**Interview of Herbert J. Miller, Jr.**

**November 15, 1995**

Mr. Willens: This is Howard Willens speaking. This is the second interview of Herbert J. Miller, Jr. as part of the Oral History Project of the District of Columbia Circuit Historical Project. The date is November 15, 1995. Jack, when we adjourned our discussion yesterday, we were discussing your recollections of your early years in practice with the firm that subsequently became known as the Kirkland & Ellis firm. As I recall, you stated that the office was relatively small, with about eight lawyers at that time. Is that correct?

Mr. Miller: Yes. When I joined it, I think that's about how many there were -- eight lawyers, maybe ten.

Mr. Willens: Did the firm grow as you stayed with it until you became a partner in 1958?

Mr. Miller: It expanded to a certain extent, but not much. As I recall, when I left I think there were probably 15 lawyers there. The Chicago office I think had grown substantially since then. I believe it's over 200 now.

Mr. Willens: When you came out of law school, did you consider applying for a judicial clerkship of some kind?

Mr. Miller: Frankly, I did not. I'll tell you what I did do that I had forgotten yesterday. Through a friend of my father's, I ended up talking to Sal Andretta, who was the Assistant Attorney General for Administration at the Department of Justice, asking him about the possibility of my getting a job as an Assistant U.S. Attorney. I remember the thrust of his advice was: what Democratic senator do you know? But in any event, I did not follow that course.

Mr. Willens: Did you consider going into government during the 1950s when Eisenhower was President?

Mr. Miller: I don't recall.

Mr. Willens: Did you have any interest in going into public service before you were approached in 1961 by Attorney General Kennedy?

Mr. Miller: I think I always had an interest in government. I'm not sure that ever equated to the thought that I would be working for the government in some program or other. My father spent his entire life studying the government -- first at the city, county and state level -- and then subsequently at the federal level. So from him, I always had a very active interest in government. But once I got started in the private practice, I don't think I ever really thought about going to work for the government. I enjoyed what I was doing. I do know that early on, one of my ambitions in life was to become a judge after I had practiced for a while. And, as we will get to subsequently, when I had an opportunity to do that, I opted for private practice rather than a judgeship.

Mr. Willens: What was it about being a judge that appealed to you as a young lawyer?

Mr. Miller: The fact that you were in a courtroom. I considered it a very prestigious office. You had an opportunity to work with the law constantly and, of course, with the testimony of witnesses. When I got into court, I was very impressed by some of the judges before whom I appeared. It just seemed to me that becoming a judge would be the culmination of any legal practice.

Mr. Willens: Do you remember any of the judges before whom you appeared in the District Court that left you with favorable impressions of the bench?

Mr. Miller: Judge Pine I remember specifically. He sometimes was, shall we say, abrupt, but he was a fine lawyer, and I thought a fine judge. He ran a very good courtroom.

Mr. Willens: What do you mean by running a good courtroom?

Mr. Miller: He didn't permit lawyers to go off on tangents. He made them stick to the points at issue in the case before him. He quickly dismissed irrelevant legal arguments that were made. Because of his earlier practice and the time he'd spent on the bench, he was able to determine very quickly what he considered was the relevant argument. Also he impressed me with his ability to rule on evidentiary issues very quickly.

Mr. Willens: Do you have any specific anecdote that you recall with respect to appearing before Judge Pine?

Mr. Miller: I can remember one time being told 20 minutes before a pre-trial hearing that I was to substitute for one of the Kirkland lawyers and went down totally unprepared. I almost did not survive the process because of my unpreparedness. I have a vivid recollection of that. It was not my favorite court appearance.

Mr. Willens: Did Judge Pine quickly become aware that you were unprepared?

Mr. Miller: Well, of course. As soon as he started asking questions, as I had watched him do with other lawyers, he immediately became aware that I didn't know what I was doing. I had no knowledge of the case. Some lawyer was supposed to cover it, and he had been called out of town the night before. So I was thrust into the brink so there would not be a default, but it was almost as bad.

Mr. Willens: Did you subsequently appear before him in that particular case?

Mr. Miller: Gosh, I don't remember. I know I've appeared before him, but I can't remember. I got to know him quite well because he was later on the D.C. Crime

Commission.

Mr. Willens: Did you have any personal dealings with Judge Youngdahl, who also had a background from Minnesota?

Mr. Miller: As a matter of fact, I remember Judge Youngdahl from my Minnesota days. He was the governor who shut down the slot machines in northern Minnesota.

