got calls from people that I'd known years ago asking whether there was anything in the article that would get them out of the draft.

Ms. Feigin: So this article was published?

Mr. Aldock: Yes, it was published. I have a copy. Nobody else does. [Laughter] But it was a big seller at the time. All of my fellow students were trying to figure out our game plan for dealing with the draft, just in case. Some of us took the exam to be Navy officers. Several of us knew we couldn't pass the eye test. If we wore glasses or contact lenses we had to be able to pass the test uncorrected, so we memorized the eye chart and qualified. That was our fall-back. Unlike conservative Northwestern, Penn was antiwar, like most places by then in terms of our age group.

Ms. Feigin: And were you involved in the antiwar movement?

Mr. Aldock: Only intellectually. I knew I didn't want to go. It seemed like the wrong war but, at that point in time, I wasn't 100% sure. I read a lot about both sides. On balance, it seemed like the wrong war, but I didn't think it was a plot to put us into a war we shouldn't have been in and I didn't know at the time that the Gulf of Tonkin incident had been trumped up. We certainly did not appreciate at that time how big a mistake the war would become.

I was pretty bored with law school by the second year as most of my classmates were. The third year of law school is, in my view, unnecessary, and probably there for economic reasons. In my last year, I hooked up with a professor named Tony Amsterdam. He was at the time the brightest man I had ever met and maybe he still is. Professor Amsterdam was very young, probably not much older than we were. He had published French poetry, graduated first in

his class in law school, and clerked for Justice Frankfurter. He ran a course where we spent every Friday or Saturday night, or both if you could handle it, driving around in police cars. We would go all night from 9:00 p.m. to 8:00 a.m. the next morning. The law school had an arrangement with the police department that the students weren't allowed to testify unless we were subpoenaed, and we would not talk about anything we saw except in the class. The police department made that demand as a condition of allowing us to be in the police cars. I'm sure they assigned us the very best cops they had. We would go into neighborhoods where husbands were beating their wives. Since we wore ties, everybody would say, "He's a detective." [Laughter] Occasionally, the police would say, "Under the seat, kid!" [Laughter] It was fascinating. I'd never witnessed urban violence, and there were incidents every single night. Mostly domestic or neighbors; some of it was drugs.

Ms. Feigin: And did this course impact your career choices?

Mr. Aldock: As part of the course, we also worked for the Public Defender. I was not enamored of the Public Defender's Office. Virtually all of our clients were clearly guilty. We nevertheless had to come up with arguments. It was very creative, but ultimately I found it depressing.

In some ways I think it made me more interested in being a prosecutor later, although at the time I wasn't thinking in those terms. I was thinking about not going to Vietnam. I graduated without being drafted. There was no lottery yet, but it was imminent. I was under 26 and single and from Silver Spring,

Maryland, where there were no enlistments. I applied for a university scholarship to Oxford in the UK in political science, philosophy, and economics (PP&E) and I got it. My draft board said, “You’re switching fields. You’re out of law. Forget it.” I then researched and found that the Maxwell School at Syracuse University had a program for law students to work on revisions to the Ethiopian constitution. I reasoned, “It’s law.” My draft board thought that was very funny. [Laughter] “Yeah, sure kid. Forget it.” I was worried that this wasn’t going well, so I applied for judicial clerkships. My choice was between Judge Leventhal, which would have been the more prestigious clerkship because he was a Court of Appeals judge on the DC Circuit, and Judge Youngdahl on the DC District Court. Leventhal was a great intellectual and I liked him a lot. Humphrey had suggested Youngdahl, who had been a Republican governor of Minnesota and was a giant of a man. In the end, I thought that an appellate clerkship was too much like Law Review. The district court clerkship seemed more real like driving around in police cars. My contemporaries thought I was nuts. In the back of my mind I assumed I was going to be drafted anyway. The Youngdahl clerkship turned out to be a great experience.

Ms. Feigin: I think we’ll stop now, do the clerkship next time and go on with your legal career. Thank you so very much.

Mr. Aldock: Thank you.

**ORAL HISTORY OF
JOHN ALDOCK
Second Interview
April 14, 2010**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is John Aldock, and the interviewer is Judy Feigin. The interview is taking place in John's office in Washington, DC, on April 14, 2010. This is the second interview.

Ms. Feigin: When we left off, I think you were just beginning your clerkship. Do you want to pick up from that point and tell us how that went?

Mr. Aldock: I accepted the clerkship with Judge Luther Youngdahl, who had an interesting history that intersected somewhat with mine. Youngdahl had been the Republican governor of Minnesota at the time Hubert Humphrey was the mayor of Minneapolis. Humphrey wanted to run for the Senate but couldn't beat Youngdahl if Youngdahl also ran for the Senate, because Youngdahl was very popular, looked like God in the Sistine Chapel, and his brother was head of the Lutheran Church of Minnesota. Humphrey told Truman that, if Truman wanted the Senate seat for a Democrat, he had to get Youngdahl out of Minnesota. There was a rumor that Youngdahl's doctors were telling him that he should do something more restful – like a federal judgeship – for his health. Humphrey told Truman that Youngdahl would be a great judge and that he couldn't figure out why Youngdahl was a Republican. [Laughter] Truman purportedly said, "Although this is a man of stature, I've got no Supreme Court vacancies; all I've got is a district court judgeship in the District of Columbia, but I'll promise him

that I'll try to move him up." Youngdahl became a district judge in DC and Humphrey became a Senator.

Before I got to the clerkship, that was the limit of Youngdahl's judicial promotion because, in his early years, the Owen Lattimore case was brought before Youngdahl. Owen Lattimore was a China expert, and he was the only State Department employee that Senator Joe McCarthy claimed was a Soviet spy. A case against Lattimore alleging perjury before a Senate committee was brought in 1952 before Youngdahl. The judge dismissed the main counts of the indictment. It went up on appeal, the DC Circuit split with an evenly divided court, and therefore the case went back down to Youngdahl.

Ms. Feigin: How did it have an evenly divided appellate court?

Mr. Aldock: Because somebody was recused.

Leo Rover, the then US Attorney, came before Youngdahl and asked him to recuse himself because the judge's opinion to throw out the case was strong. Youngdahl threw Rover out of court. Eventually, the Court of Appeals affirmed Youngdahl, and the case never proceeded against Lattimore. Of course, as far as the Republicans were concerned, Youngdahl was not going to a higher court.

Youngdahl was a very good district judge and, since I had been working for Humphrey, I thought a Youngdahl clerkship might be interesting and I wanted to clerk in DC. I also had interviewed Judge Leventhal and, while I thought that

was a great clerkship, I felt an appeals court clerkship was like Law Review, and I hated Law Review.

Leventhal was a great judge and a great man. I appeared before the DC Circuit many times. Leventhal was probably my second favorite of the judges on that court with Judge McGowan my most favorite. They both were intellectual giants. In any event, I accepted the clerkship with Youngdahl but told him I thought it was unlikely that I would finish the clerkship, because I thought I'd be drafted. Youngdahl told me not to worry.

Ms. Feigin: Why did he say not to worry?

Mr. Aldock: It was quite amazing. At that point, men who were under 26, single, and not in school were being drafted. Clerkships didn't count; I had friends who were drafted out of clerkships. If you were drafted out of a clerkship, you were offered a deal by the Army. You could go in the Army as a foot soldier in Vietnam or you could sign up for four years in Army JAG. I was hoping not to have that choice. One day Youngdahl came into my office and said, "I want to show you a letter." It was addressed to General Lewis B. Hershey, then head of the Selective Service. It was written to Hershey by his first name. I knew that General Hershey lived in Youngdahl's building, the Cathedral Towers in DC, and that Youngdahl sometimes swam with Hershey in the mornings. The letter said something like, "I'm a senior enough judge who could sit on the criminal side or on the civil side. If Silver Spring is unwise enough to draft my law clerk, I will not sit on criminal cases, and crime in Silver Spring will rise."

Ms. Feigin: [Laughter]

Mr. Aldock: I said, “Very funny, Judge. Great joke.” Youngdahl said, “What joke? I sent the letter.” [Laughter]. I reached my 26th birthday and never heard from my draft board again. Luck or the letter? I never will know. [Laughter]

So I clerked for Judge Youngdahl. It was a great job. I was in court every day. The judge would pass me notes on his thoughts about the advocate who was before him at the time. “This guy doesn’t know what he’s doing” or “This one’s good; you can learn something” or “If he doesn’t shut up, I’m going to hold him in contempt.” Judge Youngdahl would decide the criminal motions on the equities. Many of the cases were criminal, and many were Fourth or Sixth Amendment issues, e.g. lineup issues and search and seizure issues. The judge would go back into chambers and say, “The test is did the police act reasonably?” For Youngdahl that was the issue. He would decide the case on that basis and then ask me to find the supporting case law. I actually don’t think that was a bad way to decide those type of issues. Youngdahl said, “If you find cases that make it impossible for me to do what I want to do, let me know. Otherwise, I thought the police acted reasonably or I don’t think they should have done it.” That was the way the judge decided the cases. I don’t believe he was reversed during my clerkship on any criminal case we had.

Ms. Feigin: Were you the sole law clerk?

Mr. Aldock: Yes. Many of my friends today were law clerks then with other judges. Paul Friedman, now a federal judge, was a law clerk for Judge Robinson. Bob Higgins

was a law clerk for Judge Jones. Bob Watkins was clerking for Judge Bryant at the time. I met all the clerks and liked them, and we used to hang out together. After sitting in the courtroom every day and watching these lawyers, it did not take long for most of us to conclude that “we can do this.” So you were motivated to be a trial lawyer on the grounds that you had learned something about the craft, you were comfortable with it, and it looked like fun. All the clerks I mentioned became Assistant United States Attorneys (AUSA) and trial lawyers.

Ms. Feigin: Really! By the way, all the ones you mentioned were male. Were there any female law clerks in those days?

Mr. Aldock: There were very few female law clerks and very few female District Court judges. I think then there were two female judges. Burnita Matthews would have been the first. June Green would have been the second. I appeared often before Judge Green. She told stories about coming to the bar and no law firm would hire her. When Judge Green tried to use the library in the courthouse, she was told women were not allowed. I think June Green was the only judge who had female clerks at that point. Subsequently, Judge Gasch had female clerks and, of course, others did as well.

Ms. Feigin: Are we talking only about the District Court now?

Mr. Aldock: I am talking about the District Court, but I don’t recall a female judge on the Court of Appeals. I’m not positive but I don’t think there was one. Were there women law clerks? I don’t remember any. This was 1967-68. Life changed

dramatically for women lawyers within a year because of the Vietnam War. My law school class had four women and, within a few years, classes were 30, 40, and 50% women. It had to have been during the late 1960s and early 1970s when this shift occurred. In part, I think because the men were being drafted. That was the catalyst for the change. Then, when women were coming out of law school in those numbers, the pressure on the judges, whatever their views, was to get with the program and take the best students. Jumping ahead, when I was with the US Attorney's Office, there was a growing number of women law clerks.

In any event, I clerked for Judge Youngdahl. I was supposed to work until September, but in June the judge said, "This is your last day." I thought, This is not good. I'm getting fired. [Laughter] I inquired further. The judge said, "I've been thinking that I'm not going to be that active this summer. I'm going to take some time off. While I am a Republican, my party is going down the tubes. I can't stand Nixon. I've talked to Hubert. He is running for president. You should end your clerkship early and join the campaign tomorrow." And I did.

I appeared at Humphrey's election headquarters here in DC and was assigned to a group of terrific people headed by Robert R. Nathan, who had held major economic positions during World War II and had an influential consulting firm in DC. Nathan was in charge of domestic issues for the 1968 campaign. His deputies were Stuart Eizenstat, who had come out of the Johnson White House, and David Birenbaum, who later became a Deputy Ambassador to the United Nations. There also were a group of very senior people on the foreign affairs side, including George Ball and Zbigniew Brzezinski; we were the domestic side.

Our views on the Vietnam War were not solicited, and we had nothing to do with the war issues.

We divided the work into various subjects. I had “crime,” “cities,” “race,” and a variety of other issues. The game plan was to create a task force of very eminent experts on each subject – to pick the five or so best people on each subject. Out of the task forces, we would get ideas for Humphrey to use in speeches and policy positions. In any event, it would look good to be able to say that the task forces were advising the candidate on these matters. As a result, I met terrific people, including James Q. Wilson of MIT and Henry Ruth of subsequent Watergate fame who worked on the crime task force. While the Vietnam War was the main issue, crime probably was the second most important issue in the 1968 election. On the cities task force, we had former Secretary of Labor Willard Wirtz and several people from the Ford Foundation. The task force on race was composed of very prominent academics.

Ms. Feigin: Kenneth Clark? Would he have been on?

Mr. Aldock: Kenneth Clark, yes. It was very interesting and great fun, but there were a couple of depressing things. On the housing task force I couldn’t get any ideas, because all the members kept saying that everything was either politically impossible or the cost was prohibitive. Just to get the ball rolling, I asked the members to tell me what they would do if neither cost nor politics was a problem. Amazingly, they still didn’t have any ideas. How could that be? So we never wrote anything

useful about housing, but we did get some great ideas out of several of the other task forces.

On the foreign affairs front, there was a story I heard from very reliable people that, during the campaign, Humphrey was told by Joe Califano (who was in the White House) that President Johnson knew that Humphrey was considering the so-called “Peace Plank” on the Vietnam War issue that was pending before the Democratic Convention. Califano warned Humphrey that, if he endorsed that position, Johnson would appear on national TV and call Humphrey a traitor. While some of us thought that would get Humphrey elected, Humphrey decided not to endorse the “Peace Plank.” I’ve looked back at the Peace Plank versus what was then the United States Government’s position, and they are not all that different. I guess that symbolically they were burning issues, and therefore the actual words were not so important. In any event, Humphrey didn’t differentiate himself from President Johnson on the war until very late in the campaign, and then it was too late. The election was very close, and we all flew to Minneapolis on election night. We thought Humphrey was going to win. Even by midnight we thought we might have had it, but when I woke up – I’d probably had too much to drink and not much sleep – we had lost. I do think that with another week or so Humphrey would have been victorious.

Ms. Feigin: The younger generations won’t understand that you could go to sleep and not know, because that doesn’t happen anymore. Can you explain a little bit what election night was like and how the returns came in?

Mr. Aldock: It was very exciting. The returns would come in, precinct by precinct, and nobody would call the election. So you just had precinct totals. Humphrey had his own people who would try to interpret the data. I don't think the TV anchors told you anything. They certainly weren't projecting the election, and I don't think they had the sophisticated polling methods necessary to do so. I also don't think the networks polled people coming out of the voting booths. Poll watchers only would say whether the turnout was high or low in traditional Democratic or Republican strongholds.

I had an informal understanding with the campaign that, if Humphrey won, I would go to the White House. I likely would have had a policy position and would be a K Street lobbyist today. So much for litigation. But if we lost, the Attorney General would sign my commission as an Assistant US Attorney. So I flew back from Minneapolis the day after the election and walked into the US Attorney's Office – David Bress was US Attorney – and said, "I'm here to report for work."

Ms. Feigin: Before we start the US Attorney's Office, let me just ask you some more questions about the campaign. Did you personally interact with Vice President Humphrey in any significant way?

Mr. Aldock: No. We would write our materials which would go to Bob Nathan, and they would be marked up and sent back. We sometimes saw the candidate walking around the office, but there was no real personal interaction. Humphrey would wave and say, "Good work, boys," or something to that effect. We were working

pretty much around the clock because we had the feeling that everything we did was important, whether it really was or not.

Ms. Feigin: And where was everyone working?

Mr. Aldock: A big office on Connecticut Avenue. I guess the rents were cheap, and the campaign had some money. We were paid late and intermittently; we ultimately got paid, but the paychecks didn't come on a regular basis. The salary was quite low, but no one really cared.

Ms. Feigin: Do you have any idea, any memory of what kind of salary one earned in those days for this work?

Mr. Aldock: I know as a law clerk I made \$7,000. I started in the US Attorney's Office at \$7,500, and I made less in the campaign. I know Judy, whom I was dating during this period, was working for *Congressional Quarterly* and was earning \$4,200. When we got married in 1969, Judy still was making less than \$5,000, and I was making \$7,500. On those combined salaries, we ate out several nights a week, lived in a nice one-bedroom apartment in the Van Ness on Connecticut Avenue, traveled abroad every year, and owned a car. We lived as well as we live today on so many multiples of those numbers; we lived very well on very little.

To continue, after the campaign I showed up in Dave Bress' office and reminded him that he had hired me.

Ms. Feigin: [Laughter] Had you had any interviews with him?

Mr. Aldock: I had had an interview but it was tentative, because I was working in the campaign.

Ms. Feigin: You mean you had an interview with him personally?

Mr. Aldock: Yes. But it was a five-minute interview; he was just passing by. The procedure was that other people in the office did the interviews. Bress very much wanted a judgeship so anything political was fine with him. Unfortunately for Bress, he never did get a judgeship.

The US Attorneys generally do not try many cases, but Bress took a case that he then assigned to me while I was sitting there. It was the contempt of Congress case of Jeff Fort, who was one of the Blackstone Rangers, a bad street gang in Chicago. Jeff Fort had taken the Fifth Amendment before a congressional committee on every question. The case was all paper. Bress thought it was a great case; I thought it was deadly. Bress was not going to lose this case on a technicality, so it was the most over-prepared case you could imagine. That was my first case as an Assistant US Attorney.

Ms. Feigin: Did you win?

Mr. Aldock: We did. I think it took half an hour. Afterwards, Bress said, "You've got a good record and you were on the Law Review and, while we usually start Assistants in the Court of General Sessions (which was then the lowest trial court in the District) we'll start you in Appellate." So I started in Appellate. We didn't argue all our cases while we were in Appellate; we took them with us when we moved

to the Trial Division. In my three years in the US Attorney's Office, I probably argued 50 appeals. The Appellate Section was a very small group. Many people who went into the US Attorney's Office had no interest in Appellate. Everybody wanted to appear before a jury, so people went through Appellate as fast as they could, and some were deemed wholly unqualified. A lawyer, who shall remain nameless, one of the top trial lawyers in the city, washed out of Appellate after a month. The lawyer and his supervisor agreed that he was not able to brief and argue cases before the DC Circuit. He is a great jury lawyer, but it's a different skill set. I remained in Appellate for a year and enjoyed it.

Ms. Feigin: Could you tell us before we progress beyond Appellate what the court structure was then? Because it was quite different.

Mr. Aldock: There was a Court of General Sessions, which handled misdemeanors for which defendants could be sentenced to no more than a year. These included attempted burglary (but not burglary), prostitution, negligent homicide, disorderly conduct, shoplifting and petty larceny. Attempted robbery was a three-year sentence, so it went to US District Court.

The intake procedure was called papering. The police officer would show up and present his evidence to an Assistant who would decide what to do with the case. The US Attorney's Office probably had only 50-60 Assistants; it has several hundred now. In our time, we were overwhelmed with the case volume. We would look at the case and, if the person was going to get probation or a juvenile deferral, we would break the robbery down to attempted burglary and

simple assault; lower the felony charges; and charge misdemeanors. What we didn't know, which they do know today, is whether we were reducing charges on somebody who had three prior murder convictions and therefore we never should have reduced the charges. We didn't have that kind of tracking system. When somebody comes into the court they now know who the person is and whether he or she should be a target defendant.

Ms. Feigin: Do you mean you didn't know in time to make the initial decision? Because obviously you ultimately knew at sentencing.

Mr. Aldock: Right. You didn't know in time to make the decision. After I left Appellate, I was sent to General Sessions (the court I just was describing). It was a zoo, great fun but crazy. The court had trouble dealing with the volume of cases. It had judges who were less than ideal: Judge Halleck, who was the son of the then Minority Leader of the House, and another judge who had been Nixon's roommate in law school. (Nixon was president at that time.)

Ms. Feigin: Who was that?

Mr. Aldock: Buddy Beard. We had Judge Kronheim, who was the son of the largest liquor dealer in town and a man with whom President Truman played poker. And yet these men, with all that political influence, could get only a General Sessions judgeship! They were not stars. By and large, the judges were not the highest quality. There were, of course, certain exceptions. The African American judges often were better, because they needed higher standards to get appointed. But the court wasn't the same as its successor, the Superior Court, is today. The Superior

Court for the District of Columbia is one of the best state courts in the country.

Today, they generally appoint very good lawyers.

Ms. Feigin: Did the US Attorney, then as now, do local crimes as well as federal crimes?

Mr. Aldock: Both, but all the local crimes that were felonies and now are tried in the Superior Court of the District of Columbia were tried in US District Court, not in the Court of General Sessions.

To deal with the volume, we resorted to some extralegal remedies that were deemed necessary to keep the community happy. We would sit on a rotating basis on what was called “The Counter.” That meant that any citizens who had problems could show up, and Assistant US Attorneys would meet with them. We did some amazing things. For example, I granted numerous common law divorces.

Ms. Feigin: [Laughter] What does that mean?

Mr. Aldock: Women would come in and say their husbands had beat them up, and some showed it. I’d say, “Are you married?” Answer, “No, common law.” “How many years?” “I have no idea.” After confirming the woman’s wishes and determining that reconciliation was unlikely, I’d order the “husband” to stay away from the woman. I then would get both parties to sign a paper agreeing to separate, i.e. common law divorce.

Ms. Feigin: [Laughter] Did you do things like order alimony?

Mr. Aldock: No, we never ordered alimony, but we did order property to be returned to the person who paid for it, i.e. “You took the car? She gets the car.” And we would issue what amounted to informal restraining orders with no judicial approval. Some of the restraining orders were tough calls, because we often saw terrible physical abuse. The question was whether or not to bring formal charges. Often when we did, the woman wouldn’t testify. The track record was dreadful. So we took our chances and ordered the man not to see the woman again, but we were at risk – there could be further abuse or even a homicide. We never were sure, so Assistants agonized trying to figure out which way to go.

Ms. Feigin: Did it ever happen to you that there was a murder?

Mr. Aldock: It never happened to me, but it occurred in the office while I was there. That was sobering.

Ms. Feigin: Did you award custody of children?

Mr. Aldock: Yes. Of course, we had no lawful basis for formally doing so. The judges all knew what we were doing, and it continued for many years. The US Attorney’s Office hierarchy also was aware of what was happening; indeed we were assigned to counter duty. In some ways, we may have accomplished more at the counter than we did in prosecuting repeat offenders for prostitution or similar offenses. We also had cases of bullies who beat up others for lunch money. We’d subpoena the other bully; he’d come in and thought he would be charged. The odds of charging a 15-year-old boy with beating up a 13-year-old boy for his lunch money was zero, but they didn’t know that. Often it worked out well.

Another job of an Assistant was to be on call at home at night for emergency warrants. One of us always would be on call.

Ms. Feigin: For the police?

Mr. Aldock: Yes. I recall a particular Thanksgiving when I was an Assistant and living in the Van Ness Apartments. Police officers showed up to obtain a warrant to search a car in an alleged rape case. The basis for the warrant was pretty thin. The police had nothing written down; they just told me what they had. We had typewriters; there were no computers. I didn't type, but Judy did. So I dictated the basis for the warrant as best I could. It had to be typed before it went to the judge, and the police were in a hurry. It was Thanksgiving, and they had to take it to the judge's house. Judy typed it, but the carbon paper was in backwards so it was unreadable. Absolutely unreadable. The police said they couldn't wait for it to be retyped and ran off with the unreadable warrant. They told me later that Judge Kronheim signed the paper without looking at it. I never heard what happened to that case.

I had a couple of other memorable cases while I was an AUSA in General Sessions. We really learned to try cases in that court. We had no real training; it was mostly watching others and using trial and error. I would be assigned to a courtroom, a police officer would walk in, he'd hand me a file, and I'd open it up and hope it had papers in it. If it had any information charging a crime, I was ready to go. The judge, often while you were reading and before you had finished, would say, "Call your first witness." If you found the police officer's name, you'd call him. If not, you'd ask, "Is there a police officer in the room?"

Officer, would you take the stand? Officer, you are here to tell us about a burglary. What happened?”

Ms. Feigin: So no prep.

Mr. Aldock: Nothing. We never met the police officer or complainant beforehand. We certainly learned on our feet. I remember one of my first cases before Judge Pryor, who was a good judge. I opened up the file and saw that the charge was “possession of implements of a crime” (PIC). I had no idea what that meant. It turned out that, if a defendant was in possession of a syringe and something else like a tourniquet and there were only traces of drugs on these things, we charged it as PIC. The judge called me to the bench and said, “What are you going to do with this case? Particularly, what are you going to do with that possession of implements of a crime charge?” I looked at the information and saw there were three counts, including two drug possession charges, and they all had the same maximum sentence. I hadn’t a clue about the PIC count, and the judge was asking specifically about that count. I did not have a good feeling about where this was going. [Laughter] So I said, “I’m going to dismiss that count, Your Honor.” Judge Pryor said, “That was very wise of you, because I think the PIC statute is unconstitutional and I have so held.” [Laughter] Of course, no one had told me. Since then I got on very well with Judge Pryor.

Another memorable case was before Judge Harry Alexander. The judge had psychological problems, if not worse. Nobody wanted to be in his courtroom. Before being assigned to Judge Alexander’s courtroom, we were told that, if we

were “in trouble,” we should call Luke Moore, who was the head of General Sessions for the US Attorney’s Office. If Luke had lived long enough and run for mayor, he would have won. When you crossed the street with Luke Moore, it would take a long time, because everybody knew him and wanted to say hello. Luke was one of the few people who got along with Judge Alexander.

I was assigned to Judge Alexander’s courtroom. At one point during the trial, the judge said, “I’ve had enough. You’ve been staring at my water pitcher. You’re in contempt. Marshal, take him back.” The “him” was me. This was not good. [Laughter] The Marshal took me to the cellblock behind the courtroom. He told me, “This happens. Don’t worry about it, but I’ve got to put you in the cell. I understand the drill. You want me to call Luke Moore.” I said, “Please.” [Laughter] I was in the cell for an hour while Luke Moore and the judge had tea before I finally was released. I was not happy. Luke was having tea, and I was sitting in the cellblock. [Laughter] When I returned to the office, I was granted a reprieve. I was told I had done my Alexander duty, and it was somebody else’s turn. They always had trouble getting the next volunteer for Judge Alexander. It usually went to someone new in the Court of General Sessions.

There also was another judge in General Sessions who would leave the courtroom during trials. The judge would leave and ask his career clerk to carry on. We called the clerk judge whatever his name was, but he was the clerk. I don’t think he had a law degree. [Laughter] He would proceed with the ongoing trial. It was generally in nonjury prostitution cases. The prostitution cases all went the same way. The prosecutor had to establish the price and what the girl

was going to do for the price. Of course, no one believed the dialogue was quite so precise.

Ms. Feigin: How many cases would you do in a day?

Mr. Aldock: We would sometimes try 2 or even 3 cases in a day, particularly if they were nonjury. Few of the cases were prepared in advance. Yet, it sort of worked. The cases were misdemeanors, and we generally won them. If we lost a case, it was because either the witness never showed or the chain of custody of the evidence was screwed up, and the judge had to dismiss it. The jurors would occasionally acquit in domestic violence cases, particularly if it was the wife retaliating against a previously abusive husband. Sometimes the jury thought the case was too petty – maybe shoplifting from Hecht's [local department store] – but, by and large, the juries would convict. The police department in those days was very good, it was racially integrated, and black and white officers were partners. There came a time later when that was not allowed, and the police leadership drove out the whites, and they drove out the blacks who got along with the white police officers. It was a shame.

Ms. Feigin: Can you give a sense of when that happened?

Mr. Aldock: I believe during the early 1970s they had these problems. It's now a good police department again, but there was a bad period. When I was in the US Attorney's Office, the police officers were terrific. If you had a murder case you got detectives who were great people, smart and dedicated.

After six months, I moved from the Court of General Sessions to the US District Court. If I had a serious case like a murder case, I got detectives who were professionals. In the District Court we were generally assigned to specific judges for different periods of time. I was assigned to Judge William Bryant, one of the first black judges on the court, and Judge June Green. Judge Bryant was considered a tough assignment for an AUSA, so the office wanted an Assistant who could cite case law, because Judge Bryant, a former AUSA and successful defense attorney, had a reputation as the most “liberal” judge on the court. When I was assigned to Judge Bryant, the office was losing half of the Fourth Amendment motions. That was troubling.

I loved the assignment, and I loved Judge Bryant. I thought he was a terrific person and a great judge. I learned a lot in his courtroom. Bryant worked a little like Youngdahl. He’d say, “If I don’t think the police did what they should have done, you’d better have a case.” Also, the judge would bargain with the Assistant. When I had a strong case, i.e. eyewitnesses and recovery of a weapon, Judge Bryant might call me to the bench and say, “I am troubled about the search; you don’t need the gun.” I responded “What do you mean I don’t need the gun? I need the gun.” Bryant: “If you are as good as I think you are, you don’t need the gun. Do it without the gun.” [Laughter] Sometimes I’d say, “I can’t,” because he wasn’t ordering it. Other times I’d say, “All right. I will do it without the gun.” Judge Bryant and I got along very well, and he became a good friend after I left the office. He was recognized by the community and the other judges as a great judge and a great human being. The new DC courthouse is named after

Judge Bryant. That was accomplished in a bipartisan way just a few years ago by judges of different political persuasions, i.e. Chief Judge Hogan and Judge Friedman, and by Democratic and Republican senators and congressmen who had to approve it. Judge Bryant was revered. He was the first African American prosecutor to try cases in the US District Courthouse for the District of Columbia. Bryant, as a defense attorney, argued the Mallory case in the US Supreme Court. In 1965, Bryant became a judge and in 1977 he became the court's first African American Chief Judge.

We prosecuted murder, rape, and robbery cases. I loved being an AUSA in the US District Court. The attorneys would go out for beers and discuss our cases. It was there that we got tips on how to try cases. We tried about a case a week, except when we tried multiweek cases.

Ms. Feigin: One a week?! That's a lot.

Mr. Aldock: Yes. They try far fewer today and also have Assistants doing a lot of work that does not involve trying cases. The people I met in the US Attorney's Office forty years ago remain among my best friends today.

Ms. Feigin: Who are some of those people?

Mr. Aldock: Bob Higgins, Bob Bennett, Tom Green, Dick Hibey, Judge Paul Friedman, Earl Silbert, Roger Adelman, Rick Cys, Barry Levine, Bob Watkins, Don Bucklin, Steve Grafman, Roger Zuckerman, and many others.

When the Superior Court was first established, there was a need for lots of judges. Former AUSAs or Public Defenders had a good chance of getting a judgeship, and several of my former colleagues went on the bench, i.e. Willie King, Bob Shuker, and John Terry, to name a few.

Ms. Feigin: Did you consider doing that?

Mr. Aldock: No, I had no interest in being a judge.

We have former AUSA reunions. Probably 50 to 80 people who were Assistant US Attorneys from what was called the Flannery Era come. Flannery was the US Attorney during the late 60s and early 70s before he became a judge. There is now an annual Flannery lecture in the Ceremonial Courtroom at the courthouse in honor of Judge Flannery, who died a few years ago. The speaker at the first lecture was Chief Judge Royce Lamberth, and this year Justice Scalia spoke.

Ms. Feigin: Was Judge Lamberth part of the group as well?

Mr. Aldock: Yes. These reunions have very high attendance. Two of our group, Bob Bennett and Jim Sharp, represented presidents Clinton and Bush in criminal investigations. The Flannery Era Assistants were a special group and have a special bond, even after forty years.

Ms. Feigin: Why don't you state for the record what Bob Bennett did for President Clinton?

Mr. Aldock: Bob represented President Clinton in the Paula Jones case.

Ms. Feigin: What did Jim Sharp do for President Bush?

Mr. Aldock: He represented Bush in potential criminal matters that never came out. Jim never talks about it and it was not well-publicized. Jim Sharp is another excellent criminal trial lawyer from that era.

Ms. Feigin: Was that the last part of your work at the US Attorney's Office? Or did you go to another division after you were doing the felony trials?

Mr. Aldock: No. Felony trial was the last stop.

Ms. Feigin: Tell us about some of your cases.

Mr. Aldock: I thought the hardest case I had as an Assistant was an incest case before Judge June Green, involving a father who raped his daughter. It was the Walter Ashe case which had been tried once and reversed. When I was assigned to try it, I had to make the decision whether to try it again. Then I had to decide whether I was going to try the case as an insanity matter. I spent weeks with the two children; the boy – her brother – was a witness. The alcoholic wife wouldn't testify. The victim was a 10-year-old girl, but the event happened when she was 7. The brother was about 5 at the time. I had a psychologist examine the children to determine whether the children could handle the trial. Would the trial be detrimental to their future mental health? The psychologist said it would be OK and might even be useful. I am not sure I agreed, but I am not a psychologist. So I retried the case. I had to be careful with Judge Green, because she would have ruled in my favor on any plausible argument. Judge Green hated the case and

wanted the defendant to be convicted a second time. I had to make sure that I didn't lead her into reversible error. After the jury convicted, I agreed to a not guilty by reason of insanity finding if the defendant didn't contest dangerousness and was therefore committed to a mental institution. The defendant agreed and then switched lawyers, and I had to try the case again on the issue of dangerousness. It was an emotionally trying case. The jury found him dangerous which resulted in automatic commitment to St. Elizabeth's mental hospital.

Ms. Feigin: Did you have the sense after it was over how the children handled it?

Mr. Aldock: I checked on them some years later, and they seemed to be OK. They went into foster homes. The mother was a hopeless alcoholic. The father was committed to the mental institution for enough time that he wouldn't know where the kids were.

At the end of my three years as an Assistant US Attorney I was ready to leave. I was in the office from 1968 until October 1971. I got married in 1969.

Ms. Feigin: I want to get to that, but do you want to finish the cases first and then we'll get to the personal?

Mr. Aldock: I was assigned to a lot of the insanity cases for the US Attorney's Office. Those were important cases to the office. Also, Circuit Judges Bazelon and Burger, who later became Chief Justice, sparred over mental health issues in numerous cases. It seemed like every case had a mental health issue because, I think, Bazelon looked for an issue in every case. The DC Circuit had its own unique law on the insanity defense. It was called the Durham Rule, and it was different from every

other circuit. That difference became symbolic for some of the judges. Some thought that, but for the Durham Rule, the DC Circuit would rejoin the mainstream and wouldn't come up with "kooky" insanity opinions all the time. The case to challenge the Durham Rule was called US v. Archie Brawner, 471 F.2d 969 (D.C. Cir. 1972). Brawner's lawyer was a man named Flynn, who had been a Supreme Court clerk and was a noted practitioner. I think he was a senior partner at Sidley. I was assigned to handle the appeal for the government. A partner at then Shea & Gardner named Bill Dempsey was the *amicus* appointed by Chief Judge Bazelon to support the Durham Rule. The court was split on the issue; the only question was where the majority would be. We argued the case before the full court *en banc*.

Ms. Feigin: What was the result?

Mr. Aldock: Durham was overruled by a unanimous court but Bazelon filed a separate concurring opinion.

Ms. Feigin: Do you have any recollection about the *en banc* argument, because that's quite an experience.

Mr. Aldock: It was the biggest argument I had had. It was a very active bench because the judges were committed to one side or the other. Chief Judge Bazelon wanted to stay with the Durham Rule. Judge Leventhal supported what was then called the ALI Rule. I believe the rule came out of Columbia University and Leventhal was a Columbia man. The key was Judge McGowan – a great jurist who almost always decided issues correctly, in my view, and was never political or

ideological – just a great judge. I thought I would do pretty well with McGowan. The argument was all questions and speeches by the judges: What’s the consequence of doing this? What’s the consequence of doing that? What requires us to do it? Do we have discretion? Is it a constitutional issue? It was a very partisan court, although probably not as partisan as our present Supreme Court.

Ms. Feigin: How did you prepare for it?

Mr. Aldock: There was a lot of preparation. I had a young man assigned to assist me named Dan Bernstein, and he was very helpful and very good. I basically moot-courted it with Bob Higgins, who was a person I respected and whose judgment I trusted. I remember at one point I gave the argument, and Bob said, “I don’t like it. It’s too academic. Explain it the way you did when we had drinks last week. Do it that way.” I changed my opening a few days before the argument. On the other hand, I didn’t get to deliver it anyway because the argument was all questions. I gave parts of it – my sound bites. An active bench does not hear much of a prepared argument.

Ms. Feigin: So there wasn’t a formal moot court system even for a case going *en banc*?