Mr. Willens: Was that a decision you favored or opposed?

Mr. Miller: Probably at the time I was opposed to it. And I knew his daughter, Mary Youngdahl. She used to live not far from me in Minneapolis, as a matter of fact.

Mr. Willens: Do you have any recollection of practicing before him here?

Mr. Miller: I have appeared before him, and I'm embarrassed to tell you I can't remember what case it was -- probably some motion or the like. He was very friendly for a judge. I must say I don't think I ever had an opportunity to judge his legal capabilities as such.

Mr. Willens: Did you have any appearances that you recall before Judge Holtzoff?

Mr. Miller: Oh, yes, I have appeared before Judge Holtzoff on more than one occasion. There was a man that knew the law and was very quick at the law. I was always amazed that, after hearing strenuous argument from both sides interjected by pertinent questions from the bench, he would then ask his clerk to bring him in several volumes of Fed. Second, Supreme Court reports or the *Federal Supplement* and sit there and dictate from the bench, reading from the cases with the quotes as necessary, an almost letter-perfect opinion. When I say almost, many times it was letter-perfect. It was just an incredible display. On the other hand, I can remember almost losing my arm because I made the mistake, when he asked to see an exhibit, of leaning over and attempting to hand it to him directly. I've heard of other lawyers

having the same problem. And he became, shall we say, somewhat unsettled and said, "To the clerk, to the clerk. No, no, no." And of course, the animosity that existed (and I don't know where it came from) between Justice Frankfurter and the judge was quite well known. I can't remember the process, but it was in some case in the Court of Appeals or was I arguing on a Supreme Court case? But I remember we had a case in the Court of Appeals, and we relied on a Holtzoff opinion, and I remember the case got up to the Supreme Court, and I can't remember the court, and you could just see Frankfurter saying -- or I assume what would happen, and it did, one or the other. I can't remember the background of that. But there was a real animosity between those two.

Mr. Willens: That's interesting. Was that widely known throughout the legal community?

Mr. Miller: I don't know. If I knew it, I assumed it must be. I'm trying to remember what the litigation was, because I can remember thinking, when the Court of Appeals relied on something Holtzoff did and it went up to the Supreme Court, my Lord, I know we're going to lose Frankfurter. It probably was an FCC case, but I'll tell you, with the way my mind works, I'll remember tomorrow.

Mr. Willens: Did your practice take you from time to time into the local District of Columbia court as well as the federal court?

Mr. Miller: You know, I'm sure it did, but I'm just trying to think of who the judges were. Judge Ryan, of course, was domestic relations.

Mr. Willens: Let me ask this question. Was there a fairly sharp cleavage between the lawyers in the community who practiced before the local court and those who practiced in the federal court?

Mr. Miller: Oh, yes. Fairly. I think one of the most amazing changes that has occurred is in the criminal law and the practice of criminal law. In my day, early on, the criminal law in the District of Columbia was pretty much practiced by the so-called Fifth Street Bar. I can't remember his name, but one was known around town as the "Green Hornet." I'll think of his name in a minute. I remember the sadness that prevailed when he was convicted of obstructing justice for destroying evidence or suborning perjury, I forget what it was, in the District Court. But in those days, the established, bigger firm normally wouldn't touch a criminal case with a ten-foot pole. It was (I guess) considered demeaning. You would have an exception of course for antitrust criminal cases and tax, but even there, and I found this after I left the Department, many of the big firms were just not equipped to practice criminal law. They had no one that had any experience to practice criminal law, they had never done it. To a certain extent, after I left the Department and sometimes would deal with the Antitrust Division in criminal cases, I found that in those days their knowledge of criminal law and criminal procedures really was not much, which made it to some extent fairly easy pickings from a defense standpoint. I know one case that went over there. I couldn't try the case and I asked Bill Jeffress to go down. He was new in the firm. He had clerked on the Supreme Court, and Covington & Burling had tried desperately to hire him, but he opted to come with the small firm that we were. He went down to Louisiana. It was a several-count price fixing indictment involving milk and bread being sold to schools, as I recall, and ended up getting an acquittal for our client. But I remember going to meetings at the Antitrust Division with Bill, and I was always surprised how little the government lawyers knew about the actual process of trying a criminal case and what would be involved. I'm sure that's changed now, of course.

Mr. Willens: Do you recall any instances in the 1950s when the Kirkland firm

was asked to take on a criminal matter and declined to do so?

Mr. Miller: Well, no. I know that I took on pro bono matters. I can remember being appointed to a first degree matter case. Orange Pope was the defendant's name.

Mr. Willens: What happened to him?

Mr. Miller: Well, a very experienced criminal lawyer was on the case with me -- a great fellow -- I've forgotten his name for the moment. But I remember an individual who later became U.S. Attorney was trying the case, Fred -- I've forgotten his name. The jury was empaneled, of course. And in making his opening statement to the jury, he used to walk back and forth behind counsel table addressing the jury, and he would stumble every time he went by, and the jurors would sway to the right and look to see under the table what he had stumbled on, and here was the biggest, rustiest, ugliest looking shotgun -- the murder weapon. And then the jurors would sit up straight with this look on their face. But anyway, he'd put on his case, and as the case progressed, I remember going back to discuss it with the client. We had a witness who was an alibi witness that he was not present. But I can still remember the coroner getting up and describing the impact of two barrels of a big shotgun going off at a short distance -- of the impact on the victim's chest. By the time the coroner finished describing the condition of the person's body, I think that the jurors were ready to convict anyone. Then we find out that the alibi witness had decided that he wasn't going to testify. As a result, we were able to negotiate a plea, I forget whether it was second-degree or manslaughter. But you asked the question about the law firm and I don't recall. But I do know that Hammond Chaffetz probably came with the firm because he beat the government in an antitrust case. I think Kirkland was representing Standard Oil or Amoco, I forget which. But by and large, I don't recall much in the way of criminal work that was involved in the firm.

Mr. Willens: Was pro bono work a significant part of your practice in your early years with Kirkland?

Mr. Miller: No, I don't think it was a significant part. As requests would come in, we would do whatever was needed. Offhand, I can't recall any others. I know in starting out that I made a conscious effort to try to represent anybody that would have me. So I did a lot of work that turned out to be pro bono, in the sense that we weren't paid for it.

Mr. Willens: What's your recollection now about the extent to which the bar in Washington was supportive of pro bono work in the 1950s?

Mr. Miller: Well, if I had to guess, I would question whether the issue ever came up, surprisingly. I don't recall it. In those days, I was not very active in the Bar, so it could have come up and I wouldn't have known about it. But I think the bar has become much more active with respect to such matters in recent years than it was when I first started.

Mr. Willens: Is that a good development or a bad one?

Mr. Miller: Oh, I think it's an excellent development.

Mr. Willens: You mentioned being available to represent anyone who would have you. Was there some incentive within the firm to acquire one's own clients rather than work principally on the firm's important corporate clients?

Mr. Miller: No. To the contrary, I think what the firm wanted was me to work on the important paying client, but I always felt that it would be important for me to establish my own practice. I can't explain to you why, but I think it's the concept of being, shall we say, self-sufficient, because I early on recognized that if you had your own clientele, that would give you the freedom to stay with the firm or go off on your own or however you wanted to do it.

Mr. Willens: Were there any models, that is as lawyers within the firm or in the

legal community in Washington, that you particularly respected?

Mr. Miller: Well, in the firm, Louie Caldwell was just a brilliant writer and just a fine gentleman. I don't know that he did much in the way of litigation, but his history was as first General Counsel of the Federal Radio Commission -- they had just an incredibly broad scope of communications practice. I found out very quickly that the last thing in the world I wanted to be was a communications lawyer, because it was so fact-oriented in terms of what I considered somewhat minutia. I enjoyed some of the legal issues that came up, but I quickly decided that the last thing in the world that I wanted to be was a specialist in communications law. Most of the top lawyers had started there, and they were very good at it. They brought in some of the best (they call it today) media clients in the country.

Mr. Willens: Did Mr. Caldwell ever edit some of your written work?

Mr. Miller: I'm sure he did, and I'm sure he felt it was nowhere near up to his standards or capabilities.

Mr. Willens: Did the fact that you did not want to specialize in the communications field suggest to you that you would not stay with the Kirkland firm over the long term?