Mr. Aldock: No. There wasn’t much formal anything in those days. There wasn’t much supervision of our work; Flannery hired us and let us do our jobs as we saw fit.

I remember late in my tenure there was an attempt by the Department of Justice to control dismissals of indictments by the US Attorney’s Offices. The

Nixon White House wanted to show it was tough on crime. DOJ thought that we dismissed too many cases. We had the authority to dismiss a case if we thought we did not have the evidence or if we thought the defendant was innocent. We needed the permission of the US Attorney who always deferred to our judgment, but not the DOJ. I remember calling some guy at Justice who probably never tried a case in his life to tell him I intended to dismiss this case for these reasons. He said, "No, I can't approve it." I said, "What do you mean you can't approve it?" "I can't approve it." "Well, I'll talk to the US Attorney." I went to Tom Flannery's office and said, "This bozo at Justice says I can't dismiss." Flannery said, "Let's just tell him our office is not trying the case but, if he would like to come down and try it, it would be OK with us." That was the kind of support you always got from Flannery. Of course, at the Department of Justice level they blinked; it was all bravado.

In our days we felt it was our obligation to dismiss a case if we were not morally certain the defendant was guilty. I think it is different today. There is pressure for a prosecutor to "win." I think the idea that a prosecutor is doing justice as opposed to winning and losing has been somewhat lost. Maybe that's just sour grapes by somebody who is now on the defense side, but I don't think so. My former prosecutor colleagues all feel this way. Maybe "collective sour grapes."

Ms. Feigin: When you say that, are you speaking specifically about this US Attorney's Office or do you think this is a nationwide phenomenon?

Mr. Aldock: I think it's nationwide problem. But the DC US Attorney's Office always was better than other places. The Southern District of New York also was a great US Attorney's Office. In my experience, which was always as a defense attorney appearing elsewhere, you didn't get the quality you had in DC and New York.

Ms. Feigin: When you were preparing for this argument, you came to meet Bill Dempsey, who was the *amicus* appointed by the court?

Mr. Aldock: Yes. I spent some time with Dempsey speaking about the Browner case at law schools. This was a big case at the time.

Ms. Feigin: Law schools in DC or elsewhere?

Mr. Aldock: They were all local. At the end of one of those law school sessions, Bill Dempsey said to me, "Why don't you come by and meet some of the people at Shea & Gardner and have lunch?" I said, "Fine." I never had heard of Shea & Gardner. I really didn't know anything about law firms in DC, even though I'd grown up here. I met Frank Shea, Warner Gardner, Steve Pollak, Marty Flynn, and a few others. There weren't many partners; fewer than 20 lawyers in the office. Most were Supreme Court clerks. At the end of the day I was asked, "Why don't you join the firm?" I responded, "I'll call you tomorrow." I talked to Bob Higgins and a couple other friends, then I accepted. In my mind it was not a big decision; after a couple of years I would look for something else. So the decision to go to the law firm where I remained more than 40 years was done with no planning and minimal due diligence.

Ms. Feigin: This is 1971. Do you remember what the starting salary for an associate was in 1971?

Mr. Aldock: I think the US Attorney's number had been moving up. It was \$7,500 when I started. I probably was earning \$15,000 when I left. The law firm probably paid \$18,000. And again, we never lived so well. I still can't quite understand it.

Ms. Feigin: Before we get into the law firm, let's go back a little bit and talk about how you met your wife and tell me a little bit about her.

Mr. Aldock: I had grown up in Silver Spring and gone to Montgomery Blair High School. Judy had grown up in Bethesda and attended BCC but we didn't know each other in high school or college. I went to Northwestern University, and Judy went to the University of Wisconsin. Judy is two years younger than I am. Growing up we didn't know anybody in common. While I was in DC for my clerkship, Judy and I met at a party in Southwest DC at the Tiber Island apartments. I believe Judy was the date of the host of the party whom I knew from law school. To this day Judy denies she was his date, but he certainly thought so at the time. Judy was working at *Congressional Quarterly*. She lived at 2121 P Street and walked to work.

Ms. Feigin: What did she do for them?

Mr. Aldock: She was a researcher. *Congressional Quarterly* in those days was the main source of information about what was happening in Congress.

We got married on May 18, 1969. Judge Youngdahl married us at Judy's parents' home in Bethesda. I had to remind the judge that he had no jurisdiction to marry a couple in Maryland; therefore, we were officially and secretly married the 16th of May in Judge Youngdahl's chambers, where we just signed papers. Two days later Judge Youngdahl "married" us again. As far as Judge Youngdahl was concerned, he was speaking for country and God. The judge enjoyed doing weddings much more than being a judge.

Ms. Feigin: [Laughter]

Mr. Aldock: The judge's lack of jurisdiction caused some problems. Many years later, my mother-in-law was at a party where she heard that a federal judge had no jurisdiction to marry couples in Maryland. She called up and told me, "You are an idiot. The children are illegitimate."

Ms. Feigin: [Laughter]

Mr. Aldock: I barely had recovered from that conversation when my mother called. She said, "Do you mean that I was not at the real wedding? Which date do you celebrate your anniversary?" Judy and I really couldn't win, but we celebrate the wedding that people were invited to as opposed to the signing in the judge's chambers.

Ms. Feigin: What was Judy researching? What was her field?

Mr. Aldock: *Congressional Quarterly* basically did analyses of legislation in those days. There was no *National Journal* or *Politico*; they had no competition. It was "the" organization. If you wanted to know what legislation was pending, what it

contained, whether it was going to pass, what was the basis for the provisions, etc., you'd get it from *Congressional Quarterly*.

Ms. Feigin: How often did *Congressional Quarterly* (CQ) come out?

Mr. Aldock: Weekly. And it also did all kinds of special reports and an annual Almanac. There was no *Roll Call*; CQ covered that niche, too. CQ didn't do Hill gossip, but it certainly covered all the political angles. CQ had its own journalistic citation rules that were not unlike the lawyer's Blue Book. Everything was done in a certain way and had to be precise. CQ had to have a sound basis for anything it printed. It wasn't breezy like a *Roll Call*. It was a technical publication, and it was everyone's Capitol Hill Bible, including the people on the Hill.

Ms. Feigin: And what was Judy's involvement with Watergate?

Mr. Aldock: After Judy left *Congressional Quarterly*, she worked in the Research Division of the Democratic National Committee and ultimately became its Acting Director. Judy had locked the safe that was broken into the night of the Watergate burglary. That same night, we parked on the street in front of the Watergate and directly across from the Howard Johnson's while attending a concert with friends at Wolf Trap. When we returned, we saw lots of activity in front of the Watergate, but I didn't think much about it at the time. The following day the police and FBI called. Judy was told she had to return to the DNC to view the crime scene, confirm that she'd locked the safe, and determine what was missing.

Ms. Feigin: This is 1972?

Mr. Aldock: Yes. And it turned out that the prosecutors for Watergate were Earl Silbert and Seymour Glanzer. Because they knew Judy, they enjoyed the fact that she was a witness.

Ms. Feigin: Were they both at the US Attorney's Office?

Mr. Aldock: Yes, they both were. We learned lots of things about Watergate that other people didn't.

Judy testified at the trial of the Watergate burglars. It was all direct testimony with no cross-examination, because the technical issue of the burglary was of no consequence to the trial. We got three to five pages of transcript, and both of our children used the transcript for show-and-tell at school. "My mommy was in Watergate!" [Laughter] That was at a time when people still knew what Watergate was, but maybe those days are gone. During Watergate Judy and I would go out evenings, often to the Shoreham Hotel to watch the comedian Mark Russell joke about Watergate. Sometimes there would be people like Mitchell in the audience.

Ms. Feigin: The Attorney General?

Mr. Aldock: The Attorney General. Those were fascinating times. Hank Ruth, whom I worked with in the Humphrey campaign, became a big player as the Watergate prosecutor with Jaworski after Archibald Cox was fired. Hank also came to Shea & Gardner for a while at one point.

Ms. Feigin: How long did Judy stay with the Democratic National Committee?

Mr. Aldock: I think she may have stayed another two years after that. Then she did part-time work for *CQ* for several years thereafter, because her contemporaries were in charge as they moved up the line. The editor was Peter Harkness, who had been a colleague of Judy's. I think he just retired this year from *Governing* magazine, a sister publication of *CQ*, so he had been there a long time.

Ms. Feigin: That is a fascinating footnote to history.

Mr. Aldock: It was fun.

Ms. Feigin: I think this may be a good time to stop, because we're about to begin a huge block which would be your time at Shea & Gardner. So unless there is something you want to add, pre-joining the firm, probably we should save that part for the next session.

Mr. Aldock: We're done.

Ms. Feigin: Thank you so much.

Mr. Aldock: Thank you.

**ORAL HISTORY OF
JOHN ALDOCK
Third Interview
May 5, 2010**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is John Aldock, and the interviewer is Judy Feigin. The interview is taking place in John's office in Washington, DC, on May 5, 2010. This is the third interview.

Ms. Feigin: Good afternoon.

Mr. Aldock: Good afternoon.

Ms. Feigin: When we left you last you were about to join the law firm. Any qualms leaving public service?

Mr. Aldock: No, I was ready to leave. I had been assigned to try a defendant I remembered convicting on another matter two years earlier. I thought that if I now was trying defendants a second time, that might be a reason to leave. [Laughter] I had a view in those days, a lot like the view of young people today, that I wasn't going to keep a job for more than 3 or 4 years anyway, so it was time to move on and do something else for a while. I really didn't have any qualms. Because of the Browner experience and Bill Dempsey, Shea & Gardner had made the move easy; I didn't have to interview, I didn't have to worry about whether I would receive an offer, and I didn't have to do any due diligence. It was just too easy to pass up.

Ms. Feigin: Tell me what it was like to be a young associate. Before we get into cases, give me a sense of how big the office was and who was there.

Mr. Aldock: I think the office had about 20 lawyers. There was Shea and Gardner and Steve Pollak, who had been an Assistant Attorney General and had been in the White House. Most of the rest of the ten or so partners had been Supreme Court law clerks. That was pointed out to me as well as the fact that I was only on the Law Review and not Editor-in-Chief and that I didn't make the equivalent of Phi Beta until my third year. Frank Shea always would ask, "What year?"

Ms. Feigin: [Laughter]

Mr. Aldock: Shea was an academic snob, and I was not overqualified in the sense of academic background. On the other hand, I had tried probably a hundred cases, and many of those at Shea & Gardner had not. While one could have found it intimidating given the pedigrees of the partners, because of my AUSA experience I never lacked confidence as a lawyer.

Ms. Feigin: Tell me about the founders themselves since they were still at the firm when you were there.

Mr. Aldock: They were remarkable people. Frank Shea had been the Assistant Attorney General for what was the Claims Division but in the future would be called the Civil Division. He had been dean of the Buffalo Law School. Shea built up the faculty by bringing in some big names and highly credentialed young professors. Shea had gone with Justice Jackson as his principal assistant to Nuremberg to organize the war crimes trials. He was a formidable personality and a very successful trial lawyer. I think the Shea & Gardner clients in those days, with a few exceptions, came to Frank Shea. Shea was a leader of the trial bar and knew

the other major lawyers in town. One of his best friends was Hugh Cox at Covington & Burling, and they referred work to each other. It was a relatively small trial Bar.

Frank had a difficult family situation. He married his wife, Hilda, late in life. She was a very senior government lawyer in the 1940s when women weren't senior government lawyers, and I believe she was one of the first women graduates of the Harvard Law School. Late in life they had a child who was severely autistic. Hilda Shea gave up the practice of law and moved to Cambridge, Massachusetts, where they had around-the-clock caretakers in the home for the boy. Frank commuted every weekend to Cambridge.

Frank was a demanding man to work with. He had an unusual way of preparing for an oral argument. And, best as I could tell, he did a high percentage of the oral arguments in the office. Frank would invite everybody to his house, which was a mansion in Old Town Alexandria overlooking the Potomac River; Senator Mark Warner lives there now. It had a carriage house where the young, unmarried partners often lived; I know Bill Dempsey lived there for a while. In Virginia he had a housekeeper who came from the French Embassy and was a great cook. Most firm events were at Frank's house, but particularly the dinners around oral arguments. The rule was that the junior person in the room would make the argument, and then the next senior person would make the argument, etc. Everyone prepared an argument, so it obviously cost a fortune.

Ms. Feigin: Cost the client a fortune?

Mr. Aldock: I don't know what got billed, but it could never be done that way in today's commercial world. At the end, Frank would invite the group to retire for cigars and cognac to hear how he was going to do the argument, having listened to all the different renditions.

When clients came to town they were entertained at Frank's house with his marvelous French cook. Frank's wines were bought in the 1940s and 1950s and they were top French wines. In his cellar, there were \$1,000 bottles of wine for which he paid less than \$100.

Frank's practice of having the women retire upstairs while the men went to another room for cigars and cognac ran into trouble even before the first women lawyers joined the firm. I remember the time – I'm skipping ahead, so this is a few years later – when our partner Frank Kramer and his wife Noel were invited to Frank's for dinner. Noel, now a DC Court of Appeals judge, was a lawyer at then Wilmer, Cutler & Pickering (now Wilmer Hale). Frank Shea said, "We are going to retire for cigars and cognac, and the ladies can go powder their noses." Noel responded, "I'd be delighted to have a cigar." [Laughter] Frank didn't know what to do. As I recall, she came with the men, and that practice was over. It died firmly when the first women lawyers were invited.

Ms. Feigin: [Laughter]

Mr. Aldock: Working for Frank was difficult, not just because of this argument thing but also because there were too many lawyers on his cases. To be the junior person on one of Frank's cases struck me as a less than desirable position. I concluded that,

if this was how the private practice of law worked, I needed to do something else. So I conspired to avoid working on Frank's cases, and those were most of the cases. When the next associate showed up – a fellow who I think teaches at Columbia today – I handed off all my cases to the junior man before he knew what was happening. I had had a few cases of my own and a few cases with a partner named Al Scanlan (we'll talk about him later), who brought in some very interesting trials and actually let me do them. I knew I never would be happy in the practice of law unless I had my own clients, so thereafter I made a point of seeing to it that I had clients of my own and, fortunately, I always did. I do feel that it is a much more satisfying profession if the people come to you because they have heard of you and seek your advice and counsel as opposed to somebody who was assigned to you. I've been very lucky that it has worked out for me.

Ms. Feigin: Well, there you are at twenty-something. How do you go about getting your own clients?

Mr. Aldock: Let me first cover Warner Gardner. Warner Gardner in many ways was even more interesting than Frank Shea. By the time he was thirty-something, Gardner had held many of the top legal positions in Washington. He was First Assistant to Solicitors General Jackson and Biddle. He was Solicitor of Labor (1941) under Frances Perkins, and Solicitor of Interior (1942) under Harold Ickes. Warner worked under all the New Deal giants that you would read about in history class. He had clerked for Justice Stone. He had served from 1943-1945 as an Army intelligence officer assigned first to the British codebreakers at Bletchley and then

by them to the 6th US Army Group in the European Theater. He became Assistant Secretary of Interior in 1946.

How he and Frank first got together I'm not quite sure. They had very little in common except that they were both brilliant lawyers: Frank was older; Warner was younger. Frank was ambitious in building the law firm; Warner had no interest in building anything. Warner was going to argue his cases in the Supreme Court, and everything else was secondary.

It was 1947 when Shea & Gardner formed the firm. There had been a partner in New York who left before I got there. I recall Frank telling a story about calling Herb Wechsler, a famous professor at Columbia, to ask, "Who's your very best student?" The person identified was Larry Latto, who became the first associate at Shea & Gardner. Either Larry Latto or Marvin Frankel, later a judge on the US District Court in New York, was first and the other one was second in their law class. They were best friends throughout Larry's life. Larry said, "I came to Shea & Gardner because I wanted to work in private practice and because in 1948 no New York firms were hiring Jewish lawyers," even if their name happened to be Latto, which hid it pretty well. Larry Latto was a great lawyer, and he eventually became the chair of Shea & Gardner.

Warner did all of his own work. We had to beg to work with Warner on one of his cases. He wrote all his own briefs in longhand and then had them typed. Warner had several arguments before the Supreme Court that I saw where he talked to the Justices in ways that nobody else would get away with.

Ms. Feigin: Like what?

Mr. Aldock: He was just so informal. He would tell the Justices that the right question was something different than what had been asked. [Laughter] I just can't picture myself pulling that off or even attempting to pull it off, but the Justices loved it. Warner was a legend at the time and he eventually developed a very successful maritime practice. Both Shea and Gardner practiced into their late 80s.

Ms. Feigin: At the firm until the end?

Mr. Aldock: At the firm until the end and their boots on. I remember that close to the end of Warner's career he was retained by Anita Hill, which was a big matter at that time. Warner was chosen, I think, because a professor in Arizona named Frank, who had been a Supreme Court clerk with Warner, told Anita Hill there was only one lawyer in Washington, and he was Warner Gardner. I believe they were both in their late 80s. Anita Hill had been a protégé of Professor Frank so she came to Washington and hired Warner Gardner.

Ms. Feigin: Are we talking about at the time of the hearings?

Mr. Aldock: At the Senate hearings in 1991.

Ms. Feigin: We should make clear for people down the road what hearings we are talking about and who she is.

Mr. Aldock: Anita Hill was testifying against Clarence Thomas at his confirmation hearings to become a Supreme Court Justice. Hill alleged that Thomas had done several

things that were inappropriate in terms of sexual comments and related abusive activities. I believe Anita Hill had been at the EEOC with Thomas. At the time of the hearings, Anita Hill was a professor at a California law school. In any event, the hearings were televised to hear Hill's incendiary accusations against a black nominee to the Supreme Court. It was a media frenzy. The immediate reaction of the other Shea & Gardner partners was that Warner was going to fall asleep on national television. So the firm assigned Wendy White, who in those days was one of our few woman partners, to assist Warner. Wendy's job was to kick Warner if he started to doze. We were all watching, and sure enough Warner started to fall asleep. When somebody on Capitol Hill is represented and the witness has been prepared, there isn't much to do, because congressmen really don't let the lawyer participate. Warner was nodding off, and I saw Wendy's kick [laughter]; it was wonderful. [Laughter]

I also remember a somewhat related case of Warner's. For many years, Warner had been a member of the Cosmos Club, a very important institution in Washington in terms of Nobel prizewinners and other important members. It was and still is several blocks from our old offices at Dupont Circle. Warner ate lunch there often, as did Frank. They wanted me to join as many of the partners had. I couldn't imagine what I was going to do in that dining room with all those old people, so I rarely went. One day Warner came to me and said, "I've got a case and I want your advice. This person has been thrown out of the Cosmos Club." I asked, "For what?" Warner said, "Because he suggested that they admit women." And I responded, "He was thrown out for suggesting that they admit women?"

This wasn't a woman who had been denied admission?" Warner said, "No, no, no. He was thrown out for advocating that they change the policy." Warner said, "Maybe I'll get a TRO. We have a right to appear before the Cosmos Board." I said, "No. We don't have to do that, Warner. This is going to be very easy. You just go to the Club and say, 'Before we start a legal proceeding, I'm going to leave here and go to the *Washington Post*. If anybody has a problem with that, he should tell me now, because it seems to me this is a public issue.'" Warner's client was reinstated.

Ms. Feigin: [Laughter]

Mr. Aldock Both Frank and Warner were wonderful lawyers, and Warner especially was engaging. They were people anyone would find interesting to sit next to at dinner because they had great stories. They created the Shea & Gardner firm, and it was a premier litigation firm for many years in this city, one of the top two or three. Before my arrival, Frank tried the GE price-fixing case, the biggest case of its day. And he did it for several years with a firm that then only had a handful of lawyers. I was pleased that I had the opportunity to know them both and I've never looked back on having taken the job.

Ms. Feigin: Of the 20 or so people who were there, were there women or minorities?

Mr. Aldock: No.

Ms. Feigin: How long until that happened?

Mr. Aldock: The minorities story was a sad one. We hired several minority associates, but they always had lots of opportunities and thus never stayed long. We did not succeed at the partner level until we persuaded Michele Roberts, who was a big-name criminal defense attorney at the Public Defender Service, to join us around 2000. She subsequently was persuaded by Vernon Jordan to move to Akin Gump, and we parted amicably. Michele was impatient because she wanted to try cases outside DC, so she wanted a larger firm with other offices. We eventually did merge but not without a lot of analysis. We waited for the merger we wanted and rejected the opportunities brought to us by headhunters.

Ms. Feigin: And what about women?

Mr. Aldock: With women we had a better story, although not a particularly great story. In 1975, we hired two women, Wendy White and Mary Fitch. Mary left because her husband became a law professor at the University of Chicago.

At the time, it was almost unheard of to come to Shea & Gardner without a federal clerkship. It was OK that I only clerked for a District Court judge when everybody else had clerked for the Court of Appeals or the Supreme Court, but not to have clerked at all took you off the firm's radar. Wendy had applied but she had not clerked. We finally convinced the firm that these applicants did not have clerkships because the judges were not taking women. Wendy was the first of the women who stayed and became a partner. She subsequently worked for a while in the Clinton White House and is now the general counsel of the University of Pennsylvania.

Ms. Feigin: The other thing you were going to tell us about from that early time was how you went about acting upon this resolve that you wanted to have your own clients and here you are a young pup. How did you go about doing that?

Mr. Aldock: It takes a lot of luck, but it's not all luck. My view is that over a career everybody gets roughly the same number of opportunities; they just happen. The difference between people who appear to be very successful and lucky and those who don't is that the people who appear to be successful and lucky always are alert and attuned and waiting for the opportunity and, when it comes, they do not miss it. Persons who are deemed unlucky either don't see the opportunities or don't seize them. There could be an opportunity to have a dinner with the assistant general counsel of "X" Company. You could conclude that you would rather watch a ballgame, or you could go. That's a decision. You could decide whether to stay in touch with some of your college and law school classmates or you could decide that you've lost interest. When offered the opportunity, you could give a speech or say, "Why bother?" Those things, over a career, make a difference.

Ms. Feigin: With that general proposition can you be a little more specific about what happened to you in your twenties that got you started on this, how you went about it, what opportunities you seized.

Mr. Aldock: It wasn't that I was particularly ambitious and systematic; it was just that that's my personality not to turn down opportunities that seem interesting and new. It's my personality to stay in touch with people I like. Until I went to Shea &

Gardner, I did not know anything about clients. I was going to have a political career.

I got lucky because, early in my career, my colleagues in the US Attorneys' Office were successful, and we referred business to each other. My AUSA group of about 50 lawyers has stayed together to this day. Indeed, we are having a third "Flannery Assistants" reunion this year. Judge Flannery was the US Attorney who spanned the years 1967-1975 when this particular group were AUSAs. The judge died a few years ago, and there is now an annual lecture in his honor. Justice Scalia is going to speak in the ceremonial courtroom of the US District Court for DC. There will be at least 300 people in attendance, and a reception will follow. Judy has a monthly luncheon group with the wives of Earl Silbert, Dick Hibey, Bob Bennett, and Don Bucklin. Once in a while the men are invited to a dinner. We are a very close-knit group, and many have become very successful lawyers. Bob Higgins is head of litigation at Dickstein; Bob Bennett, who represented President Clinton, had a legendary career at Skadden Arps and is now at Hogan. Tom Green at Sidley Austin is another leading DC trial lawyer. If the leading lawyers in litigation are your friends and they respect you, it is good for your career, too. Some of my early cases came from this group, and later cases came from a successful reputation in the early cases. I did not have the luxury of knowing corporate general counsels or significant business people; I only knew lawyers.

Ms. Feigin: Did we mention, by the way, the bar exam? When did you take the bar exam?

Mr. Aldock: I took the bar exam when I returned to DC for the summer before my clerkship in 1967. There were no major course programs at that time, only one taught by a Mr. Kramer, who probably couldn't have gotten into any of the law schools whose students he was instructing to pass the DC bar.

Ms. Feigin: [Laughter]

Mr. Aldock: We all took this course because it was the only one. Kramer would get up and say, "This is a domestic relations case. You all know that Jones v. Smith is the correct response to the question, but you cannot use that answer. Bar Examiner Oscar Whoopdeeboop thinks the answer is different, so you must give the wrong answer when you get that question." [Laughter] There were several of those wrong answer questions. The idea that we should give the wrong answer, trusting this guy who talked like a used car salesman, was scary. That we should give the wrong answer rather than the right one was a leap of faith. Fortunately, of the wrong answer/right answer questions there only was one on the exam. I couldn't do it; I gave the right answer and yet passed the exam.

Ms. Feigin: [Laughter] So here you are starting at the law firm. Tell us a little bit about some early cases.

Mr. Aldock: Just before I arrived at the law firm, there was one question from one of my close friends that we still laugh about today. I remember Bob Higgins said to me, "You know that I'm an Irishman, and you are going to this Irish law firm. Have you investigated if that's a good move for you?" Subsequently, I suggested that he was going to Dickstein Shapiro and asked if he had investigated whether that was

a good move for him! [Laughter] But, of course, there never was a problem. Although Shea & Gardner had several Irish partners, including Dempsey, Shea, Flynn, etc., Steve Pollak was Jewish and Warner Gardner was a Quaker. Nobody cared about religion or political persuasion, but we must have been on the Law Review. The firm had its biases, but at least they were benign. My first assigned case in the office was a big antitrust case that came to Frank Shea. In time I reassigned that case to a new associate, Stanley Langbein. Stanley was very bright, but he didn't know that it was a new Frank Shea case and that he could and should have declined it. He subsequently became a professor.

Ms. Feigin: Let me just back up for one second. You had the luxury of deciding that you were just going to pass it on?

Mr. Aldock: No. [Laughter] I just did. To my knowledge, nobody had ever passed on a case. But if you were the youngest lawyer on the case and told the others, "This new lawyer got much better grades than I and was first in his class. You are upgrading here." [Laughter] "There is this other matter I could do, so let him do this case. He'll be terrific!" [Laughter]

Working for a partner named Al Scanlan was more to my liking. Al was a rough-and-tumble-type trial lawyer. A gregarious Irishman who was active in Maryland politics, Scanlan had argued the Maryland reapportionment cases in the US Supreme Court. But, basically, Al was a District Court trial lawyer. Al could tell Irish stories to a jury and have them laughing and eating out of his hand. I always envied him because I couldn't be humorous with a jury; it never worked

for me. I was very good as a prosecutor when moral righteousness was called for. However, it gets harder to figure out exactly what the posture is if it's not humor and it's not moral righteousness, and I am a corporate defense attorney. I am stuck with logic and common sense.

One of Scanlan's clients was the Catholic Church. The US Catholic Conference was the governing body which relied on Al for big cases. The Catholic Church, through its Widows and Orphans Fund, had bought Penn Central bonds. Goldman Sachs had been the underwriter when Penn Central went bankrupt. All the bond holders sued Goldman Sachs for breach of fiduciary duty and fraud for failing to disclose its full knowledge about Penn Central. Chicago's Cardinal Cody had made the purchase for the Church. The Cardinal was a legend in the Catholic Church. I'd never met a Cardinal, but Al asked if I'd take the case. I found Cardinal Cody to be a very engaging and really wonderful man.

Cardinal Cody had to give a deposition in the case. The lawyer for Goldman Sachs was a devout Catholic from Sullivan & Cromwell. I sensed that taking Cardinal Cody's deposition was unnerving him. I thought, "This will be great fun." [Laughter] The Cardinal said he would like to give the deposition at his residence. Just before the deposition I asked my opponent, "How are you going to handle the oath?" [Laughter] You could see the blood drain out of his face, [Laughter] and he said, "I don't know." I continued, "Are you actually going to swear the Cardinal?" He exclaimed, "Oh, my God, I don't know!" I said, "I just wanted to give you a head's up." [Laughter] Subsequently I learned

that my opponent called everybody to get advice. I related the story to Cardinal Cody, and he laughed. [Laughter]

We arrived at the residence, and the fellow started stuttering about the oath. He was a very articulate man, but he lost it. Cardinal Cody put his hands on the man's shoulders and said, "My son, can I help you? What kind of an oath would you like? I can give an ecclesiastical oath or a civil oath, whichever you'd like." The Cardinal was sworn as the law requires, but the experience unnerved my opponent.

The Cardinal was in a room with all of his advisors. The first question was, "Cardinal Cody, when did you buy the bonds?" And Cardinal Cody asked, "Joe, when did we buy the bonds?" And then, "What did you pay for the bonds, Cardinal Cody?" "Sam, what did we pay for the bonds?" The Cardinal, who was the sworn deponent, answered hardly any questions by the end of this deposition. [Laughter] We had a room full of respondents who had not been sworn or been identified on the record, but who had answered all the questions. It was remarkable. [Laughter] At the end, the questioner thanked the Cardinal, kissed his ring and adjourned the deposition.

It would have been a great jury case in a New York court representing the Widows and Orphans Fund on the grounds that it had been defrauded by Goldman Sachs. And it would have been a slam-dunk. However, Al Scanlan and I could not persuade the Cardinal to try the case. Cardinal Cody said, "I know we would win, and the settlement would not be everything we could get, but we did

buy it for the Widows and Orphans Fund, and I'm as embarrassed as they are to go before the jury. So I'd rather settle, even though I know you are telling me that we could get more money if we would go before a jury." Goldman Sachs pulled out all the stops. They had every major donor to the Catholic Church they knew call the Cardinal and tell him he should settle. It was well-lobbied. They pulled it off, and we settled the case. That was unfortunate because it would have been a great case to try.

I had another case during my first years at the firm that Al Scanlan brought to the office. Al was retained by a man named James Kmetz, who worked for the United Mine Workers. The case was brought as an indictment of Tony Boyle, who was then the president of the Mine Workers and whom the newspapers had "convicted" for the 1969 murder of his union adversary, Joseph Yablonski. Nobody had proven anything and nobody had charged Boyle with the murder at this point, but the Labor Section at Justice was looking for a way to get him. This became the first case alleging that union money – dues money – was being unlawfully used as a campaign contribution. Until that time, such a case had never been brought.

James Kmetz was the union's Washington representative. His crime was taking a check on the order of President Boyle, signed by the union's Secretary-Treasurer Lewis, and handing it to Bob Strauss, chairman of the Democratic National Committee. Kmetz had no knowledge of whether the check was dues money or PAC money. The Justice Department lawyers wanted a conspiracy charge, because they wanted to get in more evidence. They indicted Boyle,

Lewis, and Kmetz. The case was brought before Judge Richey in the US District Court for DC, and the prosecutor was Chuck Ruff, a formidable lawyer, who later became a special prosecutor in Watergate and subsequently counsel for President Clinton in his impeachment hearings.

Ruff was in the Justice Department's Labor Section. Chuck Ruff had lost the ability to walk early in his life due to a disease that he contracted in the Peace Corps in Africa or South America. He was confined to a wheelchair which made it even harder for the lawyers on the other side of his cases, and this was a tough case. The statute, at least the misdemeanor part, stated that there was no intent necessary if Kmetz contributed union dues illegally to a political party; he was guilty. For the felony he had to have knowledge but for the misdemeanor arguably he did not. The government offered Kmetz a misdemeanor plea, but Tony Boyle told Kmetz that he would lose his pension if he pled to the misdemeanor.

When we started trial I had not made up my mind whether our client would take the stand, although I thought probably not. Kmetz had some grand jury testimony that wasn't terrific. I wanted to avoid the misdemeanor conviction which was going to be hard. Judge Richey was a very impatient man, a good judge at times but not the best judge at others. The judge in open court with the jury in the box said, "Mr. Aldock, are you putting your man on the stand or aren't you?" That, of course, was clear error and gave me a veto over any verdict. No matter what happened, as long as I did not put Kmetz on the stand, I could not lose an appeal. That became a very relaxing moment for me. [Laughter] I did

put a priest on the stand as a character witness, and Kmetz's six children and his wife sat in the front row at trial.

The other lawyer in the courtroom was Plato Cacheris, now a famous Washington lawyer who has represented most of the spies charged in recent memory.

Ms. Feigin: Was he not also involved with the Monica Lewinsky matter?

Mr. Aldock: Yes, Plato Cacheris and Jake Stein represented Monica Lewinsky. Plato and Jake are terrific lawyers who have had many great cases. Plato is older than I am, so he was a more seasoned lawyer in the courtroom than I was in my first year of private practice out of the US Attorney's Office. Plato's client was Secretary-Treasurer Lewis. Seeing the result I got, Plato said, "My client is not taking the stand either." In open court, Lewis said, "I don't care if you are my lawyer, I am taking the stand." We tried to convince Lewis not to take the stand, but he maintained that he knew what he was doing.

Lewis had lost one leg in a mine accident. Lewis took the stand and no matter what the question was, his answer was, "I lost my leg in the mine. Do you think I'm going to commit some stupid campaign finance crime? You're out of your mind." Lewis never would answer the questions, so Judge Richey finally said, "I order you to answer the question." Lewis turned to Richey and challenged, "What are you going to do? Put me in jail? I'm 88 years old. I lost my leg in the mine. I'm not answering the question. Hold me in contempt." The jury loved it. At the end of the trial in 1972, Kmetz was acquitted by the jury, so

we didn't have to deal with the appeal issue. Lewis also was acquitted. Boyle was convicted, which is all the government wanted anyway.

We had a good time. When you know you are going to win, a trial is a lot more fun. That was my second trial at the firm. I thought that if all my trials were going to be like that one, this would be a terrific career. Of course, they are not always like that. Usually, lawyers don't get such interesting cases. Many are cases that are company X versus company Y, and the question is who is going to pay what to whom. Those cases are less exciting.

The cases I will talk about here are not those kinds of cases; I will describe only the interesting ones.

Ms. Feigin: Before we talk about some of your other cases, I want to get a sense of what it was like. How hard did people work in those days? What was it like to be a young associate? Were there billable hours and were there bonuses? How was it structured in terms of your work life?

Mr. Aldock: There was no billable hours problem. That was created much later by Steven Brill who, at the time, was the editor of one of the national legal publications. Brill figured out that among the articles that could sell was talk about profits per partner at law firms. No one ever had calculated or talked about the subject. As a young partner at Shea & Gardner, I did not know what the profits per partner were at the firm. In the early days, Frank Shea said, "You're making X," and I thanked him and consented, "OK, I'm making X." [Laughter]

But X was not a lot of money. For an associate it was \$15,000 - \$20,000 over the first few years, and the senior partners weren't making more than a few hundred thousand dollars. But the profits-per-partner focus caused law firms to worry about how they were doing relative to other firms. Also, Frank Shea used to send many of the bills "for services rendered." The client was in touch with us every day, cognizant of what we were doing, and aware of who was doing what. At the beginning, we did not fill out time sheets; we didn't keep track of our hours. We knew what we had to do and worked very hard when we were approaching trial or had two summary judgment motions due at the same time. Keeping billable hours up and being seen in the office weren't issues, but they became unfortunate trends in the law during the 1990s.

The focus on the billable hours became an issue when New York firms upped the starting salaries for associates to over \$100,000. That caused the law firms to ask, "What are we getting for this?" The result was a requirement that associates bill a certain number of hours per year. The associate pay jump resulted when a New York firm which worked its associates around the clock was unable to get quality new hires. They could have said "no," but Washington firms with New York offices yielded, one DC office of a California-based firm proceeded, then Covington & Burling caved, and Shea & Gardner was forced to follow. Shea & Gardner was not setting pay scales, but we thought we had to pay the market rate in order to compete for the best graduates. All of a sudden, there was a huge jump. The associates figured out that the pay raise was going to come

with pressure to work harder. Some lawyers would have made the trade for more leisure time, but most firms felt they had to meet the market.

I worked hardest as an AUSA, more so than in private practice because, in the US Attorney's Office, I tried one case a week with long hours and no staff. As soon as I walked out of the courtroom, I had to begin preparations for my next trial. I always was working but I loved it. In my spare time, I was comparing notes, sharing war stories, and enjoying beers with the other AUSAs. I was excited to learn a new craft. An advantage of private practice was the ability to better manage my time, particularly if I did not take up golf.

As a business matter I knew taking up golf was the right decision but, after observing friends, it seemed with a five-day work week and golf on the weekends there wasn't a lot of family time. For that reason, and the fact that I probably wouldn't have been any good at golf, I did not pursue it. I generally succeeded in spending every Saturday and Sunday with my family. I coached my younger daughter's softball teams for years, and she eventually played on the varsity in college; my older daughter was a member of her high school debate team. If one of the girls' events was held in the middle of the day, I did my best to attend. I don't think my children felt short-changed by lack of family time, or their father's absence during their formative years, and I am pleased with that. Many people look back and say, "I should have spent more time with my wife and children or taken more family vacations." I don't have any regrets on that score.

Ms. Feigin: One other thing about how life was in that era before billable hours were instituted, were there bonuses? Is that something that was involved in the beginning or was that later?

Mr. Aldock: That came later. I don't think we got bonuses as associates. I remember at one point saying, "Frank, I thought the deal was that I would make partner in two years, and it's time." He responded, "Thanks for reminding me. I guess I have to think about that." [Laughter] Around that time I had prevailed in a case that was of no consequence, except that it was for General Electric, and GE was a favored client. I was trying the case with a young associate. Frank Shea was nervous that I was going to wreck the relationship with the client, particularly since GE thought it was going to lose. I tried it in the Eastern District of Virginia, and we won. As a result, Frank was prepared to make me a partner and give me a bonus.

To finish the Scanlan story, eventually the governor appointed him to the Court of Special Appeals in Maryland. I recall Al calling me one month into the job saying, "John, I want your advice. How bad would it look to resign only one month into the judgeship?" I responded, "Al, you can't do that. It's a big deal. At least finish the year." Al said, "I'll have to jump out a window. There's nobody to talk to; it's just me and my law clerk. I don't think it's going to work, but I will think about it." He waited four months and resigned.

Ms. Feigin: Did he come back to the firm?

Mr. Aldock: He did. We called him judge after that. So the experience had a perk. [Laughter] Al hated being an appellate judge. I think I probably would have had the same

reaction. I was probably more of an academic and scholar of the law than Al but not enough to cloister myself and do nothing else.

Ms. Feigin: Do you want to talk about some of your other cases in those early years? You became a partner in 1974 I guess? Would that be the timeframe? Or maybe 1975?

Mr. Aldock: 1975.

Ms. Feigin: Soon after your first child was born.

Mr. Aldock: Yes. I will say one other thing with hindsight. We did not go into the law to make money. The idea that we'd ever make much more than \$100,000 was considered unrealistic. It was the doctors and, of course, the investment bankers that made that kind of money. And the notion that a lawyer could make several million a year was not conceivable. The fact that many DC lawyers in private practice make over a million dollars is a very recent phenomenon, starting after 2001. By those of my generation, such paychecks were neither anticipated nor sought. They just happened. Now, I'm not so sure what people's expectations are when they go into law practice.

Ms. Feigin: You were at Shea & Gardner three years when you became a partner. But when you entered you thought you'd be at the firm only three or four years.

Mr. Aldock: Yes, it never occurred to me that I would stay.

Ms. Feigin: Was there a pivotal moment, an “aha” moment when you realized you were going to be staying at the firm? How did that come to be?

Mr. Aldock: There was a period a little later when Stuart Eizenstat, whom I had worked with in the Humphrey campaign, called me from Georgia and said, “I’ve got a presidential candidate and we could win. Why don’t we do this again?”

Ms. Feigin: This is 1976?

Mr. Aldock: Yes, in 1976. I said, “You work for an Atlanta law firm, Stuart, but I’m not going to waste my time. That guy from Georgia couldn’t possibly get elected.”

Ms. Feigin: We should just make this clear on the record that he’s talking about Jimmy Carter.

Mr. Aldock: Jimmy Carter. [Laughter] I think when I bought my second house I probably was addicted to law practice income. Judy and I bought a house in her old neighborhood in Mohican Hills in 1972. Then in 1978, when my second daughter, Stephanie, was born, we moved to another house in Glen Echo Heights. Washington, DC, is a colonial city, and we always had wanted to live in a modern house. We found the perfect house, but it was an excruciatingly difficult search. The architect was Hugh Newell Jacobson. I remember walking through the house with the prior owners, and Judy was gushing. The price was rising with every favorable remark. [Laughter] I said, “I don’t know. The flat roof probably leaks. It doesn’t look good to me.” [Laughter] When we walked out, Judy asked,

“What were you talking about? You didn’t like it?” I said, “I loved it, but you just doubled the price.” We paid over \$300,000 for this glass house in the woods.

Ms. Feigin: Let’s make clear that that was a huge amount of money in those days.

Mr. Aldock: I was making something like \$50,000, certainly not \$100,000. I recall my father saying, “Buying this house is the most irresponsible decision you’ve ever made in your life. You can’t afford that mortgage. It’s going to cost you every cent you have. You shouldn’t do it.” But we did. We had a house warming party, and I remember one of my partners, Bob Basseches, remarking, “This is a very nice house. I hope we can help you pay for it.” [Laughter] Since I had a large mortgage, public service would have been an adjustment. Still, I was prepared to leave for the right opportunity. But eventually I got to a point in the profession, which I probably achieved in the Clinton years, that the Assistant Attorneys General were people I’d worked with and known. Was I going to work for them? Certainly, I would have taken the position as US Attorney for District of Columbia at any time, even today. And nobody turns down the position of Attorney General of the United States. But I wasn’t given those jobs. The jobs that were proposed were not tempting. It also happened that my party was out of power in my younger years when I would have been offered interesting government positions that I would have considered. When the Democratic Party finally came back into power (having missed the Carter years), it was the Clinton presidency. By then I thought it was too late.

Ms. Feigin: Were you active in politics?

Mr. Aldock: Not in the way that I had been in the Humphrey campaign, although I am very interested in politics. I never again worked for a presidential candidate. I contributed money to Obama, but I wasn't in a position to raise money in the early years. The people I knew were in a similar income bracket, and we didn't have a lot of money to spare. I thought about being an advance man for Clinton, but decided I'd be away from home too much at a pivotal time. An advance man was a great job, one of the best in a political campaign. I'm not sure how it is today, but in those days you'd meet with the local elected officials and check what the local issues were and who was going to be in the audience, so the candidate could say, "Hi." It was a very heady experience for a young lawyer, but it was full-time. With hindsight, I probably would have enjoyed a five-year stint in government, but it didn't happen.

Ms. Feigin: You had some peripheral semi-government involvement with independent counsel. Do you want to tell us a little about that?

Mr. Aldock: There always are public issue matters an attorney can do in Washington while in private practice. That makes the private practice of law in Washington more interesting than in other cities. In New York, they are fighting about money. In Washington a lawyer can get involved in public issues that go to the courts. I've been involved with several events that were covered on the front page of the newspaper and then made into movies. In that respect, Washington law practice is unique.

One example was serving as independent counsel. The independent counsel law, that fortunately has been eliminated, allowed a president to appoint a lawyer to investigate persons when the perception was that the Department of Justice had a conflict of interest. In 1984, Jake Stein was appointed to investigate Reagan's Attorney General Edwin Meese. Jake was one of the first people appointed under that Act. Meese had given jobs to his friends who had loaned him money. The question was whether it was a quid pro quo. Jake called me just after the investigation started and said, "I have these young guys working for me, and they are ambitious. They're doing a great job, but I'm afraid they're not going to end it. My view is this is not a lifetime appointment. It is an appointment to make a prosecutorial decision, up or down. Meese either did it or he didn't. I want you to end it and get out our report."

Jake made the decision that, while Meese was insensitive about the blatant conflict in having these officeholders loan him money, there was no payoff. I agreed as did the rest of the staff. Under the then law, we had to write a report, which was a bad idea. Jake was convinced that it had to be done in six months. We all did this work while still at our law firms. I recall that one grand juror asked why we couldn't indict, because Meese was a bad Attorney General. We reviewed all the prior Attorneys General, and Meese turned out to be average. Since 1920, a significant number of prior Attorneys General had been indicted. There weren't many whom you could say, "There's a great Attorney General." It was actually a pretty mediocre group of lawyers, by and large, and Meese was no worse than average.

I did other such things during my law practice. Late in the Clinton administration, a big case against the tobacco industry was brought before Judge Gladys Kessler of the US District Court for DC. I was offered the opportunity to stay at the firm and try it. I was tempted but quickly determined that I would be involved in years of discovery against 16 government agencies, and that was not going to be fun. When I asked how many people I could bring from the law firm to help me, the answer was none. I would be required to use the DOJ team. That didn't sound good to me, so I turned down the case. With hindsight, even though the case was tried, I was happy not to be involved. I also think it is a bad practice to bring in outside lawyers to try high-profile government cases – it must be demoralizing to the career lawyers and will discourage the best lawyers from staying in government.

Ms. Feigin: Let me go back to one thing you said about independent counsel, or maybe it was special prosecutor in those days. You said you thought one of the bad things about the Act was that you had to write a report. Do you want to explain?

Mr. Aldock: The prosecutor should not be able to not indict and then write a report saying the man is a miserable person and he is guilty, but we could not find sufficient evidence to prove it. That is an outrage, but several reports of independent counsel have come close to doing that. I also have appeared before independent counsel representing one of the targets and felt that the independent counsel abused his power. In those situations, there was no accountability. And some independent counsel stayed in office for years. They would investigate one issue, then they'd investigate something else that would lead to something else . It was

like a roving ombudsman. Jake's view, which I share, is that, if we thought we saw another crime, we would refer it to the Department of Justice. We weren't supposed to investigate beyond our original charter. I think that the law was bad, so I was pleased to see it go. We have a Department of Justice. People who have conflicts usually recuse themselves and, if they don't, there is political accountability for that.

Ms. Feigin: Back to some big cases that you tried. I think we have time to discuss one more. I know you had a series in the Carter years.

Mr. Aldock: My first big case involved a case that the SEC brought against Colonel E.C. Harwood, a West Point graduate who saw himself as an economist, although his formal training was as an engineer. Harwood bought an old mansion at a foreclosure sale in Great Barrington, Massachusetts. It was a huge place on many acres. The Colonel started an organization called the American Institute for Economic Research (AIER), which still exists today in Great Barrington. In those days, AIER held some non-mainstream economic views. Today, it might be considered mainstream conservative economics. It was free-enterprise focused and emphasized gold-backed investments as reliable and inflation-proof. AIER believed that the government shouldn't be allowed to create money. The Institute published lots of materials, and Harwood began creating vehicles for investment. Starting in the 1970s, Colonel Harwood ended up with hundreds of millions under investments.

Ms. Feigin: In gold?

Mr. Aldock: The investors invested in gold bullion, gold coins, gold-backed annuities, and South African gold stocks. Some of the investments in gold may have preceded 1973 when gold was pegged at \$35 an ounce and US citizens couldn't buy it, so Harwood bought gold through trusts. He started a Swiss corporation called the Progress Foundation, which eventually was to become a university. AIER and Progress Foundation had endowments. Colonel Harwood drafted all the contracts himself without involving lawyers.

Ms. Feigin: And he wasn't a lawyer?

Mr. Aldock: The Colonel wasn't a lawyer. The SEC thought it was a Ponzi scheme, saw Harwood as the Madoff of his day, and brought the case before Judge Gerhard Gesell in the US District Court for DC. Gesell was a legend, terrific judge, and former chair of Covington & Burling. The judge ordered all the Harwood-related assets to be brought back to the United States from Switzerland. The Swiss Credit Bank argued bank secrecy, but Gesell ignored them and even threatened to seize the bank if they did not cooperate. Although I thought the bank should have appealed, it caved. That was the beginning of the end of Swiss bank secrecy. What we are seeing now in the UBS cases is the last gasp. The SEC breached the wall of bank secrecy in the Swiss Credit case. The SEC was riding high and insisted on the power to appoint a whole new board of trustees for AIER, which was a charitable foundation. The SEC interviewed prospective trustees who were largely free-market-oriented academics. The new Board needed a lawyer, and Colonel Harwood's lawyer recommended me. The Colonel left the United States for Bermuda.

His lawyers, Judd Best and Bob Higgins, convinced the new Board it ought to have a lawyer. The Board came to the view that they didn't like what they had agreed to do: liquidate all the funds. The investors had not lost any money, so the new Board came to me and asked if I would represent them. Initially, my reaction was, "It's a little late. You signed this Consent Decree. You are liquidating all the assets. What can I do for you?" After I looked into it further, I thought we might prevail and limit the liquidation. AIER litigated against the SEC for four years. There was an international audit that showed nobody had lost any money. The investors, who were not Wall Street types but small investors who believed in Harwood, had profits of 500% to 5,000%. They all were old at this point, many in their eighties.

At the culminating court hearing, I brought a group of the investors into the courtroom. They each told their story and then stated, "If you liquidate my investment, I will have a tax problem and will not be able to pay." The judge held that these investments were unregistered securities. Harwood had violated the law, but nobody had lost anything. The Colonel had not taken any money. The SEC lawyer said, "These people have been brainwashed. It's outrageous. This is a charade that Mr. Aldock has put on." Judge Gesell said, "Well, so have I." [Laughter] "And you'd better settle with Mr. Aldock right now, or you've lost your case." So the SEC and AIER agreed that there would be a withdrawal offer to the investors but not a forced liquidation. The investors could take their money out or leave it in the funds. The fund purported to be a "pooled income fund," but for a pooled income fund you needed to have IRS approval, and the

Colonel didn't have that approval. We agreed with the SEC that the AIER funds would not seek further contributions unless and until they received IRS approval. Maybe 15% of the investors took their money out; the rest stayed in the funds. We litigated with the IRS and won. The American Institute for Economic Research has a research staff and is publishing today. It is a significant institution in the free-enterprise, hard-money world. AIER is more mainstream these days than it was in the 1970s, but its views have not changed. I continue to represent AIER, although it has no significant legal issues today and is a small client.

The Progress Foundation on the Swiss side was a smaller version of AIER. The Swiss Banking Commission (Switzerland's SEC) had appointed a Swiss fiduciary company/banker, Marcel Studer, to head the Progress Foundation. I met him with one of the investors, Sidney Rose, and we told him, "You don't need to liquidate this group." Studer agreed and said, "Let's fight." So the settlement with the SEC was that Progress Foundation would be a closed-end fund. The Foundation could keep all the investments, subject to a withdrawal offer like AIER had done in the United States. That closed-end fund became the endowment for the Progress Foundation. Today, the Foundation holds two economic conferences annually at a Zurich hotel which are open to the public at no cost. The conference format usually involves one US speaker and one European speaker – sometimes Nobel laureates – on a public issue, often an economic-related issue, although not necessarily. Progress Foundation also runs workshops which are attended by academics and public figures, and it publishes books.

As far as the Board was concerned, I was the lawyer for life even if we didn't have any further legal problems. It was determined that I should attend every meeting, and they would pay for business-class tickets for my wife and me to go to Switzerland twice a year. The Board later decided it would be cheaper for the Foundation to put me on the Board. The Trustees have become good friends. At the time of 9/11 Marcel Studer, the Chairman of the Board, and his wife telephoned because they had heard Washington was being evacuated and invited us to stay with them. That is the kind of loyalty and relationship with a client that is probably not possible today. It is an exception because it's a private, nonpublic, foreign corporation. This is as rewarding a legal relationship as one can have. I represented them thirty years ago and I represent them today, yet I do virtually nothing for them except to help them find appropriate speakers for economic conferences. Progress Foundation is my all-time favorite client.

Ms. Feigin: Was Colonel Harwood a military colonel or was that an honorary title?

Mr. Aldock: Harwood was a West Point graduate. He corresponded at length with John Maynard Keynes. The letters that they exchanged are very interesting. The Colonel was much closer to the Hayek or Milton Friedman school of economics than to the Keynesians, probably the two major schools of economic thought today.

Ms. Feigin: You were obviously thoroughly immersed in the economic issues. Is that because of your earlier training or is that something that you learned with this client?

Mr. Aldock: I learned a lot about economic theory and investing in gold with this client. My interest in economics and business is part of my interest in public affairs which I've always had. My father told me, "You ought to pay attention to what's going on out there, son," and I did.

Ms. Feigin: [Laughter] Well, that's perhaps a good stopping point for today, unless there is anything you want to add about what we have discussed? No? Thank you very much.

Mr. Aldock: Thank you.

**ORAL HISTORY OF
JOHN ALDOCK
Fourth Interview
May 11, 2010**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is John Aldock, and the interviewer is Judy Feigin. The interview is taking place in John's office in Washington, DC, on May 11, 2010. This is the fourth interview.

Ms. Feigin: Good afternoon.

Mr. Aldock: Good afternoon.

Ms. Feigin: When we left, you had finished a big gold case with Judge Gesell. I know you were involved in the Rules Committee with Judge Gesell. Was that a result of this case or how did that come about?

Mr. Aldock: I must say I can't remember the order. I can't recall whether the Rules Committee preceded the gold bug case or not, but it certainly was very early in my private practice. There never had been a Rules Committee of outside lawyers for the US District Court for DC, and Judge Gesell was very interested in having one. Fairly early, I would say 1973, Judge Gesell appointed a Rules Committee with Jake Stein as the Chair. The court's criteria for the other members was that we had to have been DC District Court law clerks. The committee was Bill Jeffress, who had clerked for Gesell, then Justice Stewart, and is now at Baker Botts; Bob Higgins, who had clerked for Judge Jones and is presently at Dickstein; and I, who had clerked for Youngdahl. We were the committee with Jake as the Chair and were tasked to rework the rules from scratch, because the court had some rules and many orders, some of which were published and some that were not. It was a mess. It was a huge project because we rewrote and

reorganized all of the rules, criminal and civil, to make sure they were consistent with the Federal Rules. We worked with the clerk's office; the Clerk of the Court at that time was Jim Davey, and he was an active participant with us. It probably took us a year and a half. When Jake stepped down, I was appointed Chair. Bob Higgins and Bill Jeffress have departed, and now there are five other lawyers on the committee. I am the only link to the original group. I do not recall exactly when Jake resigned, but I probably have served as Chair for twenty years.

We meet with the court several times a year. Yesterday, our committee lunched with Judge Kennedy, Chief Judge Lamberth, and Judge Roberts, along with the new Clerk of the Court. We discuss issues before the court that may or may not memorialize themselves as rules. We also get submissions from the bar which the court asks us to evaluate. We try not to make changes. Jake's philosophy, and one that I have followed, is that change generally is a bad idea unless what we have is not working. The bar wants the rules to be predictable. We can tinker with the rules but, if we only marginally improve them, we should not make the change. There should be some problem with the rule or some legal development that requires a change. It has been a productive committee over the years. Some things have been controversial, others not. It's all confidential so I can't talk about any of it. But there have been some interesting moments when the press was involved. I have been on the committee for more than 30 years, so I have become the institutional history.

Ms. Feigin: Can you share with us if the press was hounding you? Were there articles?

Mr. Aldock: We stand between the court and the press because the judges don't like to talk to the press. They don't think it's appropriate in most cases. If there are questions to be asked and answered, oftentimes the answer is "no comment," but sometimes I talk to the press on background to explain why some allegation is untrue or based on a misunderstanding of the facts. On occasion, the press will seize on something that has a bad appearance, but they've got the facts and context wrong, and it is not the problem they think it is.

Ms. Feigin: So you've been on the Rules Committee continually for 37 years?

Mr. Aldock: Yes. It's embarrassing.

Ms. Feigin: No. [Laughter]

Mr. Aldock: [Laughter] It's been a very long time. I will step down at 70, if not before. I serve at the pleasure of the court. The Rules Committee work was a part of my relationship with Judge Gesell. I think the securities case we discussed followed my appointment to the Rules Committee. The SEC case, the one with the gold bugs, was I think during 1976. I know we redid the rules in 1973. But there were other cases before Judge Gesell in the 1970s.

There were several White House cases, by which I mean somebody tries to break through the White House gates. In all of my cases, the person was mentally ill and not really a threat. In today's terrorism climate, these people likely would be shot on the spot and not prosecuted. The one I remember best involved a man dressed as an Arab who somehow got through the gates. If the

president had been in town, the guards would not have permitted him on the grounds. Since the president was not there, the guards surrounded the intruder, who had wires coming out of his clothes. When the guards went to diffuse the bomb, they quickly determined that the wires weren't connected to anything, and the intruder wasn't an Arab; he was just a nut. Can you imagine how that case would turn out today? The prosecutor charged the man with destruction of government property, i.e., the gate. He was found incompetent to stand trial and sent to St. Elizabeth's Hospital.

Ms. Feigin: What was your role in it?

Mr. Aldock: Occasionally, in some of those cases, I represented the defendant. But on this one, I didn't. The issue was the old DC doctrine whereby the court had the power to appoint a lawyer to raise an insanity defense over the objections of both the defendant and the prosecutor. Usually, I was the court-appointed attorney. A pernicious doctrine, it came up in the Frendak case, which is worth mentioning.

In 1974 Paula Frendak murdered Willard Titlow, a co-employee at *Congressional Quarterly* in DC, seemingly for no motive whatsoever. Titlow didn't know Frendak. He had never met her, even though she worked elsewhere in the office. After the murder, Frendak was arrested in Abu Dhabi, brought back to the United States, and charged with first degree murder. Ms. Frendak announced her defense was that the CIA and the judge on the Superior Court had plotted to entrap her. The judge had her examined by psychiatrists. The psychiatrists found that while competent to stand trial, Ms. Frendak was mentally

ill. Ms. Frendak's view was that she was not sick and would not raise a mental illness defense. Judge Ugast of the Superior Court was confronted with the well-intended but pernicious doctrine that had spawned from the DC Circuit's decision in Whalem v. United States, 346 F.2d. 812 (D.C. Cir. *en banc*). There the court held that the trial court has the discretion to raise an insanity defense over the objection of a defendant found competent to stand trial and that appointment of Special Counsel was required to explore the issue. The result of Whalem was that there were three lawyers in the courtroom. The prosecutor, the defense, and what I would call the judge's lawyer, because it was hard to say whom exactly the appointed lawyer represented. So I took the appointment in part because I respected Judge Ugast, and also because I'm not in the habit of turning down requests from judges. In addition, I saw this as an opportunity to explore the possibility of convincing the DC Courts not to follow Whalem, which I considered inconsistent with more recent Supreme Court authority. I also thought Whalem could lead to bad consequences in some cases, particularly when the defendant was charged with a misdemeanor and the insanity defense was raised over the defendant's objection. The result in such a case would be that the defendant could be committed to a mental hospital for life for a 6-month misdemeanor. That certainly wasn't the intent of the Whalem court, but it could have been the result and, I think, was the result in some cases.

This case came to trial with three lawyers: the prosecutor, the defense attorney, and me. The facts made the case somewhat tricky. First, Ms. Frendak was apprehended by a CIA agent in Abu Dhabi. Second, the first psychiatrist

who examined her on a court appointment also was an outside psychiatrist for the CIA. I could see a jury possibly buying Ms. Frendak's psychotic version of the facts, despite an otherwise airtight case on the murder. On the other hand, my view always had been that if I represented the judge, and the prosecutor and the defense were at the other table, the jury was siding with me as long as they didn't dislike the judge. Nobody disliked Judge Ugast. Eventually, Miss Frendak took the stand, and that was the end of the case. Her story got even more bizarre and, by the time she finished testifying, the jury saw that she was mentally ill.

Ms. Frendak's view was that she had a love affair with the victim who was stalking her, despite testimony that the victim never had met her. In any event, Ms. Frendak was found not guilty by reason of insanity. When the case went up on appeal, with the permission of Judge Ugast, I was appointed *amicus* and took the position that the Whalem doctrine was wrong and that the court should at least prospectively change the law. The prison system has resources to treat mental illness, whether or not an insanity defense is raised. The court, in an opinion in 1979 by Judge Ferren of the DC Court of Appeals, declined to follow Whalem prospectively. I believe that the DC Circuit subsequently followed the DC Court of Appeals, which is not the usual progression.

Subsequently, Ms. Frendak somehow escaped from jail. As a result, Judge Ugast was under armed guard for a considerable period of time, because there had been death threats that Ms. Frendak had made to him and to me over this period. The death threats never bothered me. I had been threatened by defendants as a prosecutor. It was not unusual that, after sentencing, a defendant

would turn to the prosecutor and say, “I’ll get you!” But then I would pass the defendant in the courthouse, and he/she never recognized me. So I didn’t put a lot of stock in the threats. Friendak, however, was different, and Judge Ugast was concerned. I don’t think Friendak ever was caught. I saw the judge many years later, and he hadn’t heard anything either.

Ms. Feigin: He gave up the guard?

Mr. Aldock: He’s now retired and gave up the guard many years ago.

Another interaction with Judge Gesell was a dispute for dissolution between partners in a large real estate venture. As I recall, Gesell said, “The partners of the joint venture need a divorce and I am not a divorce lawyer.” At some point Judge Gesell decided he’d had it with the case, and he appointed me as the receiver for all the assets and said, “Liquidate them.” As the receiver, I was selling property all over town. At the outset, I knew very little about this field but soon learned a lot. There was one episode that was both amusing and a bit scary. We couldn’t seem to get the permits from the fire department to sell a particular building. The fire inspector said we had to replace the bars on the windows, so we did; then he said the bars were the wrong thickness, and we replaced them again. After the third time, I had an instinct that this was not going well, so I called in the inspector. I said, “You understand that I’m a court-appointed receiver? If this is a shakedown for a payment, it is not a good case for you. You should pick a different one.” [Laughter] The inspector said, “You will

get your permit tomorrow.” [Laughter] That was an insight into DC government at its worst.

Ms. Feigin: Are we talking in the 1970s?

Mr. Aldock: In the 1970s. The next big case I had before Judge Gesell was the Leatherman case, which was another thwarted Supreme Court argument. This was a case where Mr. Leatherman had been caught robbing the Watergate branch of what was then the Riggs Bank, now PNC. It was a very sophisticated robbery. Leatherman pretended to be a bank examiner, talked his way into the bank, and got into the vault. He had to be a great con man. Leatherman fled and disappeared. He had a getaway car and had rented a helicopter. The police never would have solved this crime, but Leatherman left his passport in the rented car, so he was arrested. For reasons I could not figure out, Judge Gesell found this man “not guilty by reason of insanity” in a nonjury trial. In a case like this with such pre-planning, I couldn’t conceive of how that could have happened. Roger Adelman was the prosecutor, and he couldn’t understand it either. To us, the only explanation was that this somehow resulted from Judge Gesell’s partiality to doctors. Gesell’s father was a world-famous doctor, and he deferred to their expertise, apparently finding Leatherman’s court-appointed psychiatrist more persuasive than those at St. Elizabeth’s, who testified for the US Government.

Judge Gesell appointed me to represent Leatherman after he was found not guilty by reason of insanity and committed to the highest security ward in St. Elizabeth’s Hospital. The St. Elizabeth’s doctors who testified that Leatherman’s

crime was not the product of any mental illness were most distressed by Judge Gesell's ruling. At some point before my appointment, the hospital doctors announced their intention to treat Leatherman with controversial antipsychotic drugs. Leatherman objected and, through me, took the position that, since he had been held competent to stand trial, he was competent to reject the drugs. Indeed, my position was that to forcibly subject him to potentially dangerous drug therapy violated Leatherman's constitutional rights. Judge Gesell emphatically rejected my position. At one point, I said, "If you have no respect for my position, why did you appoint me to argue it?" Then Judge Gesell toned down, although he did not change his position.

Interestingly, St. Elizabeth's general counsel at that time was now Judge Colleen Kollar-Kotelly. I previously had known Colleen through her husband John, who served in the US Attorney's Office with me, but got to know Colleen much better during this case. (She is a friend, and I have been appointed by her to interesting pro bono matters and even represented her in a frivolous case.)

I took an interlocutory appeal from Judge Gesell's ruling which was accepted by the DC Circuit. My associate on this matter was a brilliant lawyer named Bruce Swartz, a former Supreme Court Clerk and one of Shea & Gardner's very best. I let Bruce argue the appeal, which he did extremely well. Bruce is now the head of the USG's International Crimes Section which he has headed ably in both Republican and Democratic administrations.

At the end of the DC Circuit argument, Bruce and I concluded that we would lose 2:1 but, given the composition of the court, we would have an excellent chance that the court would grant rehearing *en banc*.

When I met with Leatherman to report on the argument, he made a point of “reminding me” that he was in St. Elizabeth’s Hospital “as a volunteer.” I frankly didn’t think much about the remark until a few weeks later when I was informed that Leatherman had escaped from the highest security section of the hospital. I then knew what he meant by being a volunteer.

At that point, the Court of Appeals dismissed Leatherman’s appeal as moot under an old doctrine that an escapee waives any pending appeal. I tried to argue that this doctrine surely should not be applied to an escapee from a mental hospital, but the court had no interest in the argument. There was a split in the circuits on the issue of whether an otherwise competent defendant could reject the advice of the mental hospital’s doctors to inject him with potentially dangerous antipsychotic drugs. The Supreme Court ultimately upheld that position. Thus, I once again got close but missed the opportunity to argue a case before the US Supreme Court.

Many years later I was informed that Leatherman had been killed in an armed bank robbery. I never looked into it but always have had my doubts. Leatherman was a con man, but I doubt he ever was armed.

Ms. Feigin: Before we get to another case, you said Judge Gesell was one of the giants in the law in your opinion. Do you want to tell us who else you put in the same category?

Mr. Aldock: Judge Jones was a great judge. He had been Senator Mike Mansfield's campaign manager in Montana. He was a former Notre Dame football coach. We just don't find judges with these kinds of diverse backgrounds anymore. Jones evidenced no ideology on the bench. We find a lot of ideology with judges these days, as with politicians and with the electorate. Jones called it straight on the facts and law presented. Judge Jones had a great temperament. Judge McGowan on the DC Circuit also approached his role without any liberal/conservative, activist/non-activist bias. McGowan had been Adlai Stevenson's campaign manager in one of his presidential runs against Eisenhower. McGowan was a terrific judge and, I think, better than Bazelon and Wright, who were ideological on the left, and Burger (later Chief Justice), Robb, and some of the others who were ideological on the right. Judge Leventhal was another giant on the DC Circuit who came without any ideological baggage. Leventhal may have been the smartest judge on that court. Both McGowan and Leventhal had the right temperament and superb judgment.

Aubrey Robinson was an excellent chief judge of the US District Court. Sometimes temperament was not his strong suit – he could get awfully aggravated at lawyers – but Robinson had good judgment. A chief judge of a District Court has no powers other than the power of persuasion. Robinson was probably the

first chief judge who really ran the court in a way that got it organized to work efficiently.

Judge Bryant, whom we've discussed, was a great judge and wonderful man. He had argued the Mallory case in the US Supreme Court and was the first African American Assistant US Attorney to argue in the US District Court and one of the first African American judges. Bryant was beloved by everyone. I appeared before Bryant maybe 30-40 times. I was assigned to him, in part, because the US Attorneys' Office had lost so many cases there. Bryant was considered a pro-defense judge. If the prosecutor or the police made a mistake, he wasn't going to stand for it. The US Attorneys' Office wanted somebody who could cite case law to Bryant. If you had a case, Judge Bryant always would say, "Oh! You've got a case. I'm not lawless." [Laughter] Bob Higgins, Roger Adelman, and I spent a lot of time with Bryant, and we rarely lost. Occasionally, it became difficult because Bryant would say, "I don't know if I'm going to suppress that confession or not, but you don't need it and should not use it." Judge Bryant would talk us out of using certain questionable evidence on the grounds that, if we had any manhood at all or were a trial lawyer worth a damn, we would win without it. Half the time we would say, "All right, all right. I don't need it." And we would cross our fingers because it would not look good to have given up the confession and lost the case.

In the 1960s and 1970s, not so much because we were great lawyers but because of the composition of the jury pool and the nature of society in the District, the prosecutor rarely lost. The usual jury mostly was composed of older

African Americans who lived in high-crime areas and were going to see to it that criminals were taken off the streets. At that time, DC had an interracial police department that was respected and effective. Before the sentencing guidelines that made it hard to plead, the US Attorney's Office got a 50% plea rate and then won over 90% of the remaining cases. I don't think I lost more than two felony cases during the time I was there, and they were cases I should have lost. They were husband/wife homicides where it's either manslaughter or self-defense. Frankly, I didn't even ask for a conviction in those cases. I put those cases to the jury, the jury decided, and I was okay with the result either way.

Bryant was a giant. Subsequently, judges of both political persuasions and congressmen of both political parties supported naming the new DC courthouse as the William B. Bryant Annex. It had to be named an annex because the old courthouse was named after Judge Prettyman; changing the name would have raised issues. In the end, even the Prettyman family agreed to the William B. Bryant Annex. While called an annex, it is the nicer building and the main courthouse in the District of Columbia today.

Ms. Feigin: Let's go back. I think there's a case in your early career that we should cover which involved you and Puerto Rico. Can you tell us about that?

Mr. Aldock: I just had arrived at the firm when I got a call from a lawyer I knew who had been active in the Democratic Party and had something to do with the Credentials Committee for the Democratic Convention. He said, "We've got a credentials fight. We need a hearing examiner representing the Democratic National

Committee to handle ‘the trial.’ Can you go to Puerto Rico next week?” I said, “I’ve never been and that would be fun.” The allegation was that the then governor of Puerto Rico was running in the Democratic Party for reelection solely because a Democratic president just had been elected. Before that he arguably was a Republican. There was a challenge by the Puerto Rican Party usually affiliated with the Democratic party in the United States which argued that the governor was not a real Democrat and therefore should not be allowed to run. I discovered with a little research that in Puerto Rico political party labels have no meaning whatsoever. Citizens are either for commonwealth status, statehood, or independence, and those are the parties. Although the governor probably had changed his allegiance, nobody cares whether the candidate is a Democrat or a Republican. In those days it was unusual; maybe less so now. We see it occasionally on the mainland with Arlen Specter and others. I thought the assignment would be interesting, and it was.

When I got off the airplane, there were a lot of people, both protesters and the press. At the hearing there were people all over the place. The trial was a big deal on the island. I was 26 years old and was going to take testimony. The Attorney General of Puerto Rico was representing one side, and somebody of equal stature was representing the other side. We had a court reporter, but otherwise it was just me and the parties. In the middle of the trial, someone handed me an envelope. It was a formal invitation from the governor of Puerto Rico to dinner at the palace. I had no doubt what to do with it. I went on the record to say, “The governor is inviting me to dinner at the palace. Of course,

since he is a party in this case, I will decline the invitation.” To my surprise, the other side said, “You can’t do that. To not go would be an affront to the people of Puerto Rico. You must go.” I repeated that the Attorney General was going to be there. But the other side said, “We know. Absolutely no problem. We waive all objections and insist that you go.”

I thought about it. I don’t know whether I would have done so today, but I went. It was quite a dinner at the Fortaleza Palace. There were other people there, but it was clear to me that ingratiating themselves with the hearing examiner was exactly what this was about. [Laughter] They didn’t talk about the case, but they talked a lot about what nice people they were. It was fascinating.

When I eventually closed the hearing, I felt I had to get off the island. I had to write an opinion but couldn’t do it there. One of my partners had a family house on St. Johns, so I flew there. I wrote my opinion, and then I returned. I declined to disqualify the governor on the ground that he was not a real Democrat. The Credentials Committee reversed my decision, or at least the grounds for it, in about five minutes. [Laughter] It was all politics. [Laughter] I don’t know what happened at the actual convention. My guess is that the issue was somehow compromised. It was a great experience for me.

Ms. Feigin: You had a White House case which I think was pretty famous involving Hamilton Jordan. Was that around the same era?

Mr. Aldock: Yes, it was during the Carter administration. Hamilton Jordan, the chief White House aide to Carter, and Jody Powell, Carter’s press secretary, were alleged to

have bought drugs at Studio 54, at the time a very famous hangout of the rich and famous. It still exists and is now a museum. Then, it was where entertainers and celebrities went to buy “recreational” drugs and hang out.

Ms. Feigin: And that was in New York?

Mr. Aldock: In New York City. The complaining witness was Roy Cohn from the Joe McCarthy days. The two owners were under indictment for tax and drug charges. With such complainants, the idea that we would start a case against the president’s top aides seemed distasteful, but there was a special prosecutor appointed, a former US Attorney in New York whose name escapes me now. Steve Pollak was retained by the White House to represent Jordan and Powell. Steve asked me to work on the case. The allegation was possession of marijuana. We eventually got an affidavit from the First Assistant US Attorney in DC, Carl Rauh, that the amount of marijuana alleged to have been bought, whether indeed it was or wasn’t, would not be prosecutable in the District of Columbia at that time. That ended the case. I came to have a high regard for Jody Powell; he subsequently started a successful public relations firm in DC.

I had a much lesser regard for Hamilton Jordan who, I believe, was not up to his job. After the matter was dismissed, Jordan gave an interview, I think, in *Newsweek*. He said that the independent counsel statute was a bad law, because it allowed people like him to be financially ruined by virtue of the legal fees paid to defend himself. I agree with Jordan on his view of the law but, since he didn’t

pay us a cent, I don't know how he was financially ruined. [Laughter] That was an embellishment that he added.