Mr. Miller: No, because what happened was that when Eleanor Patterson died, Perry Patterson came down to represent *The Times Herald.* I became in effect the number two man on that, which was a wonderful client and a very exciting client, and I learned quite a bit about the law of defamation. Hammond Chaffetz would have antitrust issues which I would participate in. Then -- I forget precisely when it was -- I ended up representing Aeronautical Radio, Inc., which was owned by the airlines and provided all the air-ground communications. Representation there was primarily corporate representation. They had a subsidiary that had a

substantial government contract for maintainability and reliability research to make sure that the crucial elements of a piece of equipment that the Navy used on ships would not fail and have the whole unit become a disaster. So I became somewhat knowledgeable about government contracts. At the same time, I remember a friend of mine was going to be thrown out of the Scottie Club --

Mr. Willens: What kind of club?

Mr. Miller: Thrown out of the Scott Terrier Club because he had made some nasty comment to the judges or something. I remember representing him in a hearing. There was just a broad -- sometime I'll go back through my diaries and I'll tell you what I did.

Mr. Willens: Did you enjoy the variety of work that those assignments found you in?

Mr. Miller: Very much so. Very much so. And I think the reason that I still really enjoy practicing law is that when a client comes in the door, all of a sudden you have a brand new set of facts and a brand new question of how the law applies to those set of facts. And I just find it a fascinating endeavor to make sure you ascertain what the facts are, which ones you want, which ones you don't, and then figuring out where in the law is -- that case or that statute which permits your client to have a winning case. And even today, I just find it fascinating.

Mr. Willens: Young lawyers today worry a good deal about the need to specialize. Did you have any sense in the 1950s that you could succeed in the profession without specializing in communications or any other field?

Mr. Miller: I don't know if I ever thought about succeeding. I do know that I concluded early on that in order to be a good lawyer, specialization was out of the question, that you had to have a broad general background because, particularly if you got into litigation, your

specialization could be of very little help on the broader issues of how to present the case. I know that the law has gone 180 degrees from that, but even as late as the time that I left the Department and opened my own office, I intended to be a general practitioner as distinguished from having a specialization. I suppose that's not quite true. I had expected that I would do a lot of litigation, and I suppose that's specialization in one sense of the word. But today's specialization means focusing on a fairly set standard of antitrust or tax or patents. And now of course we have the concept of white collar crime, which is becoming a major part of the practice, and of course I guess I qualify as a specialist in that area simply because I started doing it almost from the beginning. I didn't intend to, but the clients started coming in, and I did have the background after four years running the Criminal Division.

Mr. Willens: Did you have any uncertainty as an associate as to whether you would become a partner at the Kirkland firm?

Mr. Miller: You know, I don't recall. I suppose I would naturally be concerned about it. But I knew that the work I was doing was, if not first rate, at least well accepted, so I guess I didn't worry about it too much.

Mr. Willens: Were you the senior lawyer on the Air, Inc. matter?

Mr. Miller: Yes. It had started off, like so many things, as a small operation. I remember I had done some work over there and a request came that I represent them full time and I consequently did. It was not a full-time representation, but it did take up a fair amount of my time for a period.

Mr. Willens: Was that well regarded within the law firm?

Mr. Miller: Oh, yes. It was a very important client for the law firm, as a matter of fact. They were very pleased.

Mr. Willens: Were there any other major clients that you worked on in your early years with the Kirkland firm before the Board of Monitors descended upon you?

Mr. Miller: Well, *The Times Herald* took a lot of work. I worked on some of the antitrust cases. I remember there was a quantity limits proceeding involving tires that ended up at the Court of Appeals.

Mr. Willens: There is some reference in the materials that your office has provided me to representation of the American Oil Company, later known as Amoco.

Mr. Miller: Oh, that's right. We represented Amoco. I'd forgotten that I'd represented Amoco. They used to have a station at the corner of Massachusetts --

Mr. Willens: And Wisconsin.

Mr. Miller: And Wisconsin. Were you there then?

Mr. Willens: I think I recall hearing about the case or being with the firm as that representation came to conclusion.

Mr. Miller: Well, it was a station that was built as I recall in the early '20s. It was just an ungodly-appearing thing, and for years the government had tried to buy it and Amoco wouldn't sell it because it was one of their highest volume stations. It was in a perfect area for a gas station. So finally the government, the District of Columbia I guess, got together and went ahead and condemned it. And we came up with an argument that it had no authority to do so, and as I recall, challenged the legality of the condemnation use statute for a period. The station was operating, the company was happy, and we finally got up to the Court of Appeals. Then they got a stay out of the Supreme Court, but eventually the government went in and demolished the station.

I remember trying a case where a landlord dealt with whether or not Amoco had

improperly terminated a lease, and that was in the then Municipal Court. I can't remember now who the judge was. Then I remember another one in the Municipal Court involving title to property. You're bringing all this back, Howard.