Ms. Feigin: Was the president at all involved? Did you deal with him?

Mr. Aldock: Not at all, although we spent a lot of time at the White House.

Ms. Feigin: We've probably gone through the 1970s unless there's anything else that happened during that era that you would like to tell us?

Mr. Aldock: There were two more small matters that were important to me at the time. One was the Scarborough case, because it was probably the only case I have tried before a jury as a plaintiff's lawyer for an individual. It was very satisfying. Scarborough was an electrical technician at the University of Maryland. He had been electrocuted and died trying to change wires in a box that was supposed to have been turned off but was hot. He had a new wife and small children. The University of Maryland said that they could not be sued as a result of state sovereign immunity. Scarborough had no insurance and no pension; he had nothing. We somehow beat the sovereign immunity defense. It was a technicality, but we pulled it off and were entitled to a trial. I tried it with Steve Hadley, my then partner who subsequently became the National Security Adviser for George W. Bush. I think it was probably Steve's only trial, because he became a transactional lawyer at the firm. We tried the negligence case against the University, represented by the State Attorney General's office, and won half a million dollars which was a lot of money in those days. Also, the wife had insignificant attorney's fees since we took the case as a pro bono matter. I stayed

in touch with Mrs. Scarborough for some years until she remarried. If all cases were so deserving, I could have been a plaintiff's lawyer but, of course, they are not.

One other matter in the 1970s, fairly early in my career at the firm, involved a client, Newmont Mining. Newmont at that time mined copper and gold in the Southwest. Newmont had received an Equal Employment Opportunity Commission (EEOC) complaint because all the miners in the underground mine were men. The argument was that this was the result of discrimination. It was not an easy case. Despite having good reasons as to why there were no female miners, it was clear that the mine operators did not want women in the mine regardless. One senior manager thought it was a perfectly good defense that "everyone knows women in a mine are bad luck."

Ms. Feigin: What was your defense?

Mr. Aldock: We argued that no women wanted the jobs, so the issue was could you test that? Two things happened during the case. One, there was a labor shortage in Arizona. The copper smelter, which is tough work too, started employing women to saw, hammer and perform nontraditional tasks. As a result, the company's statistics began to look better. Again, I'm not sure that the motive was pure. Because there was a labor shortage, the company had no choice but to hire women, and they discovered, much to their surprise, that most of these women were terrific workers. As a result, I think the managers turned on the merits of the issue.

I still needed a way to persuade the EEOC on the underground mine issue. The female investigator from the EEOC passed out when I took her on a tour of the smelter. That, however, wasn't enough. [Laughter] While she thought she was tough, she attributed the event to having a bad day. [Laughter] We eventually made a deal to the effect that the company would offer the mine jobs to every woman employed in the secretarial pool where most of the women worked. There were hundreds of women in secretarial positions but, of course, none of the women took jobs in the underground mine even though the pay was much higher. The smelter jobs were as high paying as the mine jobs, so we argued in favor of offering those jobs to the secretaries. The EEOC failed to recognize that the type of women who worked in the offices were unlikely candidates to sign up for the underground mine. Many indeed were wives of the miners. Also, we persuaded the EEOC that the company's good record hiring women in nontraditional jobs in the smelter would undercut any discrimination claims.

Ms. Feigin: Well, as the father of two women, there must be some satisfaction in —

Mr. Aldock: Yes, my daughters would have approved.

Ms. Feigin: [Laughter]

Mr. Aldock: In the 1980s I did have the view — I wasn't as conscious of it then as I am looking back — that I needed to change my practice every couple of years, because otherwise it would get boring.

I was looking for my next case to be in a new field. I had done white collar crime and securities so, when an antitrust case that involved a gas pipeline in Florida came to me, I thought I had found my next move.

It was a great David and Goliath case. Hvide Shipping was the company that retained us. They had a tug operation at various ports in Florida and would be out of business if a gas pipeline was built across the state. Hvide was going to do whatever it could to oppose the proposed pipeline for gas and light petroleum products; very substantial financial interests supported the pipeline. The head of the tug company was very good at getting publicity and succeeded in raising all kinds of environmental objections. The major proponent of the pipeline was Transgulf, a big company represented by big name lawyers from Vinson & Elkins in Texas. Transgulf sued Hvide for violation of the antitrust laws, including restraint of trade. We decided to counterclaim for attempted monopolization of the gas market between Texas and Florida. Harry M. Reasoner of Vinson & Elkins was a heavy-hitter attorney in those days, and he put a lot of lawyers on the case. I worked with my partner, Jamie Kaplan, and one associate. We eventually beat them both legally and in the court of public opinion. At the end, Transgulf took a dismissal with prejudice if we agreed to dismiss our counterclaim. I thought this was a great victory, because Transgulf was trying to bully the tug company to make them back off. Transgulf's complaint certainly was not meritorious; they hoped to force Hvide to drop out because it could not afford to fight. I felt the Transgulf lawsuit was an improper use of the courts to silence a political opponent. It didn't work, so it was a satisfying victory.

Ms. Feigin: Did this turn you into an antitrust lawyer?

Mr. Aldock: No, I don't think I had another pure antitrust case.

Ms. Feigin: Because this is a history for the DC courts, I wonder if you find a big difference in the practice of law, DC versus the rest of the country? This case was in Florida, and you obviously have done cases all over.

Mr. Aldock: Actually, I've had very few cases in DC over the past 30 years. The Securities and Exchange Commission (SEC) doesn't bring cases here by and large. It did bring the AIER case that I described earlier in this history but, generally, the SEC tends not to bring cases in DC. The SEC prefers to sue in New York and in other courts around the country. We didn't have that much industry in DC, so that is also a reason why fewer cases were brought in DC. Even the political criminal cases were brought, where possible, in the Eastern District of Virginia, which was thought to have a more receptive jury pool and to be much more conservative on sentencing. The DC Circuit was considered a liberal court, and DC juries were considered by the United States Government (USG) to be unreliable. A bad rap, I would say. Certainly in the 1960s, 1970s, and early 1980s, DC juries were as conviction-prone as you could get. The jurors knew crime because they lived in crime areas. I think the juries became less reliable from the government's standpoint in the 1990s. The police department wasn't as good in the 1990s, and the officers sometimes didn't deserve to be believed, which was not the case in the days when I was a prosecutor. My cases in DC have been few and far between.

I would say that the DC Superior Court is as good or better than most state courts in which I've appeared in terms of the quality of the judges. It wasn't true in the Municipal Court before it was the Superior Court, but in the Superior Court the selection process results in good lawyers generally being appointed. And the US District Court generally gets very good jurists. I think the DC District Court also is one of the better federal courts. There are several premier federal courts in the country; the Southern District is another one.

Ms. Feigin: Of New York?

Mr. Aldock: New York, yes. But our DC local court system is underrated. If you appear in West Virginia or Mississippi or Madison County, Illinois, as I have, you come to appreciate the District of Columbia local courts. DC has a bad rap for antibusiness juries; I think it is not as bad as many other places.

I had an interesting matter in DC in the 1980s. A movie was made about one of these cases, although my role is a cameo. It is rewarding to read about your matter in the newspapers or see it in the movies. That's one of the satisfactions of practicing law in DC. I don't think that happens as often elsewhere.

There was a book (2003) and then a movie (2007) called *Charlie Wilson's War*. Charlie Wilson was a Texas congressman who was being investigated for drug use. The key targets in a Capitol Hill investigation were Congressman Wilson, a hard-drinking bachelor notorious for his escapades, and Congressman Barry Goldwater, Jr., the son of presidential candidate Barry Goldwater. The

USG had a substantial basis for believing that these people were using cocaine. It was reported in the newspapers every day. The USG enpaneled a federal grand jury, and Charlie Wilson's lawyer recommended me to Wilson's then girlfriend who was going to be called before the grand jury.

Ms. Feigin: Was this a grand jury here in DC?

Mr. Aldock: Yes, here in DC. Stuart Pierson, Charlie Wilson's lawyer, who is a fine lawyer and friend of mine, figures very prominently in the movie; I am not in the movie. My client, Elizabeth Wickersham, figures a little. Gorgeous and a smart lady with a college degree, Liz had been a former Miss Georgia. Liz would come to my office, and visiting me would be people I hadn't seen in years. [Laughter] They would ask to borrow a pencil. [Laughter] My stature in the office reached new heights.

The first scene in the movie shows Wilson and several women in a hot tub in Las Vegas. It didn't happen quite that way. There only were two people in that hot tub, but that's where the government thought they had Charlie Wilson and Liz Wickersham using cocaine. Miss Wickersham at one point asked me to discuss the law generally. She inquired if the government could prosecute crimes outside the United States. I told her, "No, they couldn't do that." She said, "That's interesting." At various points I said to Liz, "You know, the government is confident that there was drug use in Las Vegas and, if they can prove it and you say that it didn't happen, you may have a potential problem: perjury. You are not a target here, so you should tell the truth." Subsequently (and the movie had this

part correct), Liz told the grand jury that she absolutely saw Charlie Wilson use illegal drugs in the Bahamas but not in Las Vegas. So the USG had no jurisdiction, and it didn't seem that Liz was not cooperating.

At one point the prosecutors said to Liz, "You were having an affair with Charlie Wilson." Liz replied, "Absolutely not," and they thought this was an obvious lie. How could she deny this? Liz explained, "Charlie Wilson is incapable of having sex with a woman at night. He is drunk almost every evening." She said, "It served my purpose to be seen with him, and it served his purpose to be seen with me. A romantic relationship would be ridiculous. Charlie is 30 years older than I am."

She subsequently told me stories of having an affair, reported in the newspapers, with Ted Turner. She was working as a broadcaster at the Turner Network in Atlanta. Liz had gone to Cuba with Ted to meet Fidel Castro. Liz thought Castro was charming, and I assume the feeling was mutual. When she returned to Atlanta, everybody at the TV station was referring to her as "the other woman," so Liz got sweatshirts that said "The Other Woman," and she wore them to the station. I last heard she had a TV show called "The Good News" on the Turner network in Atlanta, a magazine news show about interesting happenings. Liz was quite successful and, I think, now is married with children.

Ms. Feigin: Your character may not have been portrayed in the movie, but did you have any advisory role or anything to do with that?

Mr. Aldock: Not in that movie. I did better in a later movie in the 1990s, *The Insider*, which was the tobacco case.

Another interesting case in the 1980s for me was representing the Islamic Republic of Iran. International law was a new field so that was in keeping with the goal of continually remaking myself as an attorney. A lawyer I knew had been representing Iran. Post-Shah there was the Bazargan government between the fall of the Shah and the Khomeini Islamic revolution. Bazargan was socialist, not an Islamic terrorist like some of the later crew. The Bazargan government nationalized much of Iranian industry, including the petrochemical and insurance industries, which at that time were largely American-run companies. AIG was a big insurance company in Iran at the time. I think Pfizer also was big. Tom Shack, who was representing Iran, had a very small DC law firm. I knew one of his partners, Nick Glakas, a Youngdahl law clerk. Shack concluded that he needed to retain another law firm to handle what looked to be large complicated cases, and Nick persuaded him to hire me. The cases were brought against Iran by US companies in US courts seeking just compensation for the nationalization of their Iranian companies.

I did a little research and came to the conclusion that this was going to be relatively easy, because Iran had sovereign immunity in this situation. To me, the nationalization of a company was a sovereign act, and none of the obvious exceptions seemed to apply. I assigned the matter to a bright, young associate named Bill Eskridge. Bill now is a popular and respected professor at Yale Law School. He agreed with my assessment that sovereign immunity was a good

defense to the lawsuits. Then the Bazargan government fell, and the Khomeini government prevailed and seized American hostages. All of a sudden, cases that seemed like clear winners on the law were not looking good. This was not a high point for the courts of the United States, because we lost in the district courts everywhere, particularly in the District of Columbia where most of the cases were brought. And we did so, in my view, solely because Iran had taken the American hostages.

The lead plaintiffs' lawyer was Charlie Brower, a lawyer in the DC office of White & Case. Charlie made a career of these cases. He went off to The Hague subsequently when the cases ended and became a successful international lawyer. When we appeared before District Judge George Hart in the District of Columbia, Mr. Brower stood up and started his argument. Judge Hart interrupted him and said, "We can dispense with that. Let's talk about what bond you want." Then I said, "Your Honor, you can dispense with his argument but you really should hear mine before you talk about the bond." I knew Judge Hart. The judge said, "Yes, Mr. Aldock. You'll get to argue all you want. But as long as Iran has the hostages, you can't win in this courtroom. We might as well save time and hear about the bond, and then I'll let you argue." [Laughter] The judge let me make my argument without interruption. At the conclusion, I asked if he would certify the issue of sovereign immunity to the DC Circuit. Judge Hart said, "Sure. Get all the process you want. You just can't win with me while they have the hostages. It's not going to happen."

It got rough at various points in some of the other court cases. My name was in the newspaper as appearing for Iran. Remarks were made to my young kids at school. We put an American flag in front of the house; I thought that seemed like a prudent move at the time. One of the lawyers we worked with on this case with Tom Shack's office, Christie Nettesheim, is now a judge on the Federal Circuit. Christine was a good lawyer, and she would come with us occasionally to the Iranian Embassy, where we would try to get evidence off the embassy telex. The employees at the Embassy were quite western, but they said, "Christine can't be seen going in the front door without her head covered. We'll get hung." We had those kinds of issues. The Embassy had a big wine collection which they had to throw away because they said, "We can't be caught with this." The telexes that came out of Iran, which were the affidavits we needed to file in discovery, all stated at the top when translated, "Praise be Allah. Down with the Fascist pigs." I suggested that was not a good heading. [Laughter] The response was, "Look, the guys who are writing your affidavits are technicians, and they know how to write affidavits for court. The heading is written by somebody else. You either have the heading at the top or you get no evidence." So I filed some of these affidavits with the header. It was awkward to say the least, although it never came up in open court.

It was disappointing that the US State Department would call and tell us what good papers we were filing and that they were with us yet refused to file anything to support us. The State Department understood that it would be unfortunate if we lost, because it would upset the law on sovereign immunity.

The Department noted that the South Americans and Scandinavians were not going to be happy with the idea that US corporations could sue in the United States courts for just compensation when an industry or company was nationalized. Every time I suggested that the Department file an *amicus* brief, the answer was, “Absolutely not. The hostages. Remember?” So that was not a profile in courage for our State Department.

Eventually, we got to the Court of Appeals for the DC Circuit which had no trouble reversing the District Court decisions we had lost. The Courts of Appeal in other jurisdictions also reversed the cases which we had lost below. When the hostages were released, the result was a US-Iran treaty requiring the cases to be transferred to The Hague in the Netherlands for arbitration. The treaty ultimately went to the US Supreme Court in Dames & Moore v. Regan (453 US 654 (1981)). I was scheduled to argue the case, but the argument got away. Tom Shack said to me, “Look, I wouldn’t have argued this if it was a contested matter, but we have the US Solicitor General on our side. It is not an argument of moment any more. We can’t lose. How about if I argue it?” Since Tom had sent me the case, I hardly could say no.

Ms. Feigin: There was an embargo on traveling there, so did you ever get to travel to Iran?

Mr. Aldock: No. I had fixed that in my retainer letter that provided (1) most of the money would be paid up front and (2) all meetings would be in London. I wasn’t interested in becoming the next hostage. In 1971 under the Shah, my wife and I, who traveled every year, were scheduled to go to Iran, because historically it’s a

very interesting country. We had planned to go to Shiraz, Isfahan, and several other cities. We were in Turkey and were about to board the airplane when a cholera epidemic was reported. The airline said we could proceed but first had to get inoculated at the airport by a Turkish doctor with what appeared to us to be dirty needles. [Laughter] Eventually, we flew to Greece and then home. My trip to Iran didn't materialize; maybe someday after the current government is out of power.

Ms. Feigin: You said you had three potential Supreme Court arguments. Do you want to tell us about the third that didn't happen?

Mr. Aldock: I should say one more thing about the Iran case. The last time I had any dealings with Iran was when all the cases went to The Hague for arbitration. Iran asked us whom they should pick as arbitrators. Bill Eskridge and I did some research, and it became clear that Iran wanted third-world arbitrators, people from South America, not from Western Europe.

Ms. Feigin: Why?

Mr. Aldock: Because Western Europeans would find high numbers. They would look at it just like an American court would look at the issue. They would provide for lost profits, going concern value, and consequential damages. The South American arbitrators would not arrive at such high numbers. They believed that nationalization was a useful concept and viewed the value nominally. It really made a difference where the arbitrator came from and his or her philosophy and frame of reference. There was a result-oriented difference among people who

were qualified and respected. Or course, the Iranians ignored our advice, chose Western European arbitrators, and got killed. I don't know why they did it; they never explained.

Ms. Feigin: The question of your third potential Supreme Court argument.

Mr. Aldock: It comes later. Amchem v. Windsor in the Supreme Court in 1997 was the settlement of the asbestos negotiation.

Ms. Feigin: We'll wait.

Mr. Aldock: There were three cases where I almost had an argument. Three strikes and you're out.

Ms. Feigin: Would you have liked to?

Mr. Aldock: Yes, it is something a trial lawyer should try to do if the possibility arises, but it was not to be.

As long as we are on the Supreme Court, why don't I discuss now how the third argument got away. The issue was what kind of settlement class actions could be brought under Rule 23 of the Federal Rules of Civil Procedure. I represented 20 companies that comprised the Center for Claims Resolution (CCR). It was a joint defense organization created to defend and settle asbestos cases across the country. Following a successful effort through the Multidistrict Litigation (MDL) panel to move all the federal asbestos cases to Philadelphia District Court, the CCR asked us to try to formulate an "end game" to the

asbestos litigation. My partner Bill Hanlon and I devised a format for a settlement class action that we secretly began negotiating with the leaders of the plaintiffs' bar (Ron Motley and Joe Rice of South Carolina and Gene Locks of Philadelphia). Bill and I negotiated the settlement and filed it in the US District Court (E.D. Pa.). We litigated the "fairness" of the settlement for a year, culminating in a one-month trial in Philadelphia where we prevailed. Our opponents appealed to the Third Circuit.

The existing law was quite good for us. A settlement class action just had to be a fair settlement and not the product of collusion. There were no other major requirements.

Between the time that we won the case and the docketing of the appeal, the Third Circuit decision in General Motors Corp. Pick-Up Truck Fuel Tank Products Litig., 55 F.3d 768 (3d Cir. 1995), authored by Chief Judge Becker, held that the fact of a settlement should not be taken into account in deciding whether to certify a class, even when the case is filed as a settlement class action. In other words, if a case cannot be tried as a class action, it cannot be settled as a class. The case was an outlier, out of step with the other circuits and the case law in the Third Circuit at the time we tried our case. At the argument before the Third Circuit, I represented the 20 CCR companies as well as the settling plaintiffs' firms. On the other side were four lawyers representing various objectors. The main antagonist was Freddie Baron, who was a high official in ATLA (Association of Trial Lawyers of America) and a very successful Texas plaintiffs'

lawyer. Baron hired Larry Tribe to do the motions work at trial and the appeal to the Third Circuit.

Ms. Feigin: We should just say for the record Larry Tribe of Harvard.

Mr. Aldock: Larry Tribe, a professor at the Harvard Law School, was both very expensive and quite effective. When we got to the Third Circuit, I was to argue against Tribe and three other lawyers. Since there were four lawyers on one side and only I on the other, Chief Judge Becker turned to me at the outset of the argument and said, “I’m going to give them each a half hour, and you get two hours. Since you’re going to be up for two hours you may need a break, so why don’t you just tell me when you need a break and we will break. No questions asked.” Becker had in mind that I’d need to go to the bathroom or get a drink of water. Of course in a two-hour argument against Tribe and the others, I needed to regroup. [Laughter] There would be a hard question, and I’d still be recovering from the prior question [Laughter] and I’d say, “I think we’ll take a recess now.” It was a terrific power that I’d never had before or since. [Laughter] I argued over two hours. It was my best appellate argument, even better than my Brawner argument, because it was much harder substantively and I had a hostile court due to the GM decision. Judge Anthony Scirica was with us, but Chief Judge Becker dominated the argument. Interestingly, Tribe was arguing wholly different issues than those Becker wanted to hear. Tribe was arguing constitutional issues; Becker was arguing the merits of his prior GM decision. I lost in a 2:1 decision. Georgine v. Amchem Products, 83 F.2d 610 (3rd Cir. 1996). Becker decided on the GM grounds and rejected both my argument and Tribe’s. Becker told me

subsequently that I had “out-argued Larry Tribe,” and it was the best argument he ever had had. I said, “That’s great, judge, but you ruled against me.” [Laughter] Becker said, “Those things happen.” We moved for certiorari to the US Supreme Court, and it was granted.

One addendum to the Supreme Court case is that, subsequent to our loss in the Supreme Court, Chief Judge Becker was brought back as a Special Master by Congress to mediate the asbestos legislation which sought to implement the settlement that the Supreme Court had said could only be achieved through legislation. Becker worked hard to mediate among the various stakeholders in the legislative effort. Unfortunately, he died in the process, and the legislative effort ultimately failed. The politics were too tough to obtain a legislative scheme that pleased all the stakeholders. Becker told me that he felt guilty about the case, because I was right as a matter of public policy since it was a fair settlement, just one that was beyond the power of the courts to achieve. Becker thought that if he could fix it legislatively – which he thought was the right answer – he’d be happy to fix it, but it was not to be.

Before reaching the Supreme Court, there was one other interesting side light at the trial level. When we lost the case in the Third Circuit, it was called Georgine. We originally filed it as Carlough. Carlough was a major labor leader. Between the time we filed the case and the trial, there were intimations that Carlough might get indicted for labor corruption. That would not be a good start to the litigation. Judge Weiner was the MDL judge for all asbestos litigation, although Judge Reed – not Judge Weiner – presided over the trial. We lined up

another major labor leader named Bob Georgine, who was the head of the building trades unions. We convinced Judge Weiner to change the name of the case from Carlough to Georgine. The clerk's office protested on the ground that there had been major decisions in the case and even interlocutory appeals under the name Carlough. Judge Weiner understood the optics, and the case name changed. I believe that is a pretty unusual, if not unique, occurrence.

Carlough died before he was indicted but, nevertheless, it went up on appeal as the Georgine case. Certiorari was granted at which time the case became Amchem Products v. Windsor, et al. The question was who was going to argue the case for our side. Nineteen of the 20 CCR companies believed I should argue in the Supreme Court as I had in the Third Circuit. But Sam Heyman, the Chairman of the Board and owner of GAF Corporation, which was privately held, said he wanted Robert Bork to argue. I and the 19 other members of the CCR thought Bork would be a terrible choice. Among other things, Bork recently had written a book, telling the other justices they were not as smart as he was. Also, we thought we needed the "liberal wing" of the court to win. But Heyman stuck to his guns. Heyman said, "Aldock, you're a fine trial lawyer, but you've never argued in the Supreme Court. I want a professional Supreme Court advocate. This is the survival of the company." The other 19 companies disagreed. So I went to the Supreme Court clerk's office and presented the issue. I said, "I've got a group of 20 companies. Nineteen of them want me to argue; one doesn't want me to argue. This must come up, so I assume that it's no problem." And the clerk's office said, "Au contraire, it's a big problem. We have a practice here.

We take no sides on representation issues. If there's any dispute, no matter how frivolous, we don't care if you've got 50 out of 51 votes, we flip a coin. That's the way we do it. Take it or leave it." I ultimately concluded that it would not be in my clients' interest to risk Bork arguing the case. I negotiated an arrangement with Heyman and GAF that, if I receded, I could pick anybody in the country I wanted as long as that person was "a professional Supreme Court advocate." He agreed.

I retained Stephen M. Shapiro, a Mayer Brown lawyer in Chicago. We prepared Shapiro very hard for the case. Unfortunately, it was a case at that point that probably couldn't be won. We had lost the public opinion issues that surrounded the argument. When the case got to the Court it appeared that the plaintiffs' bar had pressured the corporate defendants into the settlement, when in fact it was the other way around. The defendants needed the settlement to avoid bankruptcy. The plaintiffs' lawyers would make more money without the settlement.

I would have made the argument differently than Shapiro did. We only got Justices Breyer and Stevens, so we lost 6 to 2. (Justice O'Connor did not participate.) Amchem v. Windsor, 521 U.S. 591 (1997). I am confident I would have lost, too, but I think I would have gone down in flames with more flair.

[Laughter]

Our lawyer was prepared, as I think most Supreme Court professionals are, to be overly polite to the justices regardless of the consequences. When

Justice Ginsburg, who had made clear from the opening minute how she was voting, was going to ask a 5-minute question, and there were only 5 minutes left on the rebuttal time, I would have said, “Justice Ginsburg, with all due respect, there was another question from Justice Scalia that I think I need to answer first,” and cut her off. When I mentioned that subsequently to Shapiro, he said, “We just can’t do that. That’s just not done.” He was probably right, but that is because the professional Supreme Court advocate has to appear before the Court several times a term. However, I can’t practice law that way. My duty is to the client and matter I am arguing that day.

I can’t be worried about making the judge angry for some future case before that same judge. I have to lay it all on the line on the case or cases I’m in for the particular client. I should not do anything that’s wrong; I must act properly. But worrying about alienating the judge because I might have another case is, to me, not an appropriate consideration.

I’ve had several situations where I’ve burned bridges with judges, because I thought it was the right thing to do. I had a case before Judge Sporkin of the US District Court for DC. I was representing a union. The lawyer representing some union officials argued first. The judge ordered fees against my client, the union, before I had argued. When I got up and the judge said, “I’ve already ruled,” I said, “I respectfully suggest I have a right to be heard. You have ignored the statute and all of the controlling case law including X, Y and Z. The cases are on point and to rule otherwise would be reversible error.” Judge Sporkin glared at

me, slammed his books, and walked off the bench. He subsequently ruled in my favor [Laughter] but didn't speak again to me off the bench.

Ms. Feigin: Ever?

Mr. Aldock: I didn't run into the judge that often, but we never spoke. It was the right move, and I don't have any regrets about it.

Ms. Feigin: Did you ever appear before him again?

Mr. Aldock: Yes. Nothing unusual happened.

Ms. Feigin: This might be a good stopping point unless there's something you want to add.

Mr. Aldock: No, this is a good place to stop.

Ms. Feigin: See you next week. Thank you.

**ORAL HISTORY OF
JOHN ALDOCK
Fifth Interview
May 16, 2010**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is John Aldock, and the interviewer is Judy Feigin. The interview is taking place in John's office in Washington, DC, on May 16, 2010. This is the fifth interview

Ms. Feigin: We left you in the mid-1980s amidst a series of interesting cases and swinging from topic to topic, including antitrust. You said that was your only antitrust case, so now I expect a new learning curve. Where did you go next?

Mr. Aldock: I had a couple of oddball cases. I'm focusing this oral history primarily on the cases that either had some national import or are the kind of cases you could do only because you're in Washington, DC. Our practice as Washington lawyers, I continue to believe, still is unique as compared to elsewhere, notwithstanding the so-called globalization of law practice.

An example of a small Washington-type matter is as follows: I was asked by the World Bank to negotiate with the airlines to see if I could get them greatly reduced rates given that their people regularly travel all over the world. In exchange, the Bank would give up the frequent flier programs for the business travel of their employees, which the officers of the Bank thought was being abused. For example, they believed trips to Timbuktu often had stops to see Aunt Nelly and Uncle Harry in European capitals along the way. The Bank thought there would be real savings to be gained if they took control of the business travel programs. I had some preliminary discussions with some of the

major international airlines, mostly non-US carriers. The savings were remarkable. I don't remember the percentage, but it was staggering how much money could be saved. When the Bank officials unveiled its proposed new travel program and its savings, there was a total mutiny of the staff. The Bank officials retreated immediately, and I assume that frequent flier miles remain a significant perk in the international organizations.

Another very different kind of matter came in the late 1980s. I think it was 1989 when I got a call on a Thursday from Judge Penfield Jackson of the US District Court for DC. It went something like this: "John, I've been talking to the judges here, and I have a particular problem that we think you can help us with." I asked, "What's that, Judge?" Judge Jackson said, "You'll recall that I'm in the middle of a criminal trial of Mayor Barry of the District of Columbia, who was charged in a sting operation in connection with a call girl and was indicted on drug charges. As you know, the trial has attracted quite a bit of notoriety, and there are big lines outside my courtroom every day. There are only so many seats, so we've had to give out tickets. Recently, Reverend Stallings and Reverend Farrakhan, who are quite well known personalities, moved to the front of the line with their bodyguards. Farrakhan and Stallings insisted on getting tickets and sitting in the front row. I denied them tickets, because the government has said that the complaining witness will not take the stand if these individuals are seated in the front row. She is quite scared and considers their presence intimidating. In any event, I am not going to allow it. Having denied them the tickets, the American Civil Liberties Union (ACLU) has taken an appeal which

the *Washington Post* has joined, and the matter is now on emergency appeal to the DC Circuit. The Department of Justice has declined to defend my conduct, so I need a lawyer and the court needs a lawyer. Would you represent us?" I said, "Judge, I'd be delighted to represent you but I have one problem. I'm leaving Saturday morning for a business trip abroad and I can't get out of it. It's a board meeting, and it's important that I attend." Judge Jackson said, "That will not be a problem. The brief is due tomorrow morning." [Laughter]

Ms. Feigin: [Laughter] Good news!

Mr. Aldock: "You can then go on your trip." I said, "Oh, good." [Laughter] I put together a team of lawyers. It was obviously an all-night affair. The brief largely was written by my partner Rick Wyner and others. My job was to convince the USG not to file a brief confessing error, which would be fatal to the case and embarrassing to the District Court. I entered into negotiations with the US Attorney's Office that were successful to this extent: They agreed with me that generally the conduct in a courtroom is within the discretion and under the control of the district judge. They did not agree with me that there was any precedent for the proposition that the mere presence of someone in a courtroom can be so intimidating as to justify denial of admission to a public courtroom. So we agreed that we would have two sections to our brief. One, on the right of the judge to control his courtroom and the fact that the appellants, the ACLU, and *The Washington Post* had filed no motion in the District Court, nor had Farrakhan or Stallings; they just had filed an appeal. Therefore, procedurally, they had not made a record before the district judge of the facts: how did they get to the front

of the line; did they butt, which we believed they did; why had they insisted on sitting in the front row, etc. The discretion of the judge to decide on the facts whether he should give them a ticket or not was not properly invoked by an appropriate motion. The USG said they would support our position on that procedural section of our brief. And they agreed they would not take any position either way on the substance of whether the mere presence of a person in the courtroom, without more evidence, can constitute intimidation justifying removal of that individual from the courtroom. The fact that the USG would take no position on the merits and indeed would support us on the procedure was good enough as far as I was concerned. To be sure, on the substantive issue what we had was thin, only a couple of state cases from Utah and elsewhere usually in a juvenile context. We had little useful precedent and no affidavit of the complaining witness as to the basis of her fears. Nevertheless, we made the case very strongly on the procedure.

We filed on Friday morning. The Court of Appeals in its wisdom sat on the matter for most of the following week by which time the complaining witness was off the stand. The case was decided on the papers without argument. The court remanded the case with an opinion, saying that Farrakhan and Stallings needed to apply for a ticket and properly invoke the discretion of the court. They therefore did not reach the merits issue, but the complaining witness now was off the stand. As a result, Farrakhan and Stallings never applied for a ticket, because they no longer had any interest in attending the trial. We had achieved the relief that we wanted, which was to allow the witness to testify. The Mayor was

convicted and ultimately left office. Judge Jackson and several other judges from the District Court called to express their gratitude for our efforts and the result.

There were two interesting sidelines to the case. The first involved the press around the case.

Ms. Feigin: Your case itself was getting press?

Mr. Aldock: Yes. The fact that Judge Jackson had excluded Farrakhan and Stallings was, of course, newsworthy. The fact that the judge had retained a lawyer also was in the news. When I went down to the courthouse to meet with Judge Jackson on the day that I was retained, the press somehow got wind of the meeting. I was told that when I came out of the courthouse Farrakhan would be holding a press conference on the front steps of the courthouse, and I was going to be asked for comment. I wasn't going to be able to slip out the back door because that was being watched, too. I consulted with the judge, and we agreed that I should defend the position and not just say, "No comment." I went out and said that we were filing a brief and thought procedurally that the court had the right to run its courtroom. There was a lot of heckling, and it was a little scary. There were people yelling in the background, "Get the honky!" Farrakhan had a lot of brawny bodyguards. It was not the most comfortable press conference that I've held.

After the Court of Appeals ruled, I was asked by the media whether I would be willing to hold a press conference to comment on the final decision. I consulted with Judge Jackson, and he wanted me to do so. I was not eager to

return to the courthouse again, so I consulted with my friend Steve Handelsman, who covered the matter for NBC TV. Steve said that I now held all the cards and should call a press conference at the law firm, and the media would come. So I did, the media came, and I gave some brief comments on the decision.

Then, some weeks later, the ACLU filed a motion saying that the opinion of the DC Circuit in its *per curiam* decision, which was unpublished, should be published. The Court of Appeals declined to publish the decision, and the ACLU litigated that issue for several years, always without success.

Ms. Feigin: Did you weigh in on that?

Mr. Aldock: No. I had no view on that. Having won my case, it was fine with me if they wanted to publish it. But I suspect that the court felt that it was a unique case and did not want it cited as precedent in the future.

Ms. Feigin: When the Justice Department refuses to defend the judge is the judge responsible financially for hiring his own attorney?

Mr. Aldock: He is not. The court has an ability to go to the Administrative Office of the United States Courts, which has the power to authorize funds – I think that it is \$100 per hour – for the judge to hire a lawyer. I didn't request any funds. This would have been a pro bono case regardless, but the judge has that authority.

Ms. Feigin: Were you involved with the Iran-Contra issues in the 1980s?

Mr. Aldock: Yes. Even though we won the matter for which we were retained, it was a not very satisfying representation. I was retained to represent Adolfo Calero, who was based in Miami and was the representative of the Contras in the United States. Calero was the political head of the group, and he made many of their public statements in the US and world media. There was a lawsuit filed in Miami by a group called the Christic Institute, which purported to be a liberal Catholic law firm. They filed a RICO lawsuit alleging that Calero and a group of high US Government officials, including the National Security Advisor and various CIA officials, were engaged in a conspiracy that involved using drug money to buy guns to finance the revolutions. At the time, it seemed totally bizarre. We got a retainer for this matter, because this was not the kind of regular corporate representation where we could take on faith that somebody was going to pay us.

I asked my now deceased partner, Tony Lapham, who had been the general counsel to the CIA in the Bush One administration, to take the lead on the matter. We met with Calero several times. He held things pretty close to the vest but gave us what we thought we needed to defend the lawsuit. We moved to dismiss the complaint and, given the allegations, moved for sanctions. The court dismissed the case and granted the sanctions, including a money award against the Christic Institute. It all seemed fine until the revelations of Iran-Contra began to come out in the newspapers. There were Congressional investigations, and there was the whole issue with Oliver North and, indeed, President Reagan and CIA Director William Casey. At some point, it came out that North was funding all kinds of things from a White House slush fund and Swiss accounts. There was

a Congressional investigation, and I got a subpoena that asked to see the check we received from Calero in the Miami lawsuit. The check was drawn on a Swiss bank and turned out to have come from one of those secret North funds.

Ms. Feigin: A slush fund?

Mr. Aldock: Somebody's slush fund.

Ms. Feigin: The White House slush fund?

Mr. Aldock: I don't think so. I think it was a private one. Nevertheless, a slush fund. I had to be interviewed by the staffs of the interested Senate and House committees. We had not done anything illegal or improper, but it was not the kind of publicity we would hope to get. [Laughter] Indeed, we didn't but we could have.

Ms. Feigin: Didn't get publicity?

Mr. Aldock: No, fortunately.

Ms. Feigin: Was there any effort to get the money returned? That wasn't an issue was it?

Mr. Aldock: We returned it.

Ms. Feigin: So that was another pro bono case in the end? [Laughter]

Mr. Aldock: In the end, it turned out to be a pro bono case. [Laughter]

Ms. Feigin: That should take us to the end of the 1980s, I think. That was the very end?

Mr. Aldock: I think so. I spent a large part of the 1990s in three or four areas, but one of the main areas in the 1990s was to reinvent myself as a products liability lawyer, which was not a conscious decision but merely happenstance as I think most things have been throughout my legal career.

I got a call from Scott Gilbert, a lawyer at Covington & Burling whom I knew. He told me that the insurance industry and the asbestos companies had been negotiating for years to find a way to defend the asbestos cases as a group. It was considered inefficient for all of the companies to defend themselves individually. In order to save money, the insurers particularly wanted to fund a joint defense organization that ultimately came to be called the Wellington Group, named after Dean Wellington of Yale Law School. (Best as I could tell, Dean Wellington had little to do with creating the group.) It was a good name. If the companies created such an organization, the insurers agreed to fund it and to settle their outstanding coverage litigation with the companies. The sticking point was that the companies, if they were going to defend the litigation together, had to come up with a sharing formula. They had to decide which company's insurance would be charged for payments to settle a given case and also which company was going to pay the judgments for cases that were tried to verdict.

The companies had been working on this sharing formula for years and had gotten nowhere. Gilbert said, "We just solved the insurance coverage piece, how much the insurers are going to pay the companies and for what. The contingency is that the insurers won't pay a dime unless the companies create an asbestos claims facility, and we can't create the claims facility until we have a

sharing agreement among the companies. You are the facilitator, and you have 90 days to get 30 or so companies to reach an agreement that has eluded them for years. Here are the names of the representatives of the thirty companies. Please call a meeting and solve this problem. Otherwise, our agreement with the insurers will go down the tubes.”

I had had very limited involvement prior to this call in the asbestos litigation except that the firm was representing a Canadian asbestos mining company in the litigation and I had done some work in connection with that representation. I had only a basic understanding of the issues.

I convened this group of about thirty people. I don’t think that I was acquainted with many of them, but I got to know them pretty well because we then met regularly. I came to an early conclusion that the only way we were going to be able to reach agreement was if each company would pass on whether its share was fair without knowing the shares of others. If each company knew what the other companies’ shares were, they would say, “My share is fair, but not if that other company only is paying X.” On such matters, companies act no differently than people do. The relativity of what companies were paying was blocking any agreement. Unfortunately, the world runs on the basis of envy.

The breakthrough came when I got the companies to agree that they would not know what anybody else’s share was. We would have a consultant to crunch the data and distribute the numbers to the company representatives. We then presented the group with principled issues, such as should attorney fees be

considered and should the number of years the product was on the market be considered? We voted on dozens of variables. I tried to get the group to vote as matters of principle before they knew how resolution of the issue affected their own companies. They could guess how it affected them, but they weren't sure. We would vote on the abstract propositions. The votes were not binding. Each company representative would get a slip of paper that would indicate how that change, if it was passed, would affect its share, and then we'd vote again on another principle, and so on. On this basis, we began to make good progress. The group was starting to vote on principle. I interviewed for consultants and settled on Jim Beedie of Peterson & Company, who then became a major consultant in the asbestos litigation for the insurers and for the defendants. It was probably Peterson's best commercial venture. Jim and his colleagues turned out to be indispensable to the effort. I remain friends with Jim Beedie to this day; we ski together. Eventually, we reached a sharing agreement that all thirty companies were prepared to endorse. There is nothing like having a deadline with a big carrot at the end to inspire a solution that probably couldn't have been reached without it.

The Wellington facility came into effect in 1985. There was a signing ceremony. I didn't attend and had nothing to do with the Wellington facility because I did not have a client who was involved. Three years later in 1988, I again received a call from Scott Gilbert who said, "The Wellington facility is breaking up; they can't stay together anymore. There are too many conflicts

among the companies. Would you mediate the dissolution? You did well the first time. Let's do it again." I said, "Sure."

I invited the company representatives to a meeting. Some of them were the same people and others were different, but they represented the same companies. To my surprise, I discovered that they had continued to keep the shares secret. It never had been my intent that the shares would be kept secret after they were accepted, but they did not know what all the shares were. I said, "If that's a problem, we can distribute the numbers." We did but that did not solve the basic conflicts. There were irreconcilable conflicts, because some big companies were running out of insurance and, when they ran out of insurance, they wanted to litigate every case. The strategy was to slow down the litigation even though, in the long run, that likely would be the more expensive route. There were others who thought that they had more than enough insurance. The last thing they wanted was to try cases and risk a punitive damage award or a blowout verdict that would make them a bigger target than they otherwise would be.

It was clear to me that these two strategies were irreconcilable. There was, however, a large group of about 22 companies that were compatible enough to stay together. I recommended that the 22 companies form a new organization and let the other companies withdraw in an orderly manner. Everybody agreed. Then I was asked to help put together the new organization. Interestingly, Steve Hadley, my partner who worked with me on this project, subsequently became the National Security Advisor for George W. Bush. From producer shares to national

security seems like a funny combination of projects, but that is what lawyers do.
[Laughter] And, again, only in Washington.

We formed the Center for Claims Resolution in 1988, and I and the firm effectively became general counsel. We were called Special Counsel, but we were the outside general counsel. We had two main roles. One was to deal with the shares, which had the potential to again cause problems if they were static. As a result, we adopted a sharing formula that could change as the litigation changed. We agreed on a procedure by which the Special Counsel or any company could say, "This group of cases is different and really doesn't work on the agreed formula, so it should be shared on a different basis." We, as Special Counsel, would analyze the basis for the change and make a presentation and a recommendation to the group which then would vote. In order for a proposal to pass, it had to win a certain number of the members and a certain percentage of the total shares. This protected the small share members but also gave weight to the views of the large share members. You would have thought that the votes would be based on self-interest, because there always were some companies which benefitted and some companies that didn't. But people became invested in the process and voted against their interests on numerous matters, because they wanted the process to be principled.

I would estimate that we had about 50 special recommendations and that 40 of them were unanimous, with the company which proposed it abstaining. We had one or two votes where the decision was 20 to 2 or something similar. No Special Counsel recommendation ever was voted down. It was an interesting

dynamic in getting people to vote against their short-term interest because of their long-term interest in the legitimacy of the process, a dynamic we, as a society, seem to have lost.

During the CCR years, my partner Bill Hanlon took on an increasingly significant portion of this aspect of the Special Counsel's role. Bill is a first-rate lawyer and continues to represent many of the companies that we represented in those days.

The other role of our firm was to advise with regard to the litigation, including with respect to the thousands of cases that were being settled annually and the hundreds of cases that were being litigated each year. We also met with the co-defendants outside the CCR, many of which were the large companies like Owens Illinois and Pittsburgh Corning who had left the prior group and were on their own, to coordinate overall defense to the extent that we could find common interests.

In this regard, one of the first big things that happened was an effort by Judge Parker of the E.D. of Texas to consolidate all the cases in Texas before him. Judge Parker was then a district court judge. He subsequently became a judge on the Fifth Circuit Court of Appeals. Texas was a most unfavorable forum at that time for asbestos defendants, and Judge Parker was a most unfavorable judge. Judge Parker had in mind trying a few cases and then extrapolating the results to all the other Texas cases in the queue. We thought that was a relatively

lawless process and ultimately got the Fifth Circuit to agree that extrapolation would be a denial of due process.

Judge Parker then decided that he would organize the judges around the country, and he called several meetings that were attended by numerous federal asbestos judges. The judge called one meeting at the Dolly Madison House, a little mansion on Lafayette Square across from the White House in the District of Columbia. He also summoned the lawyers for the major defendants and plaintiffs' lawyers to meet with him there. Judge Parker then entertained a discussion of proposals for aggregating the litigation, all of which seemed to the corporate defendants to be an effort to clear the court dockets by denying the defendants due process. One particular proposal that I thought was extremely naive was made by Judge Schwarzer, former Chief Judge of the N.D. of California and the head of the Judicial Conference of the United States. Judge Schwarzer suggested that we have "Asbestos Day" and set for trial on that day every case in the nation. The judge predicted that most of the cases would settle.

Judge Parker's views were more sophisticated but not any more useful from our standpoint. Many of his ideas were variations on his extrapolation concept. The judge then made the mistake – and I don't know how it happened that all the judges who were present went along with this mistake – of issuing an order out of that meeting. It was styled at the top as emanating from the Dolly Madison House. The order was signed by a dozen federal judges; only one judge declined to sign it. Judge Charlie Weiner of Philadelphia walked out of the meeting. We filed a mandamus to this order from this noncourt. [Laughter]

Ms. Feigin: And to whom was this mandamus?

Mr. Aldock: We went to the Fifth Circuit, because Judge Parker was there. We had no problem winning that one. [Laughter] It was bizarre. As a result of that episode, many of the judges who had been present at the Dolly Madison meeting and others as well filed a petition with the Multidistrict Litigation Panel (MDL panel) to consolidate all of the nation's federal asbestos cases in one court. There had been at least three or four attempts on multidistrict asbestos litigation prior to this time, and all had been denied by the MDL panel. This was an unusual request filed by judges, something I never had seen then and since. Judge Parker obviously hoped to get the cases consolidated before him. The defendants concluded at this point that, if we could get the cases consolidated in a neutral forum, it probably would be useful to us in terms of transactional costs. Also, we thought it might facilitate some consensual settlement of the cases. Although the consolidation would not cover the state court cases, a large portion of the cases at that time were in federal court. There was a petition filed by the federal judges of the Dolly Madison House [laughter] seeking multidistrict consideration. Since it came from all these judges, it got a lot of consideration. There was a hearing held before the MDL panel.

The MDL panel held their hearing in a packed courtroom. There were hundreds of defendants in the asbestos litigation and many plaintiffs' firms. Several people were scheduled to argue. The argument was interesting. The plaintiffs' bar had hired Professor Miller of Harvard University, which turned out to be a mistake. Professor Miller was the first attorney who spoke, and he called

for consolidation of all the cases in the N.D. of Texas. Miller left as soon as he finished speaking, which was perceived as both disrespectful and unwise. The Professor walked down the center aisle of the packed courtroom, so no one missed seeing him leave. The next speaker was Gene Locks, of Geitzer & Locks in Philadelphia, who was one of the lead plaintiffs' lawyers at that time. Locks said, "I disavow everything Professor Miller just said. He doesn't know what he is talking about."

It became clear during the argument that the MDL panel would consolidate the cases; the question was where. It was between Judge Parker in Texas and Judge Weiner in Philadelphia. That was not a close question for us. Not that we knew Charlie Weiner, but he had walked out of the Dolly Madison meeting, and Philadelphia was Philadelphia. We knew Judge Parker and we knew Texas. So the question was how best to address the issue. I recall that I got up as the primary speaker for the defendants, and the Chair baited me and asked, "What have you got against Judge Parker?" I said, "Absolutely nothing. Judge Parker is a wonderful judge." Then he asked, "What have you got against Texas?" I said, "Texas is a wonderful state." [Laughter] "Then why is it that you don't want to be there?" I went into some long, convoluted argument about the state law and the Texas court having decided too many cases and the Texas jurisprudence not reflecting the national consensus. It was all code, and nobody had any doubt what I really meant but could not say. At the end, the chairman of the MDL panel said, "You have nothing against Judge Parker?" I again

responded, “No.” The chairman then said, “Good answer.” [Laughter] It was clear that, if I had said otherwise, I was dead.

The panel sent the cases to Philadelphia which was very helpful to the defendants. The plaintiffs hated Philadelphia which they called the “Black Hole” because, if the cases went to Philadelphia, they would settle or remain in Philadelphia. Few cases were remanded to the transferee courts. It is only now that the second judge to succeed Judge Weiner, who is deceased, is deciding what to do with the cases that still are there.

Ms. Feigin: Twenty years later?

Mr. Aldock: Yes, although I believe that most of the cases that are there either got double filed in state court or settled against most of the viable defendants. In any event, nearly all of these cases involved non-sick people; during that time, we were getting 50,000-100,000 cases a year of which less than 10% were cancer cases. Of the 10%, most were cancers caused by smoking. In the defendants’ view, the only legitimate cases were mesothelioma cases which comprised 2-3% of the filings in those days and still are around 2,000 to 2,500 cases a year.

Many of the cases in the 1980s were pleural plaques cases. Pleural plaques were markers on a person’s lungs that indicated exposure to asbestos but by themselves were not a present injury. The courts, mistakenly in my view, allowed these cases to go to trial. The result was 50,000 cases a year involving people with no real impairment in their breathing. In effect, these were people

with no present injury. I think that the courts learned from asbestos and will be reluctant again to allow cases without present injury.

Ms. Feigin: Are you involved in asbestos litigation in any way at this date?

Mr. Aldock: No, although I had involvements well past the MDL. Today, the firm still represents a couple of the prior CCR members as national coordinating counsel for the mesothelioma cases, but I no longer work on them. We also represent a group of prior CCR members still seeking to collect money owed to the CCR.

Once the federal cases were consolidated by the MDL panel in Philadelphia, the defendants tried to find a way to settle the litigation. There were more than 100 large corporations and hundreds of thousands of cases, but there were only about 20 major plaintiffs' firms that had all the cases in those days. More than half of the core defendant group of corporations have since been forced into bankruptcy as a result of the asbestos litigation. Nothing came of these mega meetings, and I reached the conclusion that the group was too big. In a group that size somebody always was posturing. No plaintiffs' lawyer could give on any point for fear of looking soft; each lawyer wanted to be seen as tougher than the next. Rather than bringing the groups together, the meetings were polarizing, just like today's Congress. We decided that a group settlement with a few major plaintiffs' lawyers should be negotiated as a prototype. Once we had a settlement, it would lead to others. But such an agreement could have been negotiated only in secret, because, if pressures were brought to bear on either side, it wouldn't work.

We decided that we couldn't settle these cases without Ron Motley and Joe Rice of the Ness Motley firm in South Carolina. They controlled a huge number of the cases and were the trial counsel for many others. We had good relations with them in the sense that we settled with them on a regular basis. They already had made a lot of money; not that they weren't and still are happy to make more. We thought we could make a deal with them that was based on the proposition that the defendants would pay the sick and defer the non-sick until they did get sick; if they didn't get sick, we didn't pay them. Because the MDL was in Philadelphia, we needed a plaintiffs' lawyer in Philadelphia, too, and Gene Locks seemed to be the best candidate. We also didn't want Ness Motley to have a monopoly. We wanted to be able to play the two plaintiffs' firms against each other if one wanted the deal more than the other at some point in time. So we (chiefly my partner Bill Hanlon and I) conferred in secret for more than a year which, in itself, was astounding.¹ The asbestos plaintiffs' bar customarily talk and drink together. That the negotiation didn't leak out was surprising to me. Finally, we negotiated a deal. It took some statesmanship on the part of all three of these plaintiffs' lawyers and, at times, it took playing one firm against the other. To my mind the lawyers did the right thing. The proposition was that a claimant's case was deferred unless and until he or she actually got sick, and then the claimant would get quick guaranteed money without having to sue. We argued that these plaintiffs were buying "peace of mind."

Ms. Feigin: The money to be resolved at a later date?

¹ My partners, David Beers and Betsy Geise, negotiated some of the difficult medical issues.

Mr. Aldock: No, the money resolved ahead of time.

Ms. Feigin: The amount of money?

Mr. Aldock: Yes. The schedule of payments by disease was decided ahead of time, but there were arbitration panels and other procedures for extraordinary relief over and above that in particular cases. The claimant could get more but never less than the guaranteed amount. He /she would receive the check right away. The attorneys' fees were capped. We basically tried to sell it as Rawlsian justice in the sense that the political philosopher John Rawls said to look at things through a "veil of ignorance," deciding the principle before knowing on which side of the line you're going to fall. If a person doesn't know if he is going to get sick, what amount of money would he take? Obviously those who already are sick know that they want "X" amount of money. If they know that they're never going to get sick, they will take a lot less. What is the right amount of money? It was done in the abstract and, therefore, we believe arrived at a more "just" result.

We also agreed to settle the pending backlog of cases with the plaintiffs' bar as a price of their agreement to the settlement of the future cases. While this was the only way the settlement could be reached, it was our undoing. The public saw it as a payoff when, in reality, the plaintiffs' lawyers would have made more money by continuing the litigation than through the settlement.

We felt that we only could sell this if we had public relations help beyond the plaintiffs' lawyers we were settling with, so we entered into negotiations with the AFL-CIO. The union never had endorsed anything like this, although most of

the asbestos victims were their members. By and large, these were all craft union members who were getting sick from working with asbestos, and they were bringing the cases.

Ms. Feigin: Like the United Mine Workers?

Mr. Aldock: No, the shop crafts: The carpenters, steel workers, boilermakers, sheetmetal workers, everybody who works in the construction industry. In the post-WWII days, asbestos was the only good way to fireproof things. It was required by the US Navy for ships. Asbestos was what everybody used, but it so happened that it had health effects that nobody realized until later. The argument the plaintiffs made was that the companies knew about the health effects and hid them. While there were some instances of that, particularly in the case of the Johns Manville Corporation, by and large the defendants had no more knowledge than the government. That dispute and the failure to timely warn about the health effects of asbestos was the core of the litigation. In time, we persuaded the AFL-CIO to endorse the settlement. I negotiated monthly with Larry Gold, who was then the general counsel of the AFL-CIO. Lane Kirkland, an effective president of the AFL-CIO, also approved it. The AFL-CIO was a far stronger and more monolithic organization representing a much larger percentage of American working people than it does today.

We filed the settlement before Judge Weiner, who was the MDL judge in Philadelphia. We concluded that Judge Weiner was a wonderful judge, but that he would have trouble presiding over a very long trial on issues where he had

strong views. He was perceived as pro-defendant and never would have been acceptable to Motley, Rice or Locks or any asbestos plaintiffs' lawyer. We told the judge that he should not try the fairness of the settlement, and he agreed. Judge Weiner then appointed Judge Lowell Reed who had had no prior involvement with asbestos. None of us knew Judge Reed, but his reputation as a smart, nonideological, and sound trial judge was excellent.

Ms. Feigin: Who opposed your settlement class action?

Mr. Aldock: The main protagonist was Baron & Budd, and Fred Baron, now deceased, in particular. They were a Texas plaintiffs' firm with a significant number of asbestos cases. Baron retained Larry Tribe of Harvard to help him. I met with Baron whom I knew well, and personally tried to get him on board. Baron became a major player in the American Trial Lawyers Association as a result of his opposition to the settlement. I argued to Fred Baron, "We will settle all your present cases on a fair basis, the future cases will be taken care of, and it is the right choice for the public interest." Fred Baron said, "John, you have a point. There is something to be said for your position. Ideologically, however, I believe everybody has a right to a day in court, and these kinds of settlements shouldn't happen. Even beyond that, this is going to be no fun for me if I agree to your settlement. This case could go to the US Supreme Court." Baron continued, "Why in the world would I want to miss that?" Thus, we didn't get Baron & Budd's support. We were on the same side as Ness Motley and Greitzer & Locks, because they represented the settling class. Although we respected each other, we had litigated against each other for 20 years and had different views

about how to try cases. There were interlocutory appeals during the trial to the Third Circuit on various issues. We even had a purported opt out of the state of West Virginia. All of this was uncharted territory, and many of the issues were ones of first impression. After a four-week trial in Philadelphia before Judge Reed, we ultimately prevailed, and the settlement was approved. *See Georgine v. Amchem Products*, 157 F.R.D. 246, rev'd 83 F.2d 610 (3d Circuit 1996).

In addition to Fred Baron, another major person who opposed the settlement was Steve Kazan, mostly on the grounds that California claimants were paid more in the tort system and were not treated fairly by the settlement matrices.

Ms. Feigin: Who is Steve Kazan?

Mr. Aldock: Based in Oakland, California, he is certainly the major plaintiffs' asbestos lawyer on the West Coast. A good friend these days, I co-chaired asbestos conferences with him for many years. Steve and I were both active Democrats. While the asbestos plaintiffs' bar were mostly Democrats, I was a rarity among lawyers representing corporations and still am in the minority of corporate defense lawyers.

We have previously discussed the appeal of the settlement to the Third Circuit and its ultimate rejection by the US Supreme Court in the 1997 decision in *Amchem v. Windsor*, 521 U.S. 591 (1997). Since the US Supreme Court expressly said the "remedy" to the asbestos litigation was through legislation, our clients felt compelled to give it a try.

We formed a coalition through the National Association of Manufacturers. On the legislation, at least at the outset, Steve Kazan and some other plaintiffs' lawyers were with us, but as the legislation changed during the process all the plaintiffs' bar ultimately opposed it. We tried for federal legislation for over four years with two Congresses. Chief Judge Becker came down to mediate at the request of his law school classmate, Senator Patrick Leahy. Becker, as you recall, had decided in the *Georgine* case that the courts could not solve the problem. Becker told me at the time that his decision in *Georgine*, while good law, was bad public policy, but since Congress did have the power to address the issue, he was coming down "to make amends."

Ultimately something as controversial as the asbestos litigation was not a good issue for the legislative process. Also, as a result of our unsuccessful settlement, the litigation was moving in the direction of deferral for the non-sick claimants and, by the year 2000, was becoming almost a cancer-only litigation. Therefore, many of the problems, including the filings of hundreds of thousands of cases that the settlement sought to solve, were going away. The pressure on the courts was not what it had been. Also, the remaining cases had moved to the state courts which suited the federal judges just fine.

The legislative approach was laborious. In the judicial process more flexibility can be retained for dealing with special and unusual cases. This was difficult to do in the legislative arena. The legislation had too many players and too many settlement interests, and it was too much of a moving target. Although we got a bill out of the Senate Judiciary Committee at one point, it ended up

being opposed by virtually all of the plaintiffs' bar and a significant number of insurance companies and well-insured defendants. It wasn't clear how the insurance would work to fund the settlement. The insurance provisions of the bill were very complicated. At that point, a legislative solution to the asbestos problem was impossible. It is very hard to get legislation passed in this country on any controversial subject, and it does not take that many stakeholders to block it.

Ms. Feigin: Had you helped draft that legislation?

Mr. Aldock: We drafted it all in our offices. I was involved in the policy decisions that were made. The major draftsman of the legislation was Pat Hanlon, who was then a partner at Shea & Gardner and is now a professor at Boalt Law School in California. There were many other draftsmen, but he was the primary one. We represented the National Association of Manufacturers (NAM) as the umbrella client for the legislative effort. I went to all the NAM meetings on this legislation to try to keep the process moving. I also tried unsuccessfully to keep the unions on board although, by this time, that was not possible. The unions didn't oppose the legislation but they didn't want to play anymore. Politically, it was too difficult.

After the Supreme Court's Amchem decision, I decided that, as a result of having lost in the biggest class-action case to date, I should become a defendant's class action lawyer since, by this time, I had become an expert in the case law. I lectured on class actions and was asked by the US Judicial Conference Federal

Rules Committee to advise them on various alterations to the rules to deal with the issue of settlement class actions. Most rule and legislative changes address yesterday's problems, and we did that well. [Laughter] As a result of this history, settlement class actions are harder to get approved these days than they should be. The rhetoric of the Supreme Court's opinion had a chilling effect that probably was not intended, and that wasn't necessary to the decision. The Court was concerned with due process notice issues and the impact of the settlement on future cases for people not before the court. These were issues unique to the asbestos-type litigation and generally are not involved in today's class action settlements.

Ms. Feigin: Have you been involved since as an attorney in other class actions?

Mr. Aldock: That's primarily what I do. My practice is class actions and mass torts which is another way to maintain my ability to be a generalist. The class action is just a procedural vehicle. Moreover, it usually guarantees that the case has a lot of money at stake. To be a class action expert is to be a substantive generalist for big cases. I often wondered why I hadn't discovered this earlier.

Ms. Feigin: So you still can maintain that every two years you'll have a different —

Mr. Aldock: Even now. Most of my cases involve a different area of the law. To that extent it defies substantive specialty.

Let's move to the SGS matter. A very large public company based in Geneva, Switzerland, SGS, Societe Generale de Surveillance, was an interesting

and major undertaking. It was another case I would be unlikely to get if I weren't a Washington lawyer.

The client came to me in the mid-1990s. I didn't have any prior relationship with this company, but I had done some work in Switzerland on behalf of a company called Katadyn. Katadyn manufactured water purification equipment, particularly hand filtration devices that filtered stream water for drinking and could be carried around in a backpack. There was a dispute between the FDA and the EPA as to who was supposed to regulate this device, whether this was a water purifier or a pesticide. As a result of this interagency dispute, neither agency would act, and Katadyn could not get its product on the market in the United States. I got the two agencies together, and they entered into a Memorandum of Understanding that exists today as to the jurisdiction of the two agencies. It was an enjoyable representation that took me many times to Switzerland. I already was going there for other matters and, as a result, I had met a number of Swiss business people. A colleague on the board of Katadyn-USA recommended me to SGS and, when they had a significant problem with the USG in the 1990s, SGS asked me to represent them.

SGS was mostly in the worldwide letter of credit and physical and technical inspection business with a special division that provided preshipment inspection services to governments, mostly developing countries. Among their clients were Indonesia, Ghana, Venezuela, Peru, Bolivia, and the Philippines. The preshipment inspection program was in significant part addressing the then problem of capital flight, *i.e.*, money getting out of the developing country by

over- and under-invoicing of imports and exports. Several of these countries had currency restrictions. For example, if an Indonesian wanted to get money out of his country, he could arrange to get invoiced at well above the true price. The extra money would go into a secret bank account in the over-invoicing country.

To combat this and related problems, the countries retained SGS to inspect and opine on the value of these transactions. In Indonesia the program covered virtually every import and export in the country. In South America they were covering almost everything. Some of the programs exempted specific product sectors; commodities such as oil were often exempted because the commodities had a publicly traded price. The US export community, particularly in Florida, filed a document, called a 301 petition, which ultimately goes to the president. If the president agrees that the trade practice is unfair, the petition allows the US Trade Representative to cause the president to cut off trade with a particular country as a sanction. The countries who received this petition asked SGS to defend their preinspection programs.

These procedures move very quickly and, by the time we were retained, the publicity around these programs was significant, both in the US and abroad. We started by convening a meeting at our offices to which the ambassadors of all of the preshipment inspection countries were invited. Every ambassador sent a representative. The countries agreed to send a joint letter to the US Secretary of State and the president explaining what preshipment inspection was, why the program was vital to the economies of the countries, and why the unfair trade

practice petition should be denied. The countries let us compose the letter, and they all signed the letter as written.

This started a full political and legal process that continued for the next three to four years. The then US Trade Representative believed anything that came between a willing buyer and a willing seller, regardless of leverage and regardless of what these countries were trying to do, was improper, and that the White House should cut off trade with all countries using SGS to implement a preshipment inspection program. The Reagan White House, at least ideologically, agreed with the US Trade Representative. They also knew that none of these countries could afford to lose all US trade. Without waiting for the administrative process to take its course, Congressman Dante Fascell, a Democrat from Florida who chaired the House Foreign Affairs Committee, introduced legislation that would expressly outlaw preshipment inspection programs. We now were engaged in lobbying the US Congress on behalf of non-voting developing countries against the US Chamber of Commerce, the Pharmaceutical Manufacturers Association of the United States, the Chemical Manufacturers Association of the United States, and all the Florida export groups, among others.

This did not look like a recipe for a lobbying success. [Laughter] The question was how best to address the problem. We tried to identify whom we considered the most principled congressmen and senators who had safe political seats and were on the committees to which this legislation likely would be referred. We approached Congressman Solarz from New York in the House and, of course, Senator Proxmire from Wisconsin. They were pleased to support the

view that the US Government should not be undermining practices that Third World countries feel they need to avoid fraud perpetuated in part by US companies. Both Solarz and Proxmire agreed to help us. It didn't hurt that we facilitated a call to Congressman Solarz from Mrs. Aquino, the then president of the Philippines, as to the importance of this program to her country. Solarz, of course, had a lot of Filipino constituents. We hired some lobbyists, including my friend Stuart Eizenstat, to help us gain support for at least neutrality toward our position. The US State Department got nervous. Without taking a position, State told the Congress and the US Trade Representative to move cautiously as it was likely to be seen as the US bullying the developing world on behalf of unscrupulous corporations. We succeeded in getting the key House committee to table the legislation and send the issue to the International Trade Commission (ITC) to hold fact-finding hearings on preshipment inspection programs.

The result was several weeks of hearings in Washington, DC, and in Miami, Florida, at which one exporter after another told horror stories about how preshipment inspection had delayed their shipments and cost them money. On the other side, we put on testimony from finance ministers and senior people from these Third World countries as to the problem of capital flight, why the countries needed these programs, and examples of the potential fraud they had uncovered. We also retained an MIT economist named Rudi Dornbusch to address and quantify the economic problem of capital flight for developing countries. Many of our witnesses testified through translators. In the end, the ITC issued a long, inconclusive report that summarized the hearings and gave the pros and cons of

the program. The ITC suggested that perhaps the issue should be addressed during the GATT (General Agreement on Tariffs and Trade) negotiations in Geneva, Switzerland. Congress was delighted to send the problem abroad [laughter] and issued a Congressional report that sent the dispute to the GATT.

We were now at the GATT negotiations, which was something quite new for me. Indeed, private lawyers do not directly participate in GATT proceedings, because the GATT was for negotiations between countries. We therefore formed a committee of representatives from our client countries. It was headed by a published poet from Ghana. Our “poet” and his counterparts would go into meetings with the US Trade Representatives and, whenever the US made a proposal to our group, he would emerge in the hall and get our advice on their response. We previously had asked to observe the meetings, but the US Trade Representatives said, “Absolutely not. Private lawyers never are allowed in these proceedings.” After about two weeks, however, the US Trade Representatives figured out that this procedure was not efficient [laughter] and agreed to meet directly with us. We negotiated a preshipment inspection treaty that still exists today. The treaty provided that certain disputes involving preshipment inspection programs could be arbitrated under the procedures of the World Chamber of Commerce, and it also outlawed a host of practices in which nobody had engaged. The treaty was a “home run” as far as SGS and its client countries were concerned, achieving everything that we had wanted. It preserved the programs and shut off the objectors who knew this was the most they were going to get.

In time, however, capital flight programs became less necessary to the developing countries as they moved away from currency controls. Also, major competitors came into the field to compete against SGS for these programs. Some of these companies had no business in the US and thus were free of the restrictions imposed by the Foreign Corrupt Practices Act. The competition got rough. Then, somebody in SGS allegedly succumbed to the pressure and made a payment to the husband of the Prime Minister of Pakistan to facilitate getting a contract. The man who allegedly was paid the “bribe” is currently the president of Pakistan. I’m not sure anything was proven in court, but that was the end of the SGS preshipment program. One cannot be in the business of protection against fraud and be alleged to have been involved in it. [Laughter] All of those programs died.

Ms. Feigin: It was a good run.

Mr. Aldock: It was a good run. We won everything. It was something I never had done before. It was interesting and exciting, high pressure work that can make the practice of law in Washington a lot of fun.

Ms. Feigin: We have time for one more interesting case from the 1990s.

Mr. Aldock: I got a call in the mid-1990s from John Pickering of then Wilmer, Cutler and Pickering (now WilmerHale), a prestigious DC law firm which represented ABC in an alleged discrimination case. Judge Lamberth of the US District Court for DC had defaulted ABC for improper destruction of evidence. The judge also sent ethics complaints to the DC Bar with respect to several Wilmer lawyers for the

alleged spoliation of evidence. Pickering asked me to represent the firm and the Wilmer partners before the bar counsel, and the bar took the unusual position of acquitting them before the appeal of Lamberth's decision had been decided. The usual position of the bar in an ethics complaint is to wait until the judicial process is finished and then address the complaint, but they were prepared, on the basis of our presentations, to acquit these lawyers of wrongdoing even though the appeal of Judge Lamberth's ruling was in the DC Circuit and had not been decided. Judge Lamberth is an excellent judge, but somehow he was persuaded that, because some witness thought she saw a document which subsequently was not produced in discovery, somebody must have destroyed it willfully. It was a big leap from the known facts to the intentional destruction of evidence. The bar agreed with us.

Then it went up on appeal, and ABC was represented by Bill Jeffress. We were involved on behalf of Wilmer, largely behind the scenes because the firm wasn't a party to the appeal. I worked with Bill, a great lawyer and a good friend, on that brief, and the DC Circuit reversed. That was my first representation of a law firm, and I decided that representing law firms was interesting work. Law firms are smart clients; they don't complain about the bills, and they understand what you're doing and why you're doing it. With respect to all the cases I've had representing law firms, I never have thought the law firm did anything egregious.

Subsequently, I represented Wilmer again when they had problems with the Haft family litigation.

Ms. Feigin: Dart Drug?

Mr. Aldock: Yes, the Haft family owned Dart Drug, Total Liquor, book stores, and other businesses. They were a rich but dysfunctional family which essentially imploded and sued each other. The wife was suing her husband, and each of the children was suing the mother or father. There were numerous lawsuits. At one point the Superior Court for the District of Columbia issued an order precluding further lawsuits on behalf of the Haft family or anybody associated with it. The court said it was not going to close down civil litigation in the District of Columbia for this one family.

Ronald Haft, the younger son and former Wilmer client, sued Wilmer Cutler for \$400 million, and it received lots of publicity as these cases do whenever a law firm is involved. We had proceedings before Judge Bailey in the Superior Court, where some members of the Haft family wanted a preliminary injunction to disqualify Wilmer Cutler from representing the Haft companies. We won. Then there were all kinds of other lawsuits in the District of Columbia, Maryland, and Delaware and they went on forever. Ultimately, Dart Drug also sued the law firm. There were stories in "The American Lawyer" and other publications. In the end we settled all the cases satisfactorily to the law firm and its insurance carrier. At one point in the litigation, Ron Haft had taped a phone call with his own mother and then used it against her in litigation. This was a dysfunctional group of relatives, and the law firm was caught in the middle trying to deal with the fact that it had represented several Haft family members before they fell out with each other.

Ms. Feigin: One question about representing law firms. Is it not difficult in the sense that they try to second-guess your legal judgment? Because, after all, they are lawyers.

Mr. Aldock: They do second guess but not after the fact. They will tell you their views, and you will come to some consensus. Usually, they take your advice, because you're effectively representing the firm's Executive Committee. At least half of the Executive Committee of the firm is going to take their lawyer's advice, not their partners' advice. [Laughter]

The one problem you do have in an alleged malpractice case is that, when a partner is being charged with misconduct that could result in a big payment by the law firm or its insurer, the other partners often are not as supportive of the partner involved as they might be. At the same time, the involved partner often feels isolated and put upon by his ungrateful partners who don't appreciate the millions of dollars he or she brought to the firm in the past. One of my goals in these representations is to prevent those issues from getting out of hand and to keep everybody focused on the adversary. I also must get the insurer on board with the firm's strategy and goals. In addition, I need to work with the Executive Committee on their communications to the partnership, so that the other partners feel that the problem is under control, notwithstanding the amount of money being sought against the firm in the lawsuit.

Subsequently, I have represented many firms in this city. I only can talk about the public proceedings. One public proceeding involved a motion to

disqualify Sidley Austin LLP that I argued before an administrative law judge of the Federal Communications Commission. Motions to disqualify law firms because of alleged conflicts are a regular part of law firm practice, and I have had several such cases. Another case involved a contingency fee where the lawyer involved had switched firms, and the issue was who was going to get what. One case involved a former client trying to disqualify the law firm because it had been too effective on behalf of a present client. I have defended a law firm's lawyers before the Ethics Committee of the DC Bar, where the complainant was the general counsel of a former corporate client of the law firm. In my view, that case was purely an attempt by the general counsel to intimidate his former law firm; bar counsel saw it the same way and dismissed it.

Presently, I have a public case where Encyclopaedia Britannica has filed what they purport to be a \$250 million malpractice case against Dickstein Shapiro in connection with something that happened before the Patent Office fourteen years ago. We have motions to dismiss due tomorrow about which I am hopeful. In the past I have not handled an intellectual property case for a law firm, so I've associated my IP partners, Tom Scott and Matt Hoffman, to assist me.

I have represented numerous law firms over the past thirty years. I have enjoyed those representations and hope to do more. Legal malpractice tends to be a local practice; disqualification motions can be national, but generally malpractice cases are local. The suits are brought here against DC law firms, and the firms hire DC lawyers to represent them.

I also have advised law firms who are being threatened with suit by one of their partners over compensation or status issues. Generally it involves working out a “divorce” of the partner from the firm. Some of this work is not unlike work I do in the management of our firm.

Ms. Feigin: This is probably a good place to stop. I look forward to our next meeting. Thank you.

Mr. Aldock: Thank you.

**ORAL HISTORY OF
JOHN ALDOCK
Sixth Interview
May 26, 2010**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is John Aldock, and the interviewer is Judy Feigin. The interview is taking place in John's office in Washington, DC, on May 26, 2010. This is the sixth interview.

Ms. Feigin: Good afternoon.

Mr. Aldock: Good afternoon.