Mr. Willens: Well, that's good. That's in part the purpose of the project. Do you have any specific recollection of how you learned that you were going to be invited to become a partner at the law firm?

Mr. Miller: You know, I don't. I think there was a normal period, but I can't remember even if that's true. And I can't even remember how it happened. I remember that it did happen, but I can't remember how I was told or what.

Mr. Willens: Did your practice change at all after you became a partner?

Mr. Miller: I don't think it changed a bit.

Mr. Willens: Do you recall whether the firm during the 1950s until your departure in 1961 used what was called a bonus system?

Mr. Miller: At the end of the year, we were given a bonus, yes.

Mr. Willens: What is your recollection of that practice?

Mr. Miller: I was glad to get it, I remember that, and I always enjoyed it because with the family, it was nice to have a monthly stipend coming in, but then it was always nice to have all of a sudden what I considered a large chunk of money. It really wasn't all that much, but all at one time, it made you feel like you had come upon a windfall.

Mr. Willens: Do you recall approximately how much money you were making in the practice of law when you became a partner?

Mr. Miller: I don't know. By today's standards, it cannot have been much. It was $20,000, $25,000. I don't think it would be much over $22,000. I don't remember. It was

around in that area somewhere. Of course, the dollar was worth a little bit more in those days, too.

Mr. Willens: To say the least. Were you living at this point in Maryland, or was there a time at which you, Carey and your family lived in the District of Columbia?

Mr. Miller: When we first married, apartments were very hard to come by, and Carey was working up on the Hill. Somebody who worked on the Hill knew the owner of an apartment over in Glover Park. So we rented a one-bedroom apartment in Glover Park. Let's see, we were living there when John was born. Then we eventually found a two-bedroom brick house over on 26th and N. George Mason Drive over in Arlington. And I think I got a GI loan. I think I paid something like $10,000, $12,000 for the house, using my gambling winnings from the Army for the $1,000 downpayment, or $1,500 downpayment, which was an incredible sum of money in those days for me. We lived there for several years and then bought a house in Chevy Chase, Maryland. I think that house cost $21,000. It was on Thornapple Street just off of Connecticut. Built in the early '20s and shingled with a nice screen porch, dining room, kitchen, and four bedrooms. Had a stairway to the third floor, which was a playroom/office, radiator heat, termites. We stayed there for a while until we made the mistake of driving around out in Potomac in 1959. One Sunday afternoon drove by this house. The weeds were about four feet high. This brick house was being constructed. So we went in. It had a big piece of land on it; I later found out five acres. We walked through it in the dark. There were no lights. It didn't have electricity yet. So Monday Carey called and said, "I want you to come home early from work." So I came home early to the house on Thornapple Street. She came out with a Mason jar of clear liquid in a glass, and she said, "I'm going to drive," which was not normal. I said, "Why?" She said, "Well, just get in and be quiet." So we started driving. We drive out to the house, and I

start drinking what was the clear liquid, which just happened to be martinis. So I was happily drinking martinis. We get out to the house, we go through it again, and at 11:30 that night I find myself talking to the builder and purchasing the house, which, despite the stupidity of the process, turned out to be one of the smartest things we ever did.

Mr. Willens: Tell me a little bit about the Board of Monitors assignment that came in your direction in the middle of 1959. How did it happen that you got involved with the Board of Monitors supervision of a consent decree involving the Teamsters Union?

Mr. Miller: Well, John Cassidy knew Martin Francis O'Donoghue.

Mr. Willens: I'm going to have to stop here and ask who was John Cassidy and when did you first meet him?

Mr. Miller: John Cassidy came to work for the Kirkland firm as a messenger, as did Ray Larroca, I might add.

Mr. Willens: Two distinguished members of the firm and the bar.

Mr. Miller: We became friends. Somewhere along the line, he had run across Marty O'Donoghue, who was General Counsel of the Plumbers Union. He was not a part of the Union; he had his own practice and was a very well thought of, highly-respected, labor lawyer.

Mr. Willens: Did you personally know Mr. O'Donoghue?