Ms. Feigin: When we left off you were doing litigation for law firms, which I know is something that is ongoing. But you also had an incredibly explosive case that made not only the newspapers but also Hollywood. Could you tell us please about the tobacco litigation?

Mr. Aldock: Yes. The setting starts out a little like this. Jeffrey Wigand was the former director of research at Brown & Williamson Tobacco Co. At some point in the mid-1990s, he began secretly cooperating with the Food and Drug Administration and a federal grand jury investigating tobacco. Wigand was persuaded to go on the television show "60 Minutes" and tell his story, but he insisted on indemnification. Wigand was confident Brown & Williamson would sue him for breach of confidentiality agreements if he went on "60 Minutes." The reporter for "60 Minutes" agreed that Wigand would be indemnified for counsel fees as well as damages from any lawsuits by his employer.

Ms. Feigin: This was Mike Wallace?

Mr. Aldock: It was Mike Wallace's show, but the reporter, Lowell Bergman, not Mike Wallace, made the commitment. It seemed clear later that the indemnity was never approved by CBS at higher levels. Wigand appeared on the show and told his story. Basically, Wigand said that the tobacco CEOs had lied to Congress, that the nicotine in the cigarettes was meant to addict people at young ages, and that everybody knew that was the purpose. Wigand also said that there were other harmful things in the cigarettes like arsenic and that the so-called "safe cigarette" was a marketing fiction. Wigand's narrative was explosive. It aired first on "60 Minutes" in November 1995 in an edited version and again unedited in February 1996. Brown & Williamson put out a 500-page dossier to try to smear Wigand. The effort backfired when *The Wall Street Journal* showed that the facts in the dossier did not stand up. Predictably, Wigand was sued by Brown & Williamson for breach of the confidentiality provisions of his employment agreements. At the same time, there were major lawsuits filed on behalf of states' attorneys general, led by Mike Moore, who was the Attorney General of Mississippi, against the major tobacco companies in courts all over the country.

Wigand came to be represented in the states' attorneys general litigation by Richard "Dickie" Scruggs of Mississippi. Scruggs was then a very prominent plaintiffs lawyer who since has had legal problems of his own. Lowell Bergman of CBS had introduced Wigand to Scruggs. According to Scruggs, CBS told him, "We hate this indemnity and never would have agreed to it, but our reporter did, so we are bound by it. However, we'll be damned if we are going to be represented by some plaintiffs' firm." Every time Scruggs gave CBS the name of

a proposed lawyer to represent Wigand, CBS said, “No.” Basically, CBS and Scruggs had reached an impasse, while the litigation in Louisville state court against Dr. Wigand was moving ahead. Indeed, the judge had issued a bench warrant for Wigand’s arrest, because he had not shown up for his deposition. Wigand hadn’t appeared at his deposition, because he did not have a lawyer.

Wigand was teaching science in a local Louisville high school at that point, because he couldn’t get another job. The high school principal took some heat for hiring Wigand, but she thought he was doing something important and was prepared to take the risk. Scruggs was therefore under pressure to find a lawyer whom CBS would accept. CBS likely was feeling some pressure, too. Scruggs then proposed to CBS that Wigand be represented by me. I had litigated against Scruggs for twenty years in the asbestos litigation. I knew him professionally, but I always had been on the other side. We had mutual respect for each other to the extent that adversaries do in contested litigation. Basically, Scruggs told CBS, “If I have to have a defense attorney, Aldock’s a son of a bitch defense attorney, but he’s one I get along with.” [Laughter] CBS said, “Fine,” [laughter] essentially instructing me to do what I had to do but not to spend too much money doing it.

Because Wigand was about to get arrested on a bench warrant, I immediately flew to Louisville. We had talked on the telephone, but I never had met him. In my view, Wigand had to agree to retain us, notwithstanding the CBS agreement on who was going to pay. Wigand had a right to retain his own lawyer and agreed to our representation. I was working with a colleague, Laura

Wertheimer, a terrific lawyer who these days is a securities lawyer at WilmerHale in DC. We flew down for a court hearing on Wigand's contempt. Since we were out-of-state counsel, the first issue was our admission *pro hac vice*. Generally, that is a motion that is hard to lose, but this one had potential. [Laughter] We were moved in, and immediately the lawyers for Brown & Williamson objected. The argument essentially was as follows: "Aldock is coming in at the last hour. Nothing good can come of it but delay. They will want to prepare. Wigand has been in contempt. We should dispense with this motion. Wigand doesn't need a lawyer. We should proceed." The arguments were being made by out-of-state law firms representing Brown & Williamson which was quite remarkable: [Laughter] Chadbourne from New York and King & Spalding from Georgia. A host of law firms in the courtroom were representing Brown & Williamson. However, we were not wholly unprepared. Since we had heard troubling things about the state judge, we had arranged to have with us the Justice Department attorney in charge of the federal grand jury before which Wigand was the main cooperating witness. The judge said, "The motion is denied for *pro hac vice*. Mr. Aldock will not be admitted."

There were prisoners in the courtroom wearing handcuffs and yellow and orange vests. It wasn't clear to me whether Wigand and/or I was going to be put in one of those vests, but it didn't look good. [Laughter] The Justice Department lawyer introduced herself and asked to see the judge in chambers. I wasn't invited, but the DOJ attorney told me she proceeded to tell the judge that Jeffrey Wigand was a significant witness in a major grand jury proceeding, that

he was very important to the Department of Justice, and that they would be most appreciative if Wigand was allowed to have a lawyer. The judge said, “Well, if you insist.” [Laughter] He came out of chambers and reversed himself on the record.

This litigation was very contentious, so much so that the trial judge later said, “Since you guys can’t agree on anything, I’m going to appoint a former judge to sit through every deposition and rule on objections, because otherwise you are going to bother me all the time.” That was actually a terrific development for us, because the former trial judge was a good judge who was not influenced by the tobacco politics of Louisville. I wasn’t going to win anything before the judge who had denied my *pro hac* motion. After a lot of briefing, a number of hearings, and written discovery, we proceeded to the main event, Dr. Wigand’s deposition. It was going to be held in the Brown & Williamson building, and the logistics became contentious. It was being videotaped. There were ashtrays everywhere in the building. At the outset, the Chadbourne people started smoking in the deposition, and we said that we would not participate if they smoked. The judge at the hearing ruled that they could not smoke in the deposition.

Then we observed that there were extra wires going out of the room, and we requested designation on the record of anybody who was participating in the deposition but had not signed in. It turned out that there was a room full of people who hadn’t signed in and a feed to another floor in the building that they had in mind giving to the press while serving drinks and hors d’oeuvres. The

judge agreed with us that that wasn't a good idea. He required everyone in the adjoining room with the video feed to sign in and ruled that a feed could not go live to the press; a tape could be given to the press in the building at the end of each day.

We continued with the deposition. It was very contentious and lasted for weeks. There was an objection and a ruling on nearly every question. Wigand was not the best witness for himself, notwithstanding substantial preparation. There are some witnesses who, no matter how much you prepare them, are not going to be great. And there are others who are great whether they are prepared or not. Wigand was the kind of witness who didn't like to answer, "I don't know" or "I don't remember"; that was not good because there were things he didn't know and he didn't remember. If a witness makes up the answer, he/she will get in trouble. As a result, the deposition was even more difficult because of Wigand.

At the conclusion of each day, Brown & Williamson held a press conference with the press members they had wined and dined in the building. I asked for equal time. The response was, "No, of course not, this is our building." So each day I would walk out of the building to talk to the press, because they wanted to hear both sides of the story. The press loves controversy, and this event was filled with controversy. Scruggs was in the deposition with us, because he was counsel for Wigand in the Mississippi tobacco case. Some of the other key lawyers were in town, although they did not come to the deposition. They included Ron Motley of the Ness Motley firm in Charleston, South Carolina, maybe at the time the most prominent of the national asbestos lawyers. Motley

and his partner, Joe Rice, were among the architects of the tobacco litigation, and they were involved in the state cases throughout the country. They also were leaders, along with Scruggs, of the group representing Mike Moore and the other states' attorneys general.

Motley was a showman and thus a favorite with the media. When I walked outside every day, the first thing that would happen as the cameras began to roll was that a cute little girl with an American Cancer Society banner would hand Dr. Wigand a flower. This was arranged by Motley. After the first couple of days, the press occasionally would say something to the effect that "we heard from Brown & Williamson that it didn't go well for Dr. Wigand in the deposition today" or "didn't Dr. Wigand equivocate when he answered the questions about X?" As I was about to respond, Ron Motley would appear and say, "John, I'll respond to that question." Motley then would proceed to tell the press that Brown & Williamson didn't lay a hand on Wigand, that Wigand blew them away, that Wigand couldn't have been better, and that Brown & Williamson had misinterpreted whatever colloquy they had inquired about. Of course, Motley had not been at the deposition and had not seen the tape, [laughter] but in the following day's papers, Motley would be quoted. It proceeded that way throughout the deposition which lasted several weeks.

Lots of odd things occurred while we were in Louisville, as a result of which we became quite paranoid. Papers and even brief cases disappeared. There was reason to believe that phone calls were being intercepted, etc. We

couldn't prove anything, but it all seemed like something out of a Grisham novel. It was pretty rough.

The hierarchy in Louisville and the editorial board of the newspapers seemed to be against us. However, as we walked from our hotel to the deposition, the people on the street and the waitresses in the restaurants where we ate at night all made encouraging remarks and patted Wigand on the back. He was a hero to many of the working people in town.

While our case was moving slowly, the states' attorneys general cases were proceeding at a fast pace. At some point, national settlement discussions began between the tobacco industry and the states' attorneys general. They were held in a Washington, DC, hotel. It was a mob scene. Half of the plaintiffs' bar attended, and the tobacco companies had dozens of lawyers running around the city. Laura and I were invited, because the issue of what was going to happen to Wigand and the Brown & Williamson lawsuit was on the negotiating table. We were asked to draft a provision of the settlement and, ultimately, a piece of legislation entitled the Whistleblower Protection Act.

At some point, Brown & Williamson announced that they were not giving up on their pursuit of Wigand, who to them had breached signed secrecy agreements. This part I know only secondhand because I wasn't in the room when it happened, but I was informed by Scruggs, Motley, and others: Apparently, Mike Moore responded to the Brown & Williamson position by saying, "If you are not going to dismiss the case against Wigand, we are walking

out of here. It is not our practice to ‘end a war and leave our soldiers on the beach.’” All of the states’ attorneys general then walked out of the negotiations. Subsequently, I was told that Philip Morris and others said to Brown & Williamson, “We’re not going to lose this settlement, because you have a vendetta against Wigand. Get with the program.” Negotiations resumed, the multibillion dollar settlement between the tobacco companies and the states’ attorneys general was agreed to, and specific provisions provided that Wigand was basically free to speak. Ultimately, the plaintiffs’ bar got Wigand a job as a professor at the University of South Carolina, and Wigand also became a consultant for the United Nations on tobacco policy. I have not seen Wigand in many years.

There was an interesting second act to the Wigand lawsuit. Michael Mann and Disney decided to make a movie, starring Russell Crowe as Wigand and Al Pacino as Bergman. Christopher Plummer played Mike Wallace. It is a great legal movie. Mike Moore and Dickie Scruggs played themselves. Ron Motley was upset that he didn’t play himself and kept saying, “Everybody else got Russell Crowe and Al Pacino, and I got some fat guy.” [Laughter] The amazing thing about Russell Crowe, then 33 playing Wigand then in his 50s, was that he went to every effort to look like Wigand. Crowe put on 35 pounds for the role, shaved back his hairline, bleached his hair seven times, and endured a daily application of wrinkles applied to his skin. Crowe adopted twitches and mannerisms that Wigand had. When I saw the movie, and indeed when Wigand saw it, we couldn’t be sure Crowe wasn’t him. It was a remarkable performance.

There was no reason for Crowe to go to this trouble. He was not playing John Kennedy or any other well-known person. Crowe was playing somebody the public never had seen. For Russell Crowe it was artistic integrity; he was going to be Wigand regardless.

We had negotiated a contract for Wigand with Disney. We didn't get as much money as Wigand wanted, but we got more than Disney wanted to pay. Disney's threat was that they did not have to call the character Jeffrey Wigand, because that was not central to the movie, but they preferred to use the Wigand name and paid something for it.

Ms. Feigin: Did anybody play you?

Mr. Aldock: No, because Laura, our team, and I came on the scene at the point when the movie ended. The movie did not take the story all the way to its conclusion.

We took all the law firm's summer associates to the DC movie opening in 1999, followed by hors d'oeuvres and drinks at DC Coast. It was great fun. This was a Hollywood opening and there aren't so many such openings in Washington. All the players came, including many of the actors. It was an unusual Washington event.

The movie had another interesting aspect. There was a part where Wigand had alleged that he had received death threats on his computer, and the implication of the movie was that they were probably from Brown & Williamson. Brown & Williamson's position was that Wigand sent the death threats to

himself. Brown & Williamson had had discussions with the FBI in Louisville and, in their view, the FBI local office suspected Wigand. As a result, Brown & Williamson threatened a libel suit against Disney over the movie.

We did our own investigation. We had a forensic expert in computers who purported to be able to tell – not the way fingerprints and certainly not the way handwriting work – based on an examination of the hard drive whether somebody was the likely author of a computer text. This expert had terrific credentials, including work for the FBI. Our expert was prepared to testify that the author of the death threats was not Wigand. While we did not believe the threats came from Brown & Williamson, we thought they came from persons whose allegiance was closer to Brown & Williamson than to Wigand. We were hoping that Brown & Williamson would sue Disney. Unfortunately, the libel suit never was filed.

The film was nominated in 2000 for seven Academy Awards, but won none. Nevertheless, it was and remains a great movie. Brown & Williamson did pay for a full-page in the *Wall Street Journal* to counter promotion of the film and had representatives at screenings in eight cities handing out cards asking patrons to call its toll-free number for “the real facts.”

I would not have been in a position to represent Wigand without an indemnity from a company like CBS. We would not have funded a whistleblower action against a major corporation. As a result, the representation of Wigand was an anomaly in my practice. Subsequently, I got a couple of calls from other

whistleblowers, but this was generally not a practice a corporate law firm wanted to undertake.

Subsequent to the Wigand case, I did get a call from Mark Whittaker's representative. Mr. Whittaker was the Archer Daniels Midland informant who was the subject of a book and another movie called *The Informant* with an equally illustrious cast. Matt Damon played Whittaker. When I got the inquiry, I determined that I would have been the fourth or fifth lawyer for Whittaker, there was nobody to pay Whittaker's fees, Whittaker had several pending lawsuits against him, and Whittaker had a history of not telling his lawyers the truth. I turned down the representation, and that was the end of my career representing whistleblowers.

Ms. Feigin: Do you have any opinions about the whistleblower statutes as a result of this foray?

Mr. Aldock: I'm torn. I think whistleblowers on the one hand often divulge information that affects public policy in a positive way. On the other hand, whistleblowers almost always are violating their contractual agreements. Also, whistleblowers are often flawed people in some respects. Whistleblowers usually do not "blow the whistle" at the first opportunity. Often, whistleblowers like Wigand participate for years in the activity that they later challenge. Frequently, their motives are suspect. Are they speaking because they were fired or have a grudge against their employer? Are they coming out because their conscience bothered them? Are they emerging for the notoriety or money? After whistleblowers have had their

“day of fame,” they often go into decline. They become persona non grata in the business world. For example, Daniel Ellsberg seems to have had a lot of money and was taken care of, but Jeffrey Wigand had no significant assets. Wigand’s wife left him and made allegations about improper conduct with his children. He had all kinds of personal problems. To their credit, the plaintiffs’ bar tried to help Wigand by getting him an endowed professorship. I believe that Wigand was resentful that the lawyers got rich and he did not.

Ms. Feigin: You did your one whistleblower case. Time to remake yourself yet again. Where did you go from there?

Mr. Aldock: I became a nuclear lawyer. We were retained by Rockwell International. Rockwell had contracts at the nuclear facilities at Rocky Flats, Colorado (1975-1989). It also had managed facilities at Hanford, Washington, since the atom bomb. These facilities over the years were managed for the Department of Energy by Rockwell, whose predecessors included GE, DuPont, and others. At the beginning, the contractors managed these facilities for \$1 per year as a contribution to the WWII effort. In subsequent years, however, the contractors were paid under contracts with the Department of Energy and sometimes in connection with the Department of Defense.

The problem developed that Rocky Flats particularly was located too close to urban Denver, and landowners don’t like nuclear work in their neighborhoods. At some point, the plaintiffs’ bar organized the landowners, and several class actions were filed alleging leaking barrels, poor maintenance, offsite plumes, and

resulting deteriorating land values. Also, class actions were filed by former workers alleging breathing problems and progressive disease. There also was a parallel criminal investigation going on at the same time.

In the civil law suits, I argued in the 10th Circuit that the workers' compensation law precluded the workers from suing. That was a relatively straightforward case, and we won. But the property owners' cases were tougher. The criminal case also was rough.

At one point in 1989, the FBI was planning to raid the Rocky Flats facility in the middle of the night to collect evidence. This was a bizarre proposition since it was a government facility, and the USG could have ordered preservation of whatever evidence they wanted. But it was even worse than bizarre. It was a dangerous proposition, because these facilities had guards armed with machine guns hired by the Department of Energy (DOE). An unannounced FBI night raid had the potential to result in a blood bath. Fortunately, someone figured this out and asked, "What are we doing?" [Laughter] It was a classic coordination problem of the USG connecting the dots.

Ms. Feigin: Were you involved in all aspects of this litigation?

Mr. Aldock: Yes.

Ms. Feigin: Just to back up a little bit, how did that come to be?

Mr. Aldock: My partner, Jim Woolsey, who at this point had not been CIA Director but had been Under Secretary of the Navy and also held other defense positions, had a

relationship with Rockwell and was asked to recommend a lawyer to handle this problem. I had had no prior dealings with Rockwell. We first were asked to second-guess another law firm who had said that Rockwell wasn't entitled to indemnification as a government contractor. Rockwell wanted a second opinion, and we concluded that there was a good argument for indemnification. As a result, we were retained on the civil and criminal matters, although Rockwell also had Colorado criminal lawyers.

The criminal investigation was difficult particularly because it is a basis for civil liability if there is a plea to the wrong criminal count. We were prepared to consider a corporate criminal plea, notwithstanding that we believed Rockwell hadn't done anything wrong, to bring closure to the matter, but only if we could plead to things that did not lead to civil liability. The USG wanted pleas from Rockwell executives. These were difficult negotiations. We also did not want to plead to things that would lead to debarment, because Rockwell was a large government contractor. That was a risk with any felony. We thought Rockwell had a good defense because everything Rockwell did – these were alleged environmental crimes – was done at the behest and with the knowledge of the USG officials supervising the contractors.

Rockwell's defense was that the USG refused to approve the contractors' expenditure of money to do the things the USG now alleged were required by the environmental statutes. We proffered that the government employees would support our position. The DOJ responded that, if that was the case, they would allege a conspiracy and simply indict the USG officials, too. Eventually, the DOJ

was persuaded to take a corporate plea that we felt would not cause us to incur civil liability or result in debarment.

Having put the criminal case behind us, we then embarked on getting the USG to agree to indemnify Rockwell. We argued that each of the contractors, DuPont, GE, Rockwell and others, had expensive law firms defending the civil cases. The legal fees for all these law firms were going to be staggering. Unless the USG agreed that the contractors would be indemnified, the contractors needed their own separate lawyers. If, however, the DOE agreed to indemnify for the contractors, they all could be defended by a single law firm. If the DOE picked one law firm to defend all of the contractors, they would save a fortune in legal fees. The Department of Energy eventually agreed. Unfortunately, they did not pick our law firm to defend the three contractors. They chose Kirkland and Ellis. Kirkland had told the USG that they were going to win the class actions. We had told the DOE that they should settle, and settlement at a reasonable number, particularly at this early stage in the cases, was available. The DOE said, "No, we're going to fight it." The litigation, including the related Hanford facility case that we will discuss in a moment, ended only within the last couple of years. The legal fees, paid by the US taxpayers, were staggering.

As I just mentioned, Rockwell had similar class actions against them at Hanford, Washington. We litigated those cases for some time. They involved the Price-Anderson Act, which was new to me. It was very interesting litigation, and our role in it continued for seven or eight years, a long interval before the indemnification agreements were reached.

There was one other interesting aspect of these cases. We had approached the DOD on behalf of Rockwell and made our presentation as to why Rockwell should not be debarred by the USG, notwithstanding its criminal plea. The DOD agreed. The DOD needed Rockwell for what it did for them, and what Rockwell had pled to was not so culpable as to compromise the integrity of the contractor. There is a standard, but the USG has a fair amount of discretion as to when to debar a contractor. Within days, I was called by some staffers to a Committee of the House of Representatives. They wanted to know “what improper influence did I bring to bear to keep Rockwell from being debarred.”

Ms. Feigin: Was there testimony before a committee?

Mr. Aldock: We were called by the staff of a committee and were interviewed preparatory to actual testimony. They asked about campaign contributions and whether the law firm had a PAC, which we never did. They asked, “What did Rockwell do?” In the end, the public hearing didn’t happen. In time the staff accepted that we acted as lawyers under established procedures and obtained a good result for our client. In some ways the inquiry was flattering, since the staff thought it inconceivable we could have achieved properly a no-debarment result. [Laughter] We made a good argument. That’s what lawyers do. [Laughter]

There was one other unrelated Rockwell matter that might be worth mentioning, since it also was a quintessential Washington matter. A special prosecutor named Whitney North Seymour was appointed to investigate Michael Deaver, who at the time was a senior White House official in the Reagan

administration. Rockwell had hired Deaver for some public relations matter, and Seymour was investigating Deaver about it. Without getting into the facts, this was an example of a special prosecutor who abused his power. In my opinion, Seymour threatened to indict people if they didn't say things that he thought were true, whether or not the witness had any knowledge of the matter. Seymour actually threatened one of my associates, who was at his office delivering documents, if he didn't do something Seymour wanted. It was outrageous, because the man was a messenger. Eventually, Seymour backed off, but it was pretty rough and abusive enough to convince me that special prosecutors or independent counsel who are not accountable to the DOJ are a bad idea.

Ms. Feigin: Correct me if I'm wrong, but Seymour had been a president of the New York Bar and a U.S. Attorney.

Mr. Aldock: Yes, a major-domo with an ego to match.

Ms. Feigin: The legal fields we are discussing are so disparate, and the body of knowledge you have to develop for these cases seems to me staggering. How do you go about doing this? How do you become an expert on all of these matters?

Mr. Aldock: Actually, I don't think it's so difficult. I do not understand the overspecialization of today's legal world. We are trained to read statutes and cases. We don't have to have litigated ten cases under a statute to get on top of the issues that we need for a particular case. At times somebody new reading a statute is going to come up with a novel creative interpretation that is lost on others who have lived with the statute all their lives. It costs a few more dollars to hire somebody who never

has done a particular kind of case than the lawyer who does it every day but, in matters of great magnitude, cost shouldn't be determinative. It makes little difference if it takes a law firm a few weeks to get up to speed if litigation is going to last several years, but today many general counsels only want to hire the lawyer who previously has tried several related cases, even if that lawyer lost all the cases. Fortunately, I have been retained to handle matters that were new to me, because the client thought I was a good trial lawyer and would do that job well. This has allowed me to avoid specializing in particular substantive areas of the law. If my whole career was handling cases under the Price-Anderson Act or any particular statute, that would be a reason to consider shooting myself.

[Laughter] Price-Anderson was interesting, but not fascinating. I think it is another example of why, if a lawyer can be a procedural specialist but a substantive generalist, he or she will have a more interesting career.

Ms. Feigin: Do you think it is harder in today's world?

Mr. Aldock: Yes, much harder. On the corporate side, if a lawyer is going to do a deal, the client wants somebody who has done six of those deals. In litigation, we have more freedom of action. If an attorney is going to do a "stock drop" case, a type of securities case, he or she will be pressed as to how many such cases have been handled. Companies should hire trial lawyers who they think will give them the best chance to win and not focus so much on how many such cases the lawyer has had during his career.

Ms. Feigin: Indeed. The Rockwell matters must have taken a couple of years at least to handle.

Mr. Aldock: Yes, it was a multiyear representation, I think as many as 8 to 10 years. At some point after the criminal plea and before we were fully indemnified and out of the civil cases, I moved on to newer matters and left the then mature litigation in the hands of my more capable partners who had assisted me from the beginning. Frankly, it was no longer interesting, and others could take it from there better than I could. There were three law firms defending the case and they, too, had excellent people. To me there was nothing creative left to do. We prepared the best motions, discerned what those arguments were, and identified the experts we needed. We knew that there would be a lot of discovery. It was preferable for the client and for the law firm and a more effective use of my time for me to find another client with a new matter. Since the conscious avoidance of boredom is my career goal [laughter], I looked for something different.

During this period there were, of course, lots of cases by one company against another for money. While there can be interesting strategic issues in these cases, the issues do not tend to be memorable so I will not discuss them here. The next memorable case was for Arthur Andersen.

Ms. Feigin: And how did that come about?

Mr. Aldock: I have a good friend, Andre Fogarasi, who was head of the Washington office of Arthur Andersen. Andre now is retired.

Ms. Feigin: We should say for people down the road that Arthur Andersen was a huge accounting firm that no longer exists.

Mr. Aldock: Yes, Arthur Andersen no longer exists, and that was the result of a miscarriage of justice by the DOJ. Andersen was charged with criminal misconduct. The DOJ's allegation was that a woman lawyer very low in the chain of command at the general counsel's office was alleged to have issued spoliation orders in a criminal investigation that the USG argued called for the destruction of evidence. All the documents were not collected and some were destroyed, although they all were available electronically. No evidence actually was lost. Ultimately, Andersen was indicted. The firm, by virtue of the indictment alone, was out of business, because no public company can have an accounting firm under indictment vouching for its financial statements. Seventy-five thousand Andersen people were out of a job. Most were hired by the three other accounting firms so what was being accomplished? The nation now had three accounting firms instead of four; all of the audited public clients of Andersen had to hire one of the other three to get up to speed again. When these arguments were made to the Department of Justice, the DOJ's position at the time was that they were not relevant. Not that they were outweighed by other considerations, but that they were not relevant. Subsequently, the Supreme Court overruled the conviction by a unanimous 9-0 decision, but this was many years after the liquidation of the company. Not the US Government's finest hour.

At the time, Andersen was, in my view, the best of the accounting firms. The problem Andersen brought to me was that Andersen hired first-rate tax

lawyers, in addition to CPAs. For many years, Andersen had a practice representing its clients before the US Tax Court. At some point, somebody filed a complaint alleging that these were lawyers working for a corporation and that was improper under DC ethics rules and the rules of the Tax Court. The argument was that a lawyer could not be working for a corporate business and sharing confidences and fees with non-lawyers under the ethics rules. We represented Andersen before the Tax Court, and the court indicated it had no interest in disqualifying the Andersen lawyers. As a result, our opponents, the tax lawyers at private firms, made efforts to get the state bars to address the general issue of alleged unauthorized practice of law by lawyers working for accounting firms. Complaints were filed all over the country before state bar groups, which is a not very hospitable forum. The complaints clearly were generated by law firms with tax practices that didn't want the competition.

Ms. Feigin: Was Andersen the only accounting firm that did this, or did the others?

Mr. Aldock: No, the actions were brought against the other three major accounting firms, too. Andersen had the most successful tax controversies practice and, therefore, with our assistance took the lead for the industry.

One notable unauthorized practice complaint resulted in a trip to Midland, Texas, to appear before a Texas state unauthorized practice of law committee. My then partner, Laura Wertheimer, worked on this matter with me. We were accompanied to Midland by the head of Andersen in Texas. When we arrived, there was a large room full of people, two-thirds of whom I estimate were not

lawyers. Among other things, Andersen was charged in the Texas complaint with writing wills. The issue was not the Tax Court practice, it was the general practice of law.

Midland was not my favorite venue. The previous night I wore a tie and walked into a bar. The noisy bar immediately became quiet as everyone started to stare. I ordered my drink and walked out. It did not look like my kind of place.
[Laughter]

The next day we appeared at the hearing and put on a presentation. Our presentation as scripted was through the Andersen executive from Texas, a nonlawyer. He basically said, “Look, you’ve got three allegations of somebody writing a will. Two of them were for relatives or friends. If Arthur Andersen decided to be in the will business, we would write ten thousand wills, not just three. We don’t do these one-off things. That is not our business model. It is not credible. And all this other work we do is not any more the practice of law than it is the practice of accounting. What is at stake here is whether the public is going to have lower prices. If we accountants can compete in the things that we do as accountants and that lawyers would prefer to do all by themselves, the public will be better off.”

The lawyers who were leading this interrogation were getting madder and madder. But I could see there was restlessness in the audience. At the end, the Texas Committee asked for a break to caucus. The Texas Committee lawyers then came to us and said, “We’re prepared to take a disposition that Andersen will

agree that it did the following things wrong and won't do them again, and then we'll move on." I had an instinct and a client who was willing to take some risk, so I said, "Let's say no. I don't think they have the votes. We can get a dismissal here. We don't have to agree to anything. Let's take our chances." The client saw it the same way, and we said, "No." The Texas Committee dismissed all the unauthorized practice allegations against Andersen and its lawyers. We were told later that the lay people on the committee saw the charges as an attempt by lawyers to maintain a monopoly on services that accountants equally are qualified to render. It was a complete vindication of our position.

We subsequently had a dozen or so of these unauthorized practice charges in other states, and we won them all. At that point, Andersen and the other accounting firms were trying to devise a model whereby their lawyers could render certain advisory services previously provided under the monopoly of law firm lawyers. Of course, my tax lawyer friends in private practice thought I was working for the devil in representing accounting firms.

We were asked by Andersen to gear up for a major public relations and regulatory effort to expand the role of accounting firms and other professionals in rendering services to the public. In August 1998, the president of the American Bar Association (ABA) appointed a twelve-person Commission on Multidisciplinary Practice. The Commission was charged with reporting to the ABA House of Delegates in 1999. On behalf of the then big five accounting firms, we prepared white papers, worked with public relations professionals, and prepared witnesses to testify before the ABA Commission. The Commission had

some good people on it, including Judge Paul Friedman of the US District Court for DC and Carolyn Lamm of White & Case, DC, and subsequently the first woman president of the ABA. Those were the local people, but it was a national commission of prominent ABA people. We did very well before the Commission, and its January 1999 report was quite balanced. We also were successful with the PR effort, and I think that things would have moved in a very different direction than they ultimately did if the Andersen criminal case had not intervened. There also were proceedings before the SEC on difficult independence issues involving the provision of certain accounting services to businesses that also were audit clients. It was an interesting public policy debate that did not make us very popular with law firm tax lawyers. Unfortunately, after the indictment of Andersen, it was over. There was going to be no more thinking about this subject for years to come.

Andersen also wanted to set up an integrated worldwide legal network of services to their worldwide clients and had gone a long way to accomplish that goal when the criminal case brought everything to a halt. They were prepared to have some captive and some independent law firms in every significant commercial country in the world. I was asked to work with them on that effort, particularly to address regulatory barriers and foster network integration. I traveled to Barcelona, Spain, to appear at a meeting of all these worldwide law firms to talk about how they were going to cross-sell, market, do knowledge management, and address the issues necessary to provide seamless services to worldwide clients. It was an interesting effort, and I was thinking this would be

fun. I would be going to world capitals to meet with different law firms and to advise them on working within the single Andersen network. This was the proverbial lunch in Paris. [Laughter] But it came to an end with the indictment of Andersen.

During this period I also represented Andersen in two securities law cases. One involved the bankruptcy of Criimi Mae, and we won it on a motion to dismiss, which is unusual in a securities case. It was a motion without argument, so I can't say that I did anything except edit a good brief written by others with my name on it. There was a second case involving Dynegy where there was a criminal proceeding, and we convinced the other side that suing their accountant was inconsistent with the position they wanted to be in and that the government needed our people as witnesses. So we made that case go away. That was a foray post-2000 into private securities law litigation, a field to which I have rarely returned and don't particularly miss, but it paid the bills. The other part of it, the interdisciplinary practice issues and the foreign network issues, were much more interesting.

Ms. Feigin: I sense some frustration with the Justice Department when you talk about some of these cases.

Mr. Aldock: Well, everybody who was in the Justice Department many years ago has the view that the Department was "fairer" or better in their day. Part of this is that they now are on the other side and part of it is a product of age: Every father and grandfather has a story about why it was harder in their day, even though I think it

really is more difficult now for young professionals. And part of it is true in the sense that there is greater pressure on prosecutors today to get convictions as opposed to “doing justice.”

Ms. Feigin: We probably have time for one more case if you would like. Prudential?

Mr. Aldock: Prudential had been a good advisory client of Shea & Gardner for many years, but we never had done any litigation for them until about ten years ago. At that point, I convinced the then general counsel to give us a try, and ever since they have been a good litigation client. Currently, I have three or four putative class actions for Prudential. The in-house lawyers at Prudential are smart and hands-on.

One of the more interesting cases I had for Prudential was a RICO class action challenging the practice of Prudential and the rest of the managed care industry. The cases were consolidated in the Southern District of Florida and were an effort by the American Medical Association (AMA) and other physician groups to impose their views as to how managed care should operate in the US healthcare system. Prudential previously had withdrawn from this business which complicated the case from our standpoint. We no longer had any employees to testify. We litigated for several years and then settled “cheaply.” Because of the public policy issues in the case, it was interesting.

About the same time, we had a putative national class action brought by the Milberg Weiss firm solely against Prudential in the New York Supreme Court (which is the lowest, not the highest, trial court). Milberg Weiss in those days was a major plaintiffs’ law firm.

Ms. Feigin: Who handled the case for Milberg Weiss? Didn't some of them go to jail?

Mr. Aldock: In New York, Mel Weiss was the lawyer and he did go to jail. On the West Coast, the lead lawyer was William Lerach, who also got into trouble and went to jail. I believe they were convicted of improperly paying the named plaintiffs in class action cases. This case also involved alleged abuses by the insurance carriers. In many ways, these cases were the precursors of the recent legislative battles over national healthcare.

The New York Supreme Court is exactly the kind of court to avoid when you have major litigation, a court that is too busy to pay any attention to your case. In that court, thirty cases are set every day for 10:00 a.m. and, when your case comes up, the judge has to look it up on his computer to remember which case it is. The judge has no personal law clerk. He then gives you four minutes at the bench to argue complicated motions. I think we argued the same class certification motion five times. There came a point when I thought this was going to continue the rest of my career, and the last man to speak would win. Eventually, the judge said, "Okay, I'm going to write something." Judge Cahn finally wrote a decision denying class certification. It went before the New York Court of Appeals, and we prevailed.

Ms. Feigin: This might be a good time to stop since we probably will be going on to the merging of the law firm and that is a big topic. Why don't we do that next week unless there is anything else you want to add today.

Mr. Aldock: No.

Ms. Feigin: Thank you very much.

**ORAL HISTORY OF
JOHN ALDOCK
Seventh Interview
June 3, 2010**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is John Aldock, and the interviewer is Judy Feigin. The interview is taking place in John's office in Washington, DC, on June 3, 2010. This is the seventh interview.

Ms. Feigin: Good afternoon.

Mr. Aldock: Good afternoon.

Ms. Feigin: We've done a lot of extraordinary cases, but I know there is another one that also is very much worthy of including in this history. Could you please tell us about the libel case that involved Bob Bennett?

John Aldock: Yes. It was an interesting case both because we are friends and because it had some odd slants. The basic facts were as follows: There was a lawsuit filed by Judicial Watch, a conservative litigation group that brought a lot of "political" cases, against Bob Bennett, President Clinton, two or three Clinton aides, the *New Yorker* magazine, and maybe a couple of other senior people in the Clinton administration. It was brought on behalf of Ms. Dolly Browning, who alleged that she had had an affair with Clinton and that she had been libeled by Bennett in a press conference that he held during the Paula Jones case. (Paula Jones had sued the president alleging sexual harassment.) Ms. Browning alleged that she had written a book about her affair with Clinton in Arkansas and that there was a conspiracy among all these people and the *New Yorker* magazine not to publish her story. A pretty kooky concept in itself. The idea that somebody had an affair with Clinton and that people successfully conspired to keep it from getting

published was not very credible. Just maybe the book wasn't any good, [laughter] which was in fact what the *New Yorker* lawyer told me.

The Bennett aspect was legally interesting in that Bob Bennett gave a press conference when he filed summary judgment papers in the Paula Jones case. At the press conference, Bennett commented on the opposition's papers and said, "They were nonsense and a pack of lies," and perhaps a couple other similar phrases.

Among the affidavits, I think there were six, filed by the opponents, one was by Ms. Browning. But there were five others, and Bennett did not mention Browning by name. The case involving Bennett's alleged libel and the *New Yorker* conspiracy came before the late William Bryant of the US District Court for DC. Having appeared before Judge Bryant for years and knowing how he approached certain issues, I was pretty confident of a favorable outcome. The Court of Appeals, of course, always was harder to predict. The proceedings before Judge Bryant were brief. The lawyer for Judicial Watch tried several times unsuccessfully to introduce his client to the court. Judge Bryant said several times, "This case is not going to become a media circus." Bryant heard the arguments on summary judgment and wrote an opinion dismissing the case. Browning appealed, the case went to the DC Circuit, and the argument date was set.

When I received the schedule, I immediately saw that the argument date was in the middle of a trip to India that had been two years in the planning. The

trip was with three other couples whom I knew well, but who had never met each other. Judy and I were the only common link. [Laughter] Everybody had their frequent flier way of getting to India and, with these people not knowing each other, the notion of cancelling this trip was distressful. Moreover, this wasn't the usual commercial client case where I could take a partner to my client and say, "My partner will do a better job than I would. You have nothing to worry about." This was a personal matter for a good friend who had asked me, not the law firm, to handle the case.

I gave it some thought and told my partner Matt Hoffman, who was working with me on the brief, that I was going to move for an extension of the argument. Matt, who had clerked in the DC Circuit, said, "You are not going to get an extension. What are you going to tell them? What ground are you going to give?" I said, "I'm going to tell them about my vacation and my friends who don't know each other." [Laughter] Matt said, "You're kidding. What are you really going to do?" I said that was what I intended. Matt urged against filing the motion; he thought it would be an embarrassment or worse. [Laughter] I said, "Matt, I know these judges. I think they would find it human. We filed, and the court granted the extension. [Laughter] But there was one more potentially troublesome aspect: The DC Circuit panel that had the case continued the argument before a new panel sitting on the continued date. No one was a bigger conspiracy believer than my opponents at Judicial Watch. The first panel had two judges appointed by a Republican president and one appointed by a Democrat. The new panel was going to have two judges appointed by a Democratic

president and one appointed by a Republican. While I put no stock in who appointed a judge, I was sure my opponent did.

Ms. Feigin: How would you know who was on the second panel?

Mr. Aldock: I knew the names of the judges on the order granting the extension. Our brief raised several interesting issues. First, we argued no libel because Bennett had not mentioned Ms. Browning by name, and it was not clear from the context to whom he was referring. Second, at the press conference Bennett had said virtually the same things that he said in his filed papers, only in more colorful words. So we argued it was as protected as the filed papers. Third, we argued it was just hyperbole and thus protected speech and not libelous.

At the argument before the DC Circuit, David Kendall of Williams & Connolly argued for President Clinton and received a lot of pushback from the panel. I got up and fielded a lot of seemingly hostile questions. The *New Yorker* lawyer had no trouble in oral argument. The most active judge was Judge Tatel, who is very smart, always active, and perceptive during arguments. Tatel gave both Kendall and me a hard time.

In the end, the court reversed on President Clinton and sent the case back to Judge Bryant for further findings. As to Bennett, the court affirmed Bryant's dismissal but on very narrow grounds. And I got the vacation. [Laughter]

Generally speaking, victories are nice, but the most immediately gratifying results for busy lawyers are successful motions for extensions. Such extensions make practicing law and "having a life" possible.

Ms. Feigin: There may be more of them when people read your history.

Mr. Aldock: [Laughter] It was a fun case in that sense.

Ms. Feigin: Tell us about Shea & Gardner, the development of the firm, and your role in it.

Mr. Aldock: Shea & Gardner, as I think I said early in these interviews, was a firm that, on paper, I was not qualified to join, because the lawyers were mostly Supreme Court clerks. Everyone had been an Editor-In-Chief of their respective law reviews, as Frank Shea often pointed out to me. [Laughter] I didn't make Phi Beta Kappa in my second year, which Frank also noticed. [Laughter] But as the firm grew, it obviously had to hire people who did not meet that profile. In time, I became the hiring partner and was going to see to it that we broadened beyond a purely academic record profile.

Ms. Feigin: Before you continue, tell me why you did not want that to be the profile.

Mr. Aldock: I had met a lot of Supreme Court clerks, including the ones we interviewed and the ones we ultimately hired. Over a number of years I noticed how they worked out. They were all bright, but that does not translate necessarily into being a successful lawyer in private practice. The man who finished first in my law school class was virtually unemployable. He was brilliant, but I think the judge he clerked for fired him. He would write what he thought the law should be, not what it was, which is not a recipe for a successful law clerk. Also, some people can't be advocates. They just tell you their answer. That may work well for a judge or a law professor, but it doesn't work in private practice. We had quite a

few very highly credentialed hires who were not suited to private practice. I came to the conclusion over time that the law firm hiring criteria should not be based solely on academic credentials but should focus also on who wanted these positions and why they wanted them. Indeed, I had a view that people who had jobs and worked their way through law school were the real stars. That showed drive and commitment. Those people were going to succeed as lawyers. Nevertheless, I did not prevail in convincing the firm to hire a night school lawyer.

In private practice, the determining difference between those lawyers who succeed and those who do not is rarely how bright they are. It is an unusual case where the brilliant lawyer alone finds the argument that makes the difference. Rather, the defining difference is hard work, care, taking a client's problems seriously and worrying about them. A lawyer must have a certain level of intelligence, but the difference between the brilliant lawyer and the smart lawyer isn't likely to change the results in many cases. The difference between the diligent, careful lawyer who also is smart and the one who is careless, lazy, and doesn't take his case seriously, that's the distinction between somebody who will make it in private practice and somebody who will not. We ultimately changed the hiring criteria and got a few more people who clerked for lower court judges, maybe even for a district judge like me.

Ms. Feigin: Just to put this in context, back then but not now or much less so now, there were people who went to law school at night.

Mr. Aldock: Yes, there are lawyers in this town with that background who have done very well.

Ms. Feigin: I don't think that's really an option now in law school, at least not that I'm aware of.

Mr. Aldock: Probably not.

Shea & Gardner grew to about 60 lawyers. We had a different standard than most law firms today in that people made partner solely on the basis of whether they were first-class lawyers. There was only one question and that was whether an associate had demonstrated consistent excellence in the practice of law. The idea that he/she had brought in business or even had the potential to bring in business just never came up. It wasn't part of the criteria. The belief was that the firm would develop the business and, in time, it would come to good lawyers. Clients would call; they always did. That was the way the firm was built. It was quite laudable during those days but, as we'll get to later, I don't think you can do that any more.

Over time I developed an interest in how law firms were run. I was the youngest lawyer on the Shea & Gardner Executive Committee when Frank Shea chaired it. I always was questioning the decisions, but the prevailing view was that I was "the junior justice, so sit down and shut up." [Laughter]

Eventually, in the mid-1990s, my contemporaries in the firm thought that the firm needed to be run in a more business-like way. The phone wouldn't ring

forever, so we should think about marketing. Also, everybody should not be paid in seniority lock-step, because there were differences in the contributions of our partners. These were pretty modest moves. I became the chairman of the firm around 1997. The firm's vice-chair whose job was to watch me and make sure that I did not do anything radical [laughter] was Steve Hadley, who subsequently became George W. Bush's National Security Advisor. Steve and I were a great pair. I would make some blunders, and Steve would say, "I'll take the fall for that." I had the feeling that Steve did much of the same thing throughout the Bush presidency.

Ms. Feigin: [Laughter]

Mr. Aldock: Steve is a selfless, wonderful guy.

The firm evolved and we started to do some marketing. Law practice was changing in the city. In the old days, being a Washington law firm was itself a specialty. Shea & Gardner got a lot of its work from Covington & Burling with whom we shared a building. We received many of Covington's conflicts. For years New York, California, and Chicago firms would hire Washington firms to do Washington work. Eventually, they all decided to open offices here. Now there are hundreds of law firms in the city when there used to be a dozen significant local firms.

Also, clients were becoming more risk-adverse, and general counsels often felt compelled to hire big firms even when they thought a smaller firm might do a better job.

Ms. Feigin: Why do you say that?

Mr. Aldock: We used to hear these things from some of our good clients. Shea & Gardner with a dozen lawyers represented GE in the electrical equipment antitrust cases, the biggest cases against one of the country's largest companies. That wouldn't happen today. Even a strong general counsel would come to the view, "If I lose this case and I lose it being represented by Cravath, nobody's going to second-guess me. If I lose it because I picked some boutique firm that I think is great but nobody's ever heard of, I'm going to be in trouble." Many companies now think that way. I remember going to meetings with general counsel, and they would say something like that, and I would respond, "But don't you want to win?" And the general counsel would say "Yes, I'd kind of like to do both." [Laughter] I have a chance of doing both with Cravath but, if I lose, my directors will not know your firm."

Over time, many of the best DC boutique litigation firms started disappearing. The one that made the difference in my mind was when Miller, Cassidy, Larroca & Lewin went under. Jack Miller had been the Assistant Attorney General for the Criminal Division under Robert Kennedy. Miller, Cassidy attracted great lawyers, Bill Jeffress among many others, and yet they weren't making it commercially. They were not doing well enough to stay in business as a separate entity, so the firm ultimately merged into Baker & Botts. Leva, Hawes and Wald, Harkrader were good firms that merged out of existence. There must have been a half dozen others. I had no doubt that Shea & Gardner would have continued to be successful through the rest of my career. We were

doing very well commercially from 2000-2004. We were profitable, had great clients, and had maintained our promotion practices. Shea & Gardner still promoted lawyers solely on the basis of performance, not business. We were half partners and half associates, which is a ratio that is frowned upon commercially today. Leverage is part of what makes money for law firms, but we never bothered about leverage. We all were hands-on practicing attorneys. While Shea & Gardner was doing fine, I thought that our model would have trouble in the long run.

Over a period of several years I embarked on an educational effort with the law firm, sensitized my partners to the issues, and probed the young people about how confident they were about developing practices beyond the ones they were going to inherit from retiring partners. In time, I convinced my partners that we had to give serious consideration to the issue of merger with another law firm. However, I couldn't get my partners to consider the merger issue in the abstract. It always would depend on whom and on what terms. So I decided to tee up the 'whether' to merge in the same conversation with an almost fully-negotiated merger offer. In the end, my partners were even pickier than that. They wanted more than one choice of potential merger partners, so I had to come up with two choices. [Laughter]

As I looked at the merger voting procedures in our partnership agreement, it became clear to me that the partners who already were over 60, if they voted their self-interest, weren't going to vote for any change. Their life was good, and the future viability of the firm was unlikely to be a personal issue for them.

Ms. Feigin: Was the voting weighted or was everybody equal?

Mr. Aldock: Every partner got a vote, and we had several partners over 60. Also, our older lawyers wanted to work forever. They didn't want to join a firm with a retirement policy, so we first established a retirement program for the firm. From age 68 to 74 income went down progressively; income didn't go down to zero until age 75. This was in the early 1990s, and, at that point, retirement generally within the profession was at 65. In my view, even a generous policy was better than having partners draw money until they died.

Ms. Feigin: Like Shea and Gardner themselves did?

Mr. Aldock: Yes, they worked into their nineties and were paid well until the end. In addition, I worked to convince the older partners that, while they had a right to vote under the partnership agreement, they should abstain on any merger vote. Once we had the retirement policy, the older partners, to their credit, agreed that the decision whether to merge was for the younger partners, because it was their future.

Ms. Feigin: And were you also in that older group?

Mr. Aldock: I cannot remember, which probably means I was.

Ms. Feigin: How did you go about identifying potential merger partners?

Mr. Aldock: There was a merger mania in the 1990s in law firms. Law firms were merging all the time. Every week I received calls from headhunters. "Do you want to merge with X?" The extreme was a lawyer I sat next to at a wedding. He was the

chairman of a major law firm, currently one of the biggest firms in the world. I never had met him before. At the end of dinner, the partner said, “Our firms should merge.” [Laughter] I said, “Do I have to make the decision before we have dessert?” [Laughter] He said, “No, but I have the power to do this. You’re only 60 lawyers. I’ve got 1,000. Consider it an offer.” I thought the whole thing was ridiculous.

At that point, I determined that we should look at the merger issue the way we would work a problem for a client. I hired a consultant, and we did a study. At the outset, we needed to make some decisions to narrow the potential universe of merger candidates. First, we wanted only firms that did first-rate work and whose culture would not clash with ours. Second, we said that we would not consider a merger with a firm that had more lawyers in Washington, DC, than we had, because otherwise we wouldn’t be meaningful to the new firm. Finally, we limited the search to firms whose main office was in certain cities: New York, Boston, Chicago, Los Angeles, or San Francisco.

Ms. Feigin: And not another DC firm?

Mr. Aldock: Not another DC firm because most would have more lawyers in DC than we did or would have been less profitable. There were few remaining profitable firms that were our size in those days. Our criteria was a bit arbitrary, but we had the view that an Atlanta law firm or a Texas law firm were less likely to be a good fit. We also excluded the firms that would have eliminated us. There was no sense in talking about merging with Wachtel Lipton, Cravath, or Davis Polk. They had no

need or interest in us. We essentially took off the top layer of New York firms that made many times what we made and generally didn't have a Washington office, nor wanted one.

It was an interesting exercise. The culture fit was hard to define, but we wanted compatible partners. We eliminated the partnerships that did not fully share access by partners to financial information, and where partners did not know how other partners were compensated. There is something to be said for such systems because they minimize jealousy. But once partners are used to an open system there is no going back. We also had a tradition of pro bono at the firm and wanted a firm that shared that value. Pro bono is culturally ingrained in Washington firms, but it's not so inherent elsewhere.

Ms. Feigin: Did you have a minimum number of hours that you expected of people?

Mr. Aldock: By that time we did. It was 1800.

Ms. Feigin: Including pro bono?

Mr. Aldock: Yes, including pro bono. We also had a practice that in some ways was stricter than our present firm. If you worked fewer than 1800 hours as a partner and you had no excuse, i.e. illness, maternity, management, etc., you took a proportionate deduction automatically. Because it was objective and automatic, and not a personal rebuke, it was much more accepted than if a committee took away shares. This practice only applied to partners.

When we applied all of our criteria screens, it was surprising how few firms remained. In the end, only about three or four firms were left and, because all of those firms needed a Washington, DC, presence, it was clear to me that they were going to find a merger partner either with us or someone else. This allowed me to address the lawyers' favorite excuse, "Let's just wait," but we couldn't without a price. If we delayed five years, presumably all the firms that met our criteria no longer would be interested in us, because they would have otherwise met their needs.

Ultimately, we negotiated with Goodwin Procter, which had about eight people in Washington and needed a more significant presence. Goodwin had lost some people in Washington, and there was some pressure to at least replicate what they had lost. On paper, Goodwin had all of the qualities that we wanted. However, I was not familiar with Goodwin and did not know anyone there. At an early point, I was approached by Regina Pisa, Goodwin Procter's managing partner, and was very impressed. My initial view was that, if the firm was smart enough to pick Regina as their managing partner, it must be well-run. She was and is a strong and confident leader and as persuasive as anybody I've ever met. Regina Pisa, then and now, has more skill in managing a law firm than any other managing partner I have met. She certainly is better than I, and I always thought that I was quite good at management.

I had to have a second firm in the mix to please my partners. But the other firm for me was always the second choice and, in the end, I doubt that I would have merged with the second firm if Goodwin had dropped out of the picture.

Regina and I had negotiations, but they were unusual because we never really negotiated anything. It was conversational; we would discuss issues and then arrive at what always seemed to me to be a reasonable resolution. We requested two seats on the Executive Committee in order to be part of the firm in a way that was meaningful. Regina said, "That would be fine. We only have one for our New York office, and they are bigger than you, so they should get a second one, too." Shea & Gardner recently had signed a lease and contracts for furniture, etc., to move into new offices at 901 New York Avenue. It was agreed that we would take the offices, and Goodwin's eight or so DC lawyers would join us there. We agreed to take another floor for which we had an option and to build another internal stairway because only when a building is new is it practicable to build internal stairways; otherwise it gets too expensive. It was agreed that every person at Shea & Gardner would be offered a position in the new firm, including secretaries, etc., and no one would make less at the combined firm. It was a wholly congenial "negotiation." Two like-minded people, both wanting to do the deal because it was right for both firms.

I worked with a small group on the union: my partners, Bill Hanlon and Chris Palmer, and the office administrator, Mike Felty, who is now the office administrator for Latham & Watkins. Our partners voted unanimously for the merger, and all but one of our younger partners, who went elsewhere, moved with us.

Ms. Feigin: And when was this? What year?

Mr. Aldock: This was 2004. We moved into the building at 901 New York Avenue during Thanksgiving weekend. We negotiated the combination over the summer and, with some transition agreements, officially merged on October 1, 2004, which was the beginning of Goodwin's 2005 fiscal year.

The combination has been a success. It was helpful that two of Shea & Gardner's major clients, GE and Prudential, also were clients of Goodwin. Indeed, John Liftin, the then general counsel of Prudential, commented favorably on the merger of two of his law firms in the press release. It was a nice touch.

Ms. Feigin: Was either Shea or Gardner still alive?

Mr. Aldock: No, and that also helped. I think the senior partners, people in their seventies, all would say, "It was too bad. We would have liked to keep the name. It's a shame that there won't be a place forever for a firm like Shea & Gardner." But, with hindsight, having seen how the legal world has changed, our younger lawyers understand they got well placed, and even our older lawyers would say that the union was the right decision. I went on the Executive Committee and the Compensation Committee of Goodwin Procter. It's been an interesting six years' experiencing how a 600+ lawyer firm is managed. It is much different than managing a 60-person firm. Since the combination, we have grown the DC office from 60 to 100 by adding practices that we never could have attracted. We took a private equity group from Hogan & Hartson, an FDA group from WilmerHale, and an IP group from Hunton & Williams. Last year, we lured an investment

management group away from Morrison & Foerster. We still are looking to grow the office in various areas, and I spend not insignificant time recruiting laterals.

Ms. Feigin: Do you have a sense of the optimal size of a law firm?

Mr. Aldock: No. I think it's really a function of what the firm seeks to do and how it is managed. If you're going to do certain kinds of things in a global world, you're going to have to be big. Goodwin Procter started as a regional New England firm. It then moved to New York and to DC. The clients on the West Coast said, "We love you, but there's a three-hour time difference. This is not going to work. You either open an office out here or we may have to send the West Coast work elsewhere." So we also moved to California. The Goodwin position is that we don't have to be in the middle of the country. The firm has no intention to have lawyers in Texas or Atlanta or Chicago. We can service Chicago from the East Coast and even fly in for lunch. But California is too hard. We have small offices in London and Hong Kong, both of which are experiments. At some point, I believe the transactional global practices will require expansion abroad. It is less of a litigation issue; it is a corporate practice issue.

Ms. Feigin: Are there different managing groups in each office?

Mr. Aldock: It is done in different ways. For some firms, each office is a different profit center. The Goodwin model, which I believe is the majority model, is one firm and one profit center managed by a diverse executive committee, and with office chairs and representatives of major practice groups resident in each office.

Ms. Feigin: In the new firm, you began your role in management and continued to litigate. Before we go on to what you're doing now, I'd like you to tell us a little bit about your role with the American College of Trial Lawyers, when that started, and what that involves.

Mr. Aldock: I was elected a Fellow of the American College of Trial Lawyers in 1998. It is more of an honor than a role, but for a trial lawyer it is the best professional recognition you can achieve. The College is by invitation only; you don't apply. You must be a real trial lawyer and have tried a significant number of cases; many litigators in this town never have tried a case to verdict. You must be out of law school fifteen years. Somebody recommends you without your knowledge; you are not allowed to be told that you are being considered. The process is for a present member of the College to call every lawyer in every case you have ever tried, both on your side and on the opposing side, and then try to call every judge before whom you have appeared. On that basis, they make a decision as to whether it is worth advancing and, if they decide to move forward, the candidate's name is presented to a referendum of the members of the organization in your jurisdiction. It is not a blackball but, if somebody says the person is unethical and supplies examples, the candidacy ends. If the candidate passes the local referendum, it goes to the national for final review. The process takes more than a year and, only at that point, do you receive an invitation to join.

Ms. Feigin: How large an organization is it?

Mr. Aldock: Nationally, it is a fair number of people. There are Canadian members. In DC, I would estimate about 180.

Ms. Feigin: Is it only private practice lawyers?

Mr. Aldock: No. I was inducted with A.J. Kramer, the Federal Public Defender from DC. There are judges, but they have to be invited before they become judges; you can't come in as a judge. It took a while for the organization to have significant numbers of women and minority lawyers, but now they work at it. For the first time, the president this year is a woman. A lot of my friends are Fellows in DC, and many are former Assistant US Attorneys from the Flannery years when I was in the office. There are, of course, plenty of good trial lawyers who are not members. But to my knowledge, there are few members who are not very good trial lawyers.

The organization takes positions on some legal issues affecting trial practice and sponsors moot court competitions but, from my standpoint, the organization is mostly social.

Ms. Feigin: Do they have annual meetings? What do they do?

Mr. Aldock: The DC Chapter has an annual dinner and cocktail party. The DC Chapter has a committee that does the due diligence on new members. The national meets twice a year, always at a nice place and sometimes abroad. We had dinner at Hampton Court when I was inducted in London. Usually, Supreme Court justices

and other legal luminaries speak at the meetings, which also have discussion panels on timely trial issues.

Ms. Feigin: Before we talk about more litigation that you're doing, why don't you tell us a little about your work as an arbitrator.

Mr. Aldock: I always have thought that arbitrations were interesting. Unfortunately, they have not met at all times the promise that they should have had in this country in the sense that they were supposed to be a quicker, cheaper way than the courts to resolve disputes. And most times they are neither. I have been associated for some years with the Center for Public Resources (CPR). They have rules, promote arbitration, and have groups by city of "distinguished neutrals" who are available to act as arbitrators and mediators. I am one of about 40 "distinguished neutrals" in Washington, DC. There is no bureaucracy like the American Arbitration Association. If you get appointed as an arbitrator, you are bound by the rules, but you and the other arbitrators and the parties work out the schedule.

I have acted as an arbitrator in a couple of cases annually over the past fifteen years. I have tried to limit myself as a matter of discipline, and the firm doesn't encourage it.

Ms. Feigin: Why?

Mr. Aldock: The firm prefers that I supervise major litigation, which is highly leveraged. If I'm an arbitrator, I'm the only one working on the matter. There is no leverage at all so, from the firm's standpoint, that is not the best use of my time in terms of

maximizing income. The firm would not ask me to turn down an arbitration I wanted to do; the limitation has been my own.

From among the arbitrations that come to me, I try to pick the ones that seem interesting. The most fascinating and the most unique one that I've had was an arbitration for Orbital Sciences, a rocket company. This was rocket science. [Laughter] Orbital was in a dispute with its former affiliate, Orbital Imaging. The imaging company puts telescopes on the rockets to take pictures for mapping and other services. This arbitration came with the strangest arbitration agreement I had ever seen. It called for a panel of three arbitrators. The chair would be a lawyer and the other two people would be scientists, one a rocket scientist and one an imaging scientist. They would be appointed by the respective parties. The panel then attended operating sessions of the launch teams. It was like NASA or Cape Canaveral in the movies where there would be a man on the stage proposing some aspect of the launch, and the audience of about fifty other engineers and scientists would critique him. It was obvious there were going to be delays in the launch, and the contract between the rocket and the imaging companies provided for significant delay damages. Therefore, each party wanted to make any delay the other party's fault. The arbitration panel sat through these sessions because we were supposed to evaluate what was happening and because a dispute was likely to arise during one of these sessions. We attended about six days of these sessions. Also, I think the parties believed people would be better behaved, because "the panel was watching." [Laughter]

At some point the parties teed up an actual dispute. When I looked at the procedure, I was astonished to see that it expressly provided that neither party could be represented by counsel. There could be no lawyers in the proceeding except me. People would be represented by business executives. Of course, the parties had lawyers but, at the beginning of each proceeding, I would state, “We’re about to begin the proceeding, would all the lawyers please leave.” I loved saying it. My two co-arbitrators who were not lawyers were told that they were not party arbitrators but were neutrals. Unlike lawyers who are appointed by parties, these guys, having been told they were neutral, were going to be 100% neutral. [Laughter]

We decided one dispute after another and everything unanimously. All the presentations were oral. No papers except exhibits were submitted. We also rendered orally our initial decisions. We did this for about two days. I loved being the only lawyer in the room; everyone deferred to me.

Ms. Feigin: [Laughter] Dream world.

Mr. Aldock: After about twelve disputes – with about fifty to go – I got the approval of my colleagues on the panel to address the parties saying, “You have seen how we’ve decided these first twelve disputes. You can figure out what principles we are applying. We are going to get some of these decisions wrong and we are going to miss things. You all know exactly what you have to have and what the engineering means. Now, you should decide the remaining disputes. You’ll do better than we will. If you have trouble, you can come back to us, but you

shouldn't. Remember, we may screw it up." [Laughter] They never appeared again. It was rocket science and it was fun.

I had another interesting arbitration involving whether a basketball player for the then Washington Bullets was disabled. The player was a 6'9" center who had had two knee operations. Was he disabled so that the insurance company should pay? Or was he just not good enough to play anymore? Wes Unseld, the legendary former Bullets player, testified for the team. It was a very close case that met my test for an interesting arbitration.

I was one of three arbitrators this year in a case involving Utz Potato Chips. It was a small company that only had a few professionals on staff. The other party was Ernst & Young. An important tax deadline had been missed. It was a question of whether Utz had a right to rely on Ernst & Young to alert it to the deadline. It also was interesting.

I like arbitrations and generally prefer them to mediations.

Ms. Feigin: Why?

Mr. Aldock: I am better at deciding than I am at begging. [Laughter] I lack the patience. My temperament for mediation isn't as good. I do them on occasion, particularly for lawyers whom I know. Sometimes the lawyers can settle the case, but the clients are being stubborn. I will mediate cases like that because I feel that I am doing the judicial process a favor by keeping the case out of court. For example, in one mediation I told the party, "Look, if you continue with this litigation, it will cost

you a fortune in attorneys' fees. How many billable hours will that be?" They figured out that it was going to cost \$500,000 to try the case, per side. And then I pointed out that they were only \$180,000 apart. The colloquy was something like, "Now, are you going to settle or am I going to call your boss? Whom do you report to?" "I'm a vice president." "Well, there is somebody higher, right?" "Yeah." [Laughter] "I'm going to make that call. It's an \$180,000 dispute that is going to cost you \$500,000 to try. What business justification are you going to give for your position?" By then the lawyers were laughing, and the case settled.

Or it's a business man who says, "I just hate these people." So I suggest he draw a cartoon of them and throw darts at it, but settle the case. [Laughter] "What's that got to do with it? You're going to hate them after you win, too." [Laughter]

I also would do a complicated multiparty mediation or one involving the USG, because they are challenging.

I appear as a lawyer, of course, in lots of mediations for cases I am litigating. One of the more interesting but difficult was representing the Massachusetts Institute of Technology (MIT) in two student suicide cases. That was a representation that didn't come directly to me. I was in a car with Regina Pisa, the managing partner of Goodwin shortly after the merger. Regina knew MIT's president who called her and said, "I have a terrible problem and I don't think my lawyers are any good. How do I get out of this?" Regina put her hand over the phone, explained the issue, and asked me, "Can you handle this?"

Regina then told the president that the lawyer she wanted was in our DC office and he was with her presently. “I will put him on,” she said. [Laughter]

The president informed me that MIT was being sued by the families in two student suicide cases and that MIT’s insurer said it would provide defense but no indemnity. Moreover, the prior president of MIT had publicly paid an exorbitant amount in a prior student suicide case. The president told me, “Your job is to settle both cases with insurance money and not to go to trial.” I told her that I would need to litigate aggressively for a significant period of time before talking settlement, because the only way to get an acceptable settlement was to convince the other side that I might go to trial. As it turned out, we successfully settled both cases with a significant portion paid by the insurers. If it had been my decision, however, I would not have settled. I believe that we would have prevailed in the Massachusetts appellate courts. Except in the most unusual cases, schools have no duty to prevent a suicide by a student. We actually got the case to the Supreme Judicial Court of Massachusetts, and I am convinced that it would have ruled in our favor. We used that pending proceeding in the mediation to get the acceptable settlement that the client wanted, but I would have taken my chances with the appellate court. But then I was not the president of the University and whether to settle is a client decision.

The insurance issues also were interesting. The insurance company said that MIT was overpaying and was settling only to protect its reputation and to avoid publicity. I argued that one reason MIT bought insurance was to protect its reputation, and that is not an illegitimate reason to settle. We disagreed but

compromised on a dollar amount. Goodwin still represents MIT on various matters, but they now are handled in Boston, as they should be.

Ms. Feigin: What cases are you working on now?

Mr. Aldock: I usually have a docket of six to ten active matters. I am also in the mode of trying to reinvent myself and find new things to do. The rubric of class actions still seems to work well, because I can do different things and not get forced into substantive specialization. I have three or four cases for The Prudential Insurance Company that are the bread and butter of commercial litigation. Sometimes the cases involve companies Prudential bought or sold and the transaction didn't work out satisfactorily for one side or the other. Sometimes there are disputes under the warranties to the buy-sell agreements. Often these result in one side accusing the other of fraud. There are also a couple of class actions against Prudential that involve businesses that Prudential no longer has. Questions sometimes arise as to the impact on their former customers when they withdraw from the business. The Prudential Insurance Company of America has been a good litigation client for me and the firm for many years. At this point, several of my most able partners, Mike Isenman, Mark Raffman, Rick Wyner, and Adam Chud, manage these cases on a daily basis.

I also do a lot of work for CNA Financial. Often these are CNA's biggest cases, either because of the potential liability or because their reputation is implicated. Many of them are claims by their insured that the insurer somehow acted in bad faith. So far we have achieved very good results in every case we

have done for CNA. The case that I am presently working on with my partner, Mike Giannotto, involves the W.R. Grace bankruptcy in which certain residents of Libby, Montana, have asbestos claims that they believe are worse than the usual asbestos case. They are suing CNA in state court in Montana in a direct action against the company as Grace's workers' compensation insurer. Only a few states allow these direct actions, and Montana is one of them. The suit alleges that CNA failed to disclose the risks of working with asbestos. We are trying to get the Grace Bankruptcy Court to enjoin the direct actions or, alternatively, we want to settle the Libby actions within the bankruptcy context. It is complicated, and there are a lot of parties, so it is a challenge.

Ms. Feigin: As I recall, wasn't that rolled into the recent health care legislation?

Mr. Aldock: Yes. The asbestos issues in Libby, Montana, have been political issues in a variety of contexts, including the asbestos legislation, an Environmental Protection Agency (EPA) clean-up order to W.R. Grace, and a criminal trial in which Grace executives and lawyers were tried for environmental crimes. Ultimately, the Grace executives and lawyers were acquitted.

In another present case, I represent a company called Arrowood Financial. It is a runoff company of the former Royal Insurance Company. Eight thousand cases have been filed against them by the Peter Angelos law firm in Baltimore state court alleging that, in a settlement of asbestos cases many years ago, the insurance company misrepresented the extent of its insurance and defrauded Mr. Angelos's clients and others represented by other firms. It is an interesting case,

and I have some good people at the firm working on it. I spend some time on the strategic issues in the matter but thus far have left the courtroom work to my partners, Betsy Geise and Fred Schafrick.

I also have some law firm representations. The main one is representing the DC firm of Dickstein Shapiro in a malpractice case brought by Encyclopaedia Britannica (EB) alleging that Dickstein made decisions fourteen years ago in the US Patent Office that resulted in the invalidation of some of EB's patents. EB lost the infringement case and immediately decided it must have been the patent lawyers' fault. The case is pending before Judge Bates in the US District Court for DC.

Representing law firms is something that I enjoy doing. I've represented Dickstein on other occasions, but I never have had an IP malpractice case. EB is demanding a huge amount of money (\$250 million), and that can be scary for a law firm even if it is believed the case is without merit. Pending are motions to dismiss that I think have merit. It is another one of those cases where the legal profession, not unlike society in general, can't deal with the fact that sometimes negative things happen and it isn't somebody's culpable failure. Every bad legal outcome is not malpractice. There is a tendency by courts to always find someone at fault. "Acts of God" do not seem to happen anymore. There no longer are honest mistakes that are errors only by hindsight but were just questions of judgment at the time. Congress specializes in hindsight blame, so why shouldn't plaintiffs' lawyers? I would love to get the court to say that

everything that goes wrong isn't somebody's fault, let alone professional malpractice.

Of my current matters, the main case is one that is going to trial this month. It is what we call a "bet-the-company case." It cannot be settled, so the only alternative is to win. The case arose out of hurricane Katrina in New Orleans. The biggest hurricane disaster in American history. It devastated the city of New Orleans and much of Mississippi. The day after the hurricane, the *Wall Street Journal* ran a short article stating that a barge got loose in the Industrial Canal in New Orleans and smashed through the levee, resulting in the flooding of the Ninth Ward and St. Bernard Parish. In today's world, an article like that results in six class actions within a matter of days. It's just the way that it is. I had been doing some work for Lafarge, which is the world's largest cement manufacturer. The general counsel called and said, "Open your *Wall Street Journal* and read this." He then said, "You didn't know this, but I had some heart issues and just came out of surgery a week ago. I can't go back to the office for a month. You know where my office is. You take charge of this. We think it was a barge in our custody and control. The president and the CFO have been told, and they're expecting you."

That was the beginning. The cases were filed in a matter of days. They had maritime law aspects, and that was an area of law that I knew nothing about. We sent some people down to New Orleans to investigate along with our local New Orleans maritime counsel. They had to get through the blockade with passes so that they could get to the cement terminal and find out if there were any

records. It wasn't our barge, but it was a barge in our care, custody, and control. We had to find our employees who had heeded the Mayor's order to evacuate.

There were barges all over the canal, but ours became a photo op because, when the water receded, it was on the land side of the levee on top of somebody's house. The water had retreated, so there was no way to get the barge out of the neighborhood. These are huge vessels, weighing thousands of tons. It could not be picked up and moved. Every visiting dignitary from the US President to the Speaker of the House to the entertainer Spike Lee had their pictures taken in front of our barge.

Ms. Feigin: George W. Bush?

Mr. Aldock: George W. Bush. We couldn't get the barge off the front page of the newspapers. It was not the kind of publicity that the company desired. Somebody else owned the barge, so we had to deal with them. The barge was evidence, and evidence can't be destroyed. All of this took more than a year. At some point, we got a court order that allowed the barge to be raised up on balloons and examined by everybody's experts. It then was photographed, cut into sections, and carted away to a warehouse where it remains today.

The judicial process moves slowly, and the case has continued for years. Katrina occurred five years ago. The first case is coming to trial June 21 of this year, 2010. There was substantial class action briefing, and we succeeded in defeating class certification. The judge ruled that there were individual damage issues, e.g., where the water was coming from, how close you lived to a particular

levee breach, whether you had a one-story or two-story house, etc. The court ruled that these issues were individual enough that a class action was inappropriate. That was a big victory. The class would have been 90,000 homes, and we would have had a potentially unbondable trial on the whole liability. Now, we have 22,000 individual cases which is a better although still significant problem.

Meanwhile, another group of plaintiffs' lawyers sued the Army Corps of Engineers/the US Government, which was the appropriate defendant to sue, because the levees were badly designed, constructed, and maintained. Suing the government, however, is not easy. There are difficult immunity issues: statutory flood control immunity as well as discretionary function immunity. We have been cooperating with those plaintiffs' lawyers who sued the government because we brought a third-party claim against the government. I already have argued flood control immunity twice in the District Court. The first of the government cases, where there is as yet no class, resulted in a plaintiffs' verdict and has been appealed with the immunity issues to the US Court of Appeals for the 5th Circuit.

We also moved for summary judgment in our cases. We lost, because the plaintiffs' lawyers said that they had three to four alleged eyewitnesses who they claimed saw the barge break the levee causing it to fail. We don't have any eyewitnesses to prove the negative but we do have numerous experts on meteorology, hydrology, levee design, etc., who opined that, as a matter of science, the barge could not have been at the breaches before they occurred and, in any event, that the barge was incapable of causing the flood walls to fail. The

scrapes on the bottom of the barge and the bent rebar show that the barge went through the flood wall after the flood wall already was down. The walls failed for reasons having nothing to do with the barge, and we are prepared to show how. On wall failure, we had roughly the same position as the plaintiffs who were suing the US Government.

The case is going to trial in New Orleans in the summer, which weather-wise is not ideal. [Laughter] The US Government has quantified the damages as roughly \$8 billion. Well, \$8 billion gets your attention. It's not an \$8-billion trial because it's a "bellwether" trial of several individuals and a business. One is a death case. But there are 21,000 cases behind it. So the plan is to win, because the alternatives are not good. [Laughter]

I will be going down to New Orleans the 15th of this month and will stay there for four weeks. It is a tough trial in a tough venue in a situation where I could not be more morally certain that we are absolutely right. The barge did not cause the breaches; it went through an already existing breach in the flood wall. The plaintiffs have witnesses who say that they saw the barge hit the wall. We both have lots of experts. One of our experts is a major expert for the plaintiffs in the British Petroleum cases. In my opinion, our experts will carry the day.

Ms. Feigin: We should say that the British Petroleum problem is an oil spill.

Mr. Aldock: The biggest oil spill in history.

Currently, the *Lafarge* case is consuming the overwhelming majority of my time.

Ms. Feigin: Is this going to be a jury trial?

Mr. Aldock: The first case is going to be a bench trial, but the remainder will be jury trials. The plaintiffs made some mistakes, including pleading the early cases as nonjury maritime cases, and we succeeded in getting the nonjury case scheduled first. So we will have one nonjury shot. Fortunately, we removed the cases to federal court. Federal almost always is preferable to state court. A federal, nonelected judge with life tenure is preferable to an elected state court judge.

It is a tough case, not because we aren't, in my view, clearly right but because the science is hard and because of the venue and the issues. We have had to learn meteorology, how levees are built, the sound when concrete breaks, how barges are moored, the different strength of mooring lines, hydrology, and a host of other issues, all of which were new for me, as well as maritime law.

Of course, the food is good in New Orleans, [laughter] but it is also one of the few places that will be hotter this summer than Washington. It is going to be the most technological trial that I have done. Over the years, trials have become sophisticated with more technology involved. I never have had a trial like this. Every expert witness (we have fourteen and the plaintiffs have twelve) will have a Powerpoint with pictures and graphics. There will be a visual for every minute of the trial. Models of levees have been built with moving parts. We have a twelve-minute animation showing the barge movements juxtaposed against wind

movements. It is made to scale with water movements and even shows the effect of the flood waters on the neighborhood. Also, we have the ability to cross-examine a witness and say, “But you said something different at your deposition,” and, instead of reading from the deposition, the video piece flashes on the screen with the witness actually contradicting what he just has said in court. It is very effective. There is nowhere to hide these days. [Laughter]

Of course, the barge has not left the local news which is troublesome for purposes of future jury cases. There’s a new HBO series that now is being shown. I haven’t seen it, but I have been told that the major character talks about the barge breaking the levee and that the barge is pictured in the credits that appear before every episode. Just what we need, [laughter] but at least the barge is no longer sitting on the house in the Ninth Ward.

Stay tuned. It will be an interesting case.

Ms. Feigin: I will. I suspect that we won’t see you for the next interview for a while.

Mr. Aldock: It will be a while.

Ms. Feigin: Best of luck in the trial and thank you so much for another wonderful session.

Mr. Aldock: Thank you.

Oral History of John D. Aldock
Eighth Interview
July 22, 2010

This is the eighth oral history session with John Aldock for the DC Court Historical Society. The interview is taking place in John's Washington DC office. The interviewer is Judy Feigin.

Ms. Feigin: Good afternoon.

Mr. Aldock: Good afternoon.

Ms. Feigin: When we left you several weeks ago, you were about to go off to New Orleans for a huge trial. Want to give us a taste of what happened down there?

Mr. Aldock: Well, I got back.

Ms. Feigin: That's good. [Laughter]

Mr. Aldock: That was the priority. [Laughter] I was down there three or four weeks, fifteen hours a day, seven days a week. The judge did take off the weekend of the Fourth of July. That, of course, didn't do the rest of us any good. You're there with your expert witnesses who need care and feeding at all times. [Laughter] Also, when you are in trial, there is never too much preparation, so we worked hard.

It went as well as it possibly could. Our case went in better than it had gone in our practice sessions. Their case went in worse than we anticipated. I thought that every day we were ahead on points, including at the end of their case when we expected to be behind on points but thought we would make it up when we put our case in. While there was no way this judge was going to grant summary judgment at the end of the plaintiffs' case, I do believe, if he had, we

could have sustained the ruling on appeal. But, in fact, we did not want a ruling at the end of their case.

Ms. Feigin: Why?

Mr. Aldock: At this point, it is a potential mass tort of 21,000 cases. I want a full record. I want every ruling I can get and I want to lock the plaintiffs into everything in their best case, including their best cross. What I said to the judge at the end of their case was that, for the record, I was renewing our motion for summary judgment, although we were eager to put on our case, and that we understood and appreciated the wisdom of the judge in hearing our case and rethinking the issue at the end. He, of course, got it. [Laughter] The plaintiffs were somewhat surprised. They had planned to argue against something but, when the lawyer got up to speak, he couldn't figure out what he was arguing against. [Laughter]

I made a somewhat unconventional opening statement in that I did not preview the evidence, which is what you usually do. I thought that the judge was too well prepared to waste time doing that. The judge had read the pre-trial statements that had all kinds of detail in them; he knew what the evidence was going to be, so there was a need to do something else. In the opening, I tried to take on all the issues in a thematic way to show the weaknesses in the plaintiffs' case. I basically had an Ockham's Razor approach: Our evidence was straightforward and logical. The plaintiffs' case was complicated, inconsistent, and thus implausible. The plaintiffs had the barge moving all over the canal, always against the winds and currents. I described their case and then said, "It can't be."

I also did some things in the opening statement that were risky. I said that the plaintiffs had a key eyewitness that they had relied on to block summary judgment but who was not on their witness list and whose testimony was being submitted by deposition designation. The witness was beyond the court's subpoena power, but the plaintiffs' lawyers had produced him two times for a deposition, so surely they had some control over him. I argued that he must not be the witness they represented him to be and that they were not prepared to put him on the stand. It was a risk that the witness might be given \$5,000 in gambling chips and a free trip to New Orleans so that they could get him to come to the trial. I concluded that they weren't going to get him or did not want him to come.

The other strategy was to argue that plaintiffs had changed their theory three or four times since the case started and predicted that they would change it again at trial. That was probably less of a risk. They had to change their theories and they did. I argued why our experts were better than theirs. The plaintiffs went first since they had the burden of proof. The plaintiffs' lawyer started his opening, "This is an eyewitness case and, of course, everybody has experts, but they are just necessary evils." Well, that just played into my "We have experts who really are experts. They don't do this for a living and they aren't professional testifiers. They have 'hired guns' and they are 'necessary evils.' To us, they are the heart of the case." The opening held up completely.

We also had the most high-tech case that I have used in a courtroom.

Ms. Feigin: That's what I wanted to ask about. You were worried about that last time.

Mr. Aldock: Yes. I became good at it. I just had to press the clicker [laughter] and something good appeared. I said, "Andrew," (my terrific tech assistant) "a picture of the pole in the middle of the levee breach, please." And a slide with the pole instantly appeared on the big screen in the courtroom and on the judge's computer. With good technology people, it's a great tool. In addition, we had a 12-minute movie showing waves and the movement of the barge and the break in the levee and the dispersement of the houses, etc. It also was keyed to the time and wind direction. We put it on as a summation by our key expert, and the expert narrated it. The judge appeared riveted.

We also had models of levees where the walls could be taken out and then put back in. We could superimpose things on the model and show how the sheet metal bends when the levee fails. We had something on the screen every second of the trial. It was effective, and the other side's technology was terrible. They would request "Slide 8," then would have to walk back to their assistant and would need a break because they couldn't find Slide 8 or Slide 8 was the wrong slide. At various points, the plaintiffs asked, "Would the defendants be so kind as to show the exhibit they used earlier."

Ms. Feigin: Oh really! [Laughter]

Mr. Aldock: The judge would look at us, and I'd say, "Alright, we'll send them a bill."
[Laughter]

Also, there was the stuff we did on the fly. We had an argument with the plaintiffs about one of the breaches that they alleged the barge caused. But the breach had a utility pole in the middle of it. The 200-foot barge couldn't have gone through the pole without knocking it down, and the barge couldn't have gone around it. It was an 80-foot breach and a 200-foot barge. During trial, we had a slide made that superimposed the barge on the opening with the pole there. Plaintiffs' expert said, "There was no such pole. It was not there. It was put there after Katrina." We came up overnight with photos from the Times Picayune the day before and a few days after Katrina with the pole there. Those kinds of things always were fun when we could do them.

The plaintiffs could have put on a better case, if they only had figured out that they had to concede some things. If they had argued one breach instead of two, they would have had a better case, but they couldn't bring themselves to concede anything. The plaintiffs ran their case by committee. They couldn't make a hard decision and they certainly couldn't make a concession by committee. No one was going to show weakness, so no arguments were given up, good or bad, consistent or inconsistent. We didn't work that way. I would consult with my able team but, in the end, I would make the decisions.

Ms. Feigin: Is that always part of your legal style?

Mr. Aldock: Yes. You have one case, you can have only one captain. You can consult all you want but you need a decision maker. You can't run a case by committee. Our group was cohesive and collegial, as well as able, which made it easy.¹

Our biggest stress was working out of war rooms that were filled with experts half the time and the clients much of the time. It is not ideal for others to see "sausage being made." But the clients were pros, and the witnesses were as good as they could be in terms of trying to stay out of our hair except when they were supposed to be performing. Nevertheless, it was tiring. If you win, you don't remember being tired. [Laughter] If you lose, it was exhausting.

Ms. Feigin: [Laughter] We will have to find out when the final result comes in, but that sounds great.²

I've asked you about your career but not your personal life very much. I'd like to go into that a little bit. Do you want to start by telling us about your family? We know a little about your wife because we heard about her Watergate and early working experiences, but you might want to add to that and fill us in about your children and grandchildren.

Mr. Aldock: Judy and I have two daughters, Jessica and Stephanie.

¹ The main players at my firm were Mark Raffman, Adam Chud, Rick Wyner, Kirsten Robbins, Eric Goldberg, and Ezra Geggel. Our team also included New Orleans lawyers Derek Walker and his firm, and Dan Webb. Our able technology assistant was Andrew Sloniewsky.

² On January 20, 2011 Judge Stanwood Duval issued a 42-page opinion rejecting all of the plaintiffs' claims and finding: "Simply put, the barge did not do it." See *In Re Katrina Canal Breaches Consol. Litig.*, 2011 U.S. Dist. LEXIS 44615 (E.D. La. Jan 20, 2011). The plaintiffs filed a notice of appeal and then withdrew the appeal.

Jessica (1974) is 36 years old. She went to Haverford College and the University of Virginia Law School. She clerked two years for Chief Judge Thomas Hogan of the US District Court for DC.

Ms. Feigin: Did you not appear before him when she was clerking? Did that impact your career at all?

Mr. Aldock: It didn't, because I never had a case before him. The Chief Judge had two clerks and certainly would have recused Jessica. Hogan would not have recused himself after Jessica's clerkship. The strong judges have a way of avoiding recusal. Their approach is to say to the litigants, "The plaintiff's lawyer is my brother-in-law, whom I adore. But that fact will have no effect on my judgment. Unless you disagree, counsel," [laughter] "we'll just proceed." [Laughter] Not many object. [Laughter] That's the right way to do it. The wrong way is the method that Judge Thomas Penfield Jackson, whom I had represented in the Mayor Barry case, did it. The Judge said, "Mr. Aldock was my lawyer." But before Judge Jackson asked for the lawyers' views, he told them that he was inclined not to transfer the case before him that one set of lawyers wanted transferred. Then, Judge Jackson offered to recuse himself. That is the wrong procedure. [Laughter]

One of the major cases before the Chief Judge during Jessica's clerkship was the vitamins anti-trust case. One of the lead plaintiffs' lawyers in the case was my friend Ken Adams. The special master in the case was my partner Steve Pollak. Jessica knew both of them personally. It was a high profile and important

case, and Chief Judge Hogan has told me on numerous occasions that Jessica was terrific.

Jessica assisted the judge with one opinion that was reversed in the DC Circuit, and then the DC Circuit decision was reversed by the Supreme Court 9-0. This is a district judge's dream [laughter]: to have the circuit reversed unanimously by the Supreme Court in your case. Hogan could not have been happier. I think there are awards given to district judges who get those kind of rulings. [Laughter]

As a result of the vitamins case, Jessica became interested in the health field. Jessica always said she would not do what I did; i.e. she wasn't going to be a trial lawyer and she wasn't going to be a lawyer in a private firm. She wanted to do something useful. [Laughter] She took a job in the office of the Chief Counsel at the Food and Drug Administration (FDA). She has held various positions at the FDA and now is associate director of regulatory policy for biologics.³ Jessica's husband, Steve Tave, also works at the FDA, representing the agency in criminal cases.

They have two girls. Samantha is 6 and Alyssa is 4. Their parents drop the girls at their schools on the way to work. Alyssa attends a Montessori school, and Samantha is in kindergarten at the neighborhood public school. Jessica works 8am to 3pm and picks up the girls after school. The US government is much friendlier to working mothers than are private law firms. The Taves live in

³ Summer of 2011 Jessica became a senior policy adviser to the FDA Commissioner.

Carderock Springs in Bethesda, ten minutes from our house. I see the grandchildren every weekend, and Judy sees them several times a week. We are the baby sitters of choice; Judy is the caretaker when one of the girls is sick, there is a field trip, or their parents have to work late. The two girls are a big part of our lives.

My younger daughter, Stephanie (1978) is 32. She went to Macalester College in St. Paul, Minnesota. She was the co-captain of the varsity softball team. I guess all my years of coaching her teams as a child did not cause her much harm, although Stephanie claims she had to re-learn much of what I taught her. For several years, Stephanie worked for the Edison Electric Institute in DC. They paid her tuition to get a masters degree at night from the Johns Hopkins School of Communications. She subsequently moved to Boston to seek a job as a marketing director in an alternative energy firm. Stephanie said she wanted to be on “the right side.” [Laughter] While the electrical industry certainly is not like working for tobacco, I guess it is not quite “the right side” to this generation. The right side is solar and wind. Stephanie was unemployed for two months while seeking a position in Boston. Judy and I thought that she should get a new job before quitting the old one, but Stephanie was confident, and it paid off. She was hired by Emerging Energy Research (EER) based in Cambridge, where she ultimately became the Marketing Director. This year EER was bought by IHS, a public company, and she got the cash equivalent of a stock interest in EER even though she did not own any stock. She remains in her current position now as a part of a larger organization in a holding company structure.

Stephanie travels domestically and abroad to attend conferences, mostly on wind. To her surprise, Shea & Gardner merged with Goodwin Procter, and I am frequently in Boston. [Laughter] Stephanie thought she was escaping from her parents, but it didn't work out all that well. [Laughter] We often have dinner together.

Judy has a younger sister, Claudia, who is married to Dr. Daniel Esposito, and they have two children and two grandchildren. Dan is my personal physician. I have no brothers or sisters. As far as grandparents, there is one left, Judy's mother, Frederica (Zapi), who is 91 and lives at Brighton Gardens, an assisted living facility in Chevy Chase. Judy visits her most weekdays. Our small family would fit into a large phone booth.

Ms. Feigin: Your mother-in-law has an interesting history. Could you tell us about it briefly?

Mr. Aldock: My mother-in-law, Frederica Robichek, is an interviewee of an unusually long oral history project. The interviews took place years ago and, since then, Judy has been editing them. It's called "My Casablanca Story," and is about to be published by us this year. My mother-in-law was an orphan and lived with her grandmother in Prague, Czechoslovakia but she spent most of her time as a teenager at her future husband's house where she was part of his family. They married at age 19 in 1938. Almost immediately, my father-in-law, Walter Robichek, got a scholarship for foreign students to Harvard University. It was the same scholarship that Henry Kissinger and other Europeans received just as the war was beginning. My mother-in-law stayed in Prague to take care of my father-

in-law's mother and got caught by the Nazis. Walter's mother died in the Holocaust as did most of the rest of his family, but my mother-in-law eventually got out of Europe. My father-in-law had money in Switzerland, and she escaped in a manner that could be a novel today, including forged passports, "underground railroad"-type arrangements, long trips through Europe and Cuba until she eventually arrived in the United States and reunited with my father-in-law in Cambridge, Massachusetts.

My father-in-law graduated from Harvard, served in the US Army, and took a job in the Treasury Department as an economist. He became concerned when the Joseph McCarthy era started, and Eastern European names like Robichek became suspect in the US government. My father-in-law then accepted a job at the International Monetary Fund, where he remained his entire career. He rose to be Director of the Western Hemisphere, a very senior position. I believe he was and remains the only non-Hispanic to hold that position at the Fund. My father-in-law died in 2003 at the age of 84.

By the way, the interviewer for the oral history was our friend, Pat Silbert, who is Earl Silbert's wife.

Ms. Feigin: I want to talk a little bit about some of your hobbies and interests. I know travel is one of them. Do you want to give us a sense of how you pick where to go and the extent of your travels?

Mr. Aldock: Since the AIESEC trip I took during my sophomore year in college, I have become a travel addict. Judy and I spent our honeymoon in Greece and

Yugoslavia. That just worsened the addiction. [Laughter] Before the children were born, Judy and I vacationed out of the country every year, including three-week trips to both Mexico and France.

After the children were born, we took a few trips when they stayed with my mother and father. One was to Peru, Bolivia, Ecuador and the Galapagos Islands. But at the point when Jessica was 10 and Stephanie 5, we started taking the children abroad every year until they graduated from college. Our travels included the UK, France, Thailand, Bali, Israel, Hong Kong, Australia, the Netherlands, Belgium, and several times to Italy. When the girls were older, we took walking trips to Switzerland and Costa Rica and several Backroads walking trips in the United States. When they were young, the girls would take their cameras – Polaroids mostly in those days – and make a scrapbook. We found that, if children take a picture of something, they actually look at it. Otherwise, the odds are not good. We took a slightly different approach to trips when the children were young. We agreed to a beach-type stop between every two cities, so Bali was picked between Bangkok and Hong Kong. Bali was the hit of the trip although it was almost an afterthought at the time. We also limited ourselves to the number of and time spent in museums.

When we were in Rome, we focused the children on Michelangelo, and searched for his work throughout the city: the sculptures, the Sistine Chapel, and his other works in Rome, including his great statue of Moses. We went to Florence but visited only one museum. [Laughter] So with the children our travels were different. In Paris we spent a lot of time pushing toy boats with a

stick in a fountain in a park. We took the children to a lot of plays, both here and in London, and they are very interested in theatre today. Since the children have moved out, Judy and I have focused on Asia. Our most recent trips have been to northern India, China, Tibet, Vietnam, Cambodia, New Zealand, and Australia. We are going to Egypt and Jordan in October and southern India in 2011. We usually travel with different friends on different trips. I've given thought to 2012, possibly Sicily, but we haven't booked yet. I like to plan several years in advance. It's part of my psyche; there always needs to be a trip on the horizon.

Ms. Feigin: Are you the trip planner?

Mr. Aldock: I'm the trip planner.

Ms. Feigin: It sounded like it. [Laughter]

Mr. Aldock: If there is no trip on the horizon, my equilibrium is off. [Laughter] Travel has been and remains an important part of our lives. We also skied with the children between Christmas and New Year's almost every winter. We might resume again with the grandchildren when they are ready. We still ski, usually once a year with friends. We now go to the Caribbean, usually Turks and Caicos, with the grandchildren between Christmas and New Year's. We stay at a Beaches resort that comes with Elmo, Grover, Big Bird, Cookie Monster, etc. [Laughter] This may be the year that the granddaughters figure out that the Sesame Street characters are not real, but maybe not. [Laughter] We have a New York City trip planned with the grandchildren, their parents, and Stephanie for a Mary Poppins

show, Eloise Tea at the Plaza, FAO Schwartz and American Girl stores, Central Park, etc.

Ms. Feigin: I know art is important in your life. Would you tell us about your art collection?

Mr. Aldock: Probably less a collection than a hobby. We tend to pick up something on most of our trips which has resulted in some semblance of a collection. At present, we have many Buddhas, indoors and outdoors, and a lot of Indian religious folk art.

We also like abstract modern art. We have a number of pieces but mostly they are by one artist. Judy is a specialist. She finds an artist she loves and she can't get enough.

Ms. Feigin: Who is that?

Mr. Aldock: We have a large collection of works by Sam Gilliam. Sam is a local artist and part of the 1960s Washington Color School. When Sam had his last show at the Corcoran, we had one piece in the catalogue. We have something from almost every period of Sam's quite diverse career. We probably have ten Gilliams. If Judy had her way, we'd probably have twenty. [Laughter] Fortunately, we have run out of walls. [Laughter] One value in having a glass house is a limited amount of wall space. This is true with our house at Bethany Beach, Delaware, also a flat-roofed, glass house with limited wall space.

We also are interested in craft art. We belong to the Renwick and go to the Smithsonian and Baltimore craft shows every year. We favor unique things made by artists. They hold the most interest for us. At the beach house, we have

a fair number of contemporary crafts made out of wood and glass as well as some ceramic and pottery pieces.

We also support the Corcoran, Phillips, and Sackler Galleries as well as the Textile Museum, and we go to the major shows at each of them.

We are big movie and theatre fans. We go to the Studio Theatre regularly and, of course, at least two plays every year in London on the way to or from my annual business trip to Zurich. We see a movie nearly every other week, mostly independent films at the Landmark Theatre in Bethesda

We used to subscribe to the symphony, chamber music groups, and the Washington Opera, but we gave up the subscriptions when I had to cancel so many because of work. We likely will re-subscribe if my next career is less demanding.

We attend jazz performances at the Kennedy Center and abroad. I listen to a lot of jazz at home. I still listen on occasion to the Beatles and 1950s and 1960s rock and roll but, by and large, the music is limited to jazz and opera.

Ms. Feigin: And I gather, in addition to art, you have quite a wine cellar. Is that the case?

Mr. Aldock: Growing up we had no wine at home. My father would drink a bourbon now and then, but my parents really weren't drinkers. In college I started drinking wine and did some reading about it. In those days, I didn't have much wine of any real quality because I couldn't afford good wine. When we were first married, Judy and I were in France and ended up in Burgundy. We went to restaurants, and I

saw the names of all the great wines on the menus. Surprisingly, they were at prices I actually could afford. The dollar was pretty strong then, 4 or 5 francs to the dollar, so I started ordering wonderful wines that I never had tasted. There was no such thing as wine by the glass or half bottles of the top wines, and Judy doesn't drink at all, so I had a bottle for lunch. [Laughter] I had a bottle for dinner. [Laughter] Each one was a great bottle of wine. [Laughter] We had to plan a second vacation in France to see what I had missed, since I was in a wine-induced fog during the entire first trip. [Laughter]

When I got home I decided to start buying wine. I read that 1982 was the best Bordeaux vintage in recent history, but I didn't realize they say that every year. [Laughter] It turned out that 1982 was a special year, so I bought Bordeaux futures. I still have some of those 1982 Bordeaux that I paid \$20 for and now sell for \$600 or more if they can be found. They're not worth it. Now that they cost so much I feel badly drinking the wines with pizza, but somebody has to drink my old wine before it goes bad. [Laughter] Stephanie drinks a bit. Jessica doesn't drink at all, but her husband, Steve, is interested in wine. These days, I buy less pricey wines from Italy, Spain, Austria, and New Zealand.

As recreation, Judy and I also are into fine dining. It's hard to cook for two people, so we eat out several days a week, mostly at ethnic restaurants but also at various fine restaurants that have opened in DC and Bethesda in recent years. Judy is the designated driver, so I can drink when we go out for dinner.

Ms. Feigin: You could cook.

Mr. Aldock: I have no idea how to cook. I am absolutely hopeless. Like her mother, Judy is a very good cook and uses some of her mother's recipes. Judy makes goose for Thanksgiving and Christmas. The grandchildren don't eat much meat. At this point, their diets consist mostly of Cheerios, bagels, and pasta. My daughters don't eat much meat either, but that's fine with me. I eat most of the goose.

[Laughter] I also drink most of the wine. [Laughter]

Ms. Feigin: One other part of your private life that I wanted to cover here is your involvement with the Legal Clinic for the Homeless. Could you tell us a little bit about that?

Mr. Aldock: We give a fair amount of money to charities but I always have thought that I ought to do something professionally beyond writing checks. Because it is a very good organization, I've stayed active with the Legal Clinic for the Homeless and have been on the Board for about twenty years. Shea & Gardner gave the Clinic free rent in the law firm for about ten years. At this point, I mostly fundraise. To my mind, it is one of the best legal services providers in the country on a problem, homelessness, that is important and that the DC government handles badly.

Ms. Feigin: I know you have different plans for your legal career in a couple of years. Where do you see it going?

Mr. Aldock: I'm not quite sure. Judy has made it clear that coming home for lunch is not part of the marriage deal. [Laughter] I never took up golf, so full time recreation seems inconceivable. We could travel more, but there's a limit as to how much. Maybe I could take a position abroad for a while, but then we would miss the grandchildren.

I will step down at the firm at the conclusion of the year when I turn 70, which is September 30, 2012. I can have an office for life and will keep it as long as I find that doing so is useful, but I need another career. I am not going to compete with my former partners and think that at some point I should give up the courtroom. Then the question is, what else is there? I am unlikely to teach. I think that my days of writing the great American novel are past. I would act as an arbitrator on interesting matters, but I'm not keen on being the mediator. If, however, the arbitrations don't come with lunch in Paris or London, I'm probably not going to do them either. [Laughter] I also would have to break in on the international side, since all of my arbitration work to date has been domestic.

I will continue to serve on the Board of the Swiss think tank that I have been involved with for thirty years, but that doesn't take a lot of time. If the voters are wise enough to re-elect President Obama and there are dollar-a-year positions to do things that career people don't want or aren't situated to do like some impossible treaty negotiation, that would be attractive to me. I have thought about a consulting firm that would be made up of friends who have held prominent positions in various fields. We would be on retainer to kibitz on big problems and offer a second opinion and we would be very cheap. [Laughter]

If I had my druthers, I would do philanthropy. I don't have enough money but I could spend someone else's wealth. I am sure that Bill Gates has a lot of people to evaluate his projects, but there are smaller foundations that may want help in evaluating how to contribute their funds. That would be interesting.

Eventually, I will need to find something but I have time to think about it. I can't explore options fully until I am ready to accept a position that is offered, so I will get serious about looking sometime next year.

I only can do so much reading, traveling, and recreating. I have escaped boredom my entire career and I need to continue to achieve that result after I give up my trial career in private practice.

Ms. Feigin: Before we end, I would like to get your overarching view of the legal profession as to how people should go about it and what you have learned. Your philosophy of life as it were.

Mr. Aldock: The one thing I learned from my father was that there is only so much common sense given out, and he maintained that it is granted equally to every human being at birth. My father predicted that my generation was going to have a real problem, because so many people now have received the benefit of higher education. Most such people will sound reasonable, but my father said that I should not be fooled, because the amount of common sense these highly educated people have and the amount of common sense our plumbers and roofers have likely is equal. As a result, it will be harder to figure out who's got common sense and who doesn't. Over the years, I have met lawyers, doctors, CEOs, Ph.Ds, and professors with no common sense whatsoever, and I have meet some brilliant tradesmen. I share my father's view that common sense and good judgment do not increase with education.

Ms. Feigin: Do you think it can be acquired?

Mr. Aldock: After a certain age, I think not. You can grow as a person until you are about thirty. Beyond that, if you don't have any common sense or judgment, you probably never are going to acquire it. So I think it is useful to have that skepticism. It is good not to assume that the person who was first in his class at the Harvard business school and the CEO of a company always knows what he or she is talking about.

I also have come to the view that career-planning is a lot of fun, but it's of no real value because it's just going to happen the way that it's going to happen.

Ms. Feigin: So all those alternatives we just went through? [Laughter]

Mr. Aldock: I am confident that whatever I do won't be one of those options we just have discussed. It will be something else. [Laughter] Careers are most often the result of a little bit of luck, although not entirely. I just have to keep my antennae up. Some people will walk past their three opportunities in life, and others will seize all three. Some go through life with their eyes open, and others with their eyes closed. I guess the philosophy I've lived by is that, if you are not afraid of change and are open to new challenges, you will have an interesting life. If you do everything you can to avoid boredom in your job, you will have an exciting and interesting career in the end, and it will work out. But if you fall into a rut and resist change, you are going to be bored, and it will be downhill from there.

Ms. Feigin: A last thought on how to get the career that you want and sound advice for young lawyers. What do you think of the common law school wisdom that the path to follow is to get the judicial clerkship if you can?

Mr. Aldock: I wouldn't listen to law professors. Many have a narrow view of life at the bar. Most have done nothing except finish high in their law school class, clerk, and teach. Such a person is not best positioned to give advice except to a student who aspires to teach at a law school. If I were coming out of law school today and had the ability, I would try to get a Supreme Court clerkship. If I were considering a circuit clerkship and thought I might be interested in becoming a trial lawyer, I might take a district court clerkship. If I were uncertain that I was going to practice law or what kind of lawyer I wanted to be, I probably would find a star in the Executive Department of the US government and attach myself to him or her. Arne Duncan, the Secretary of Education, might be a good choice today. I would pick a mentor who is doing something new and interesting and who also is a nice person, and I would hang my hat there. I would treat this period of history like the New Deal. Many professionals got their jobs in the New Deal in government and moved to interesting careers, resulting in part on help from people they had met and impressed along the way.

I think a legal education is a good skill, but private practice is not necessarily the career of choice that I would make today as a young lawyer. I'm not sure that I necessarily would be a litigator. I don't regret anything that I have done. I've had a wonderful career, but times are changing. Trials are disappearing. Private practice is getting harder, particularly at the entry level. Public issues today are more interesting. I would get into a new, changing field for which I had some passion. If I picked the wrong one, I would choose another.

I would do that over a law clerkship today. I have, however, sold that proposition to no one. [Laughter]

Ms. Feigin: Maybe someone reading or listening to this oral history will take that advice. Thank you so much for sharing it with us and for the whole overview of your career that you have given us.

Mr. Aldock: Thank you. It has been a pleasure.

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CASES CITED
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- Amchem v. Windsor*, 521 U.S. 591 (1997), 136, 140–42, 167, 169
Arthur Anderson LLP v. United States, 544 U.S. 696 (2005), 202
- Brown & Williamson Tobacco Corp. v. Wigand*, 228 A.D. 2d 187 (1996), 913 F. Supp. 530 (WD Ky, 1996), 182–90
Browning v. Clinton, 292 F.3d 235 (D.C. Cir. 2002), 211–14
- Carlough v. Amchem Products*, 10 F.3d 189 (3d Cir. 1993), 139–40
City of Burlington, Vermont v. Westinghouse Electric Corp., 215 F. Supp. 497 (D.D.C. 1963), aff'd., 117 U.S. App. D.C. 148, 326 F.2d 691 (1964), 80
- Dames & Moore v. Regan*, 453 U.S. 654 (1981), 134
Durham v. United States, 214 F.2d 862 (1954), 62–63
- Frendak v. United States*, 408 A.2d 364, 368 (D.C. 1979), 110–13
- General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig.*, 55 F. 3d 768, 794 (3d Cir. 1995), 137, 138
Georgine v. Amchem Products, 157 F.R.D. 246, 83 F.2d 610 (3d Cir. 1996), aff'd., 138–40, 167, 168
- In re Katrina Canal Breaches Consol. Litig.*, 2011 U.S. Dist. LEXIS 44615 (E.D. La. Jan. 20, 2011), 239–50
In re Vitamins Antitrust Class Actions, 327 F.3d 1207, 1210 (D.C. Cir. 2003), 251–52
- Mallory v. United States*, 354 U.S. 449 (1957), 59, 118
- Ronald Haft v. Wilmer, Cutler & Pickering*, Sup. Ct. of D.C., CA94-9904, 178
- Scarborough v. Ridgeway*, 726 F.2d 132 (1984), 123–24
Shepherd and Graves v. American Broadcasting Companies, 62 F.3d 1469, 1481 (D.C. Cir. 1995), 314 U.S. App. D.C. 137, 64 USLW 2135, 32 Fed. R. Serv. 3d 685, 176–77
- United States v. Ashe*, 478 F.2d 661 (D.C. Cir. 1973), 61–62
United States v. Boyle, 338 F. Supp. 1028, 1035–36 (1972), 88–91
United States v. Brawner, 471 F.2d 969 (1972), 63, 66, 72
United States v. Jeff Fort, 443 F.2d 670 (D.C. Cir. 1970), 49
United States v. Lattimore, 112 F. Supp. 507 (1953), 40
United States v. Leatherman, 580 F. Supp. 977 (1983), 114–16
- Whalem v. United States*, 346 F.2d 812 (D.C. Cir. *en banc*), 111, 112

BIOGRAPHY

John D. Aldock

On October 1, 2012 Mr. Aldock will retire from the private practice of law in D.C. after 41 years of practice. At that point he will embark on “a new career,” having promised his wife Judy that he would not be home for lunch.

Mr. Aldock was born in Washington, D.C. on January 20, 1942 and went to public schools in the D.C. area. He attended Northwestern University and the University of Pennsylvania Law School. After graduation, Mr. Aldock clerked in D.C. for U.S. District Judge Luther W. Youngdahl, worked for Hubert H. Humphrey in the 1968 election campaign, and was an Assistant U.S. Attorney for D.C. from 1968-1971.

In 1971 Mr. Aldock joined the then firm of Shea & Gardner where he remained as a partner and Chair of the firm until it combined with Goodwin Procter LLP in 2004. Since 2004 Mr. Aldock has been a partner in Goodwin Procter and Chair of its D.C. office.

Mr. Aldock tried throughout his career to change the focus of his litigation practice every few years, as he says, to avoid getting bored. His oral history concentrates generally on cases of some public interest and often on cases that were more likely to have come to a Washington lawyer.

Mr. Aldock is married to the former Judy Robichek. They have two daughters, Jessica and Stephanie, and two granddaughters, Samantha and Alyssa.

November 30, 2011

Judith S. Feigin

Retired, U. S. Department of Justice
Member, New York and California Bars

EMPLOYMENT

Legal Historian, Office of Special Investigations, Department of Justice

Sept. 1999 - May 2005

Reviewed tens of thousands of documents and interviewed dozens of people to obtain detailed history of the Office of Special Investigations; wrote 600+ page report on U.S. efforts to identify, investigate, denaturalize and deport individuals who took part in Nazi-sponsored acts of persecution

Deputy Chief, Department of Justice Campaign Finance Task Force

Sept. 1997-Sept. 1999

Met weekly with the Attorney General, Deputy Attorney General and other senior DOJ officials; helped supervise approximately two dozen investigations; coordinated with U.S. Attorneys offices on Task Force issues

Counsel to the Director, Executive Office for U.S. Attorneys

Jan. 1997-Sept. 1997

Ethics contact for Assistant U.S. Attorneys nationwide; helped establish electronic brief bank; worked with the Attorney General's Advisory Committee to review and revise policies within the Justice Department

Assistant U.S. Attorney, Southern District of California

Senior Legal Counsel & Special Assistant to the U.S. Attorney

Jan. 1994- Jan. 1997

Helped develop and revamp office policies and strategies; assisted U.S. Attorney in his work as head of the Southwest Border Council and the Attorney General's Special Representative for Southwest Border Issues

Appellate Attorney (11 years); Trial Counsel (4½ years)

Sept. 1978-Jan. 1994

Appellate Attorney, Department of Justice, Civil Division

July 1971- May 1978

Briefed and argued cases in all federal Circuit courts

Associate, Rosenman & Colin (New York)

Aug. 1970-May 1971

PUBLICATIONS

The Rule of Law at the Margin: Reinventing Prosecution Policy in the Southern District of California, 12 Geo. Immigr. L.J. 285 (1998) (co-authored with Alan D. Bersin, U.S. Attorney, Southern District of California)

Comment, Right to Counsel - Alleged Incompetent Held Entitled to Counsel at Civil Commitment Hearing, 43 N.Y.U.L. Rev. 1004 (1968)

Columns in the *Los Angeles Times*, *The San Diego Union-Tribune*, the *San Diego Daily Transcript*

EDUCATION

New York University School of Law

J.D. 1970

Member of Law Review

Newman Scholarship for Achievement

Barnard College

B.A. 1967