Mr. Miller: No, I may have met him, but I really didn't know him well. What had happened, Cy Chastie, who was working with Ed Williams, had put together -- no, not Cy Chastie -- a lawyer in Ed's firm had worked with the Teamsters, and eventually Ed started to represent the Teamsters. There was a suit brought by dissident Teamsters, Cunningham, et al., to set aside Hoffa's election. The case was settled by the entry of a consent decree, which called for a three-man Board of Monitors, one appointed by the Teamsters, one appointed by the dissidents,

and then the two agreeing on the so-called impartial chairman. The Teamsters, thinking that Martin O'Donoghue as a labor lawyer would be sympathetic to labor unions because he represented them I gather most of his adult life, agreed that he should be the impartial chairman, and Judge Letts appointed him as such.

Mr. Willens: And the plaintiffs agreed to Martin O'Donoghue's designation.

Mr. Miller: Oh, yes, the plaintiffs agreed to it also. There were serious problems with the Teamsters in those days. Over-utilization of trusteeships to permit the International to control the operations of the local unions, and the method of voting was something less than the best, shall we say, with respect to both local and international officers. Marty O'Donoghue was so knowledgeable about labor unions and labor law that as he became involved he began to realize that there were very serious problems and made recommendations that the Teamsters do certain things. The Teamsters eventually started refusing. The way they would refuse, they'd band together several locals from around the country, and they would come in and intervene and challenge what the Monitor had ordered or recommended.

Mr. Willens: The case I understand was pending before --

Mr. Miller: Judge Letts.

Mr. Willens: Judge Letts. L-e-t-t-s.

Mr. Miller: Yes. L-e-t-t-s.

Mr. Willens: And the Board of Monitors then was trying to bring about change in the Teamsters Union by going to court and requesting the judge to enforce --

Mr. Miller: Well, actually we were trying to do it by making requests of the Teamsters, but those requests would be challenged sometimes by the Teamsters Union International but oftentimes either in conjunction with the International or just by themselves a

bunch of locals would come in. I think by the time that case was over, it was the longest record of docket entries of any case in the history of the District Court. The reason was because of the tremendous volume of litigation that was engendered by the Board of Monitors attempting to cause these changes to come about in the Teamsters Union.

Mr. Willens: As I recall, the consent decree was entered into in 1959 as a result of litigation started in 1957. At one point did Chairman O'Donoghue conclude that he needed to retain outside counsel?

Mr. Miller: I don't know what the triggering event was, but he realized that, every time the Board of Monitors tried to accomplish something, litigation would ensue. He, of course, still had an active practice representing the Plumbers Union, and there was no one else to do it really. He didn't have any lawyers to go in and handle the case. So he finally asked if we would, if the court approved it, agree to represent the Board of Monitors?

Mr. Willens: Where was John Cassidy at this point?

Mr. Miller: I think he was working for the Board of Monitors, come to think of it, at this stage.

Mr. Willens: He had graduated from law school, and after working with the Kirkland firm, he went to work elsewhere as a practicing lawyer.

Mr. Miller: Yes. I'm pretty sure John was working over there at the time. To make a long story short, an application was filed by the Board of Monitors, and of course there was substantial objection. Eventually Judge Letts authorized it, so we started to represent the Board of Monitors, and there were specific cases involving alleged corruption that we represented the Board in. It was really a substantial amount of litigation. Every issue was hotly contested. Eventually, the Teamsters representative became William Bufalino, who was a lawyer

but who was at one time head of a Teamster local, I think out in the Pittsburgh area or Detroit, I've forgotten which.

Mr. Willens: He became a member of the Board of Monitors?

Mr. Miller: Yes. He became a member. Of course, the Teamsters did not pay any legal fees, and the Kirkland firm was getting a little concerned because the bill was running up substantially. So we had, I forget how many cases we had, how many series of cases we had before Letts and how many appeals there were. But I remember going up to argue more than one appeal in the Court of Appeals. You've just shown me the description of the work -- that's very interesting -- 5,170 hours representing fees of $105,000.

Mr. Willens: Sounds like a bargain to me.

Mr. Miller: Yes.

Mr. Willens: Was there some concern within the Kirkland firm in taking on this fairly unusual representation?

Mr. Miller: Well, there was.

Mr. Willens: Jack, could you repeat what you said about the amount of work that was put in on the Teamsters Board of Monitors representation.

Mr. Miller: You've handed me a summary that I had prepared some time ago. I see that for the period July 23, 1959 through December 31, 1960, the Kirkland firm spent some 5,170 hours with respect to the Monitorship, and the fees were $105,000. And I see here that in addition to opposition to petition for certiorari, there were over 20 appeals to the Court of Appeals in this case. That was an incredible number of petitions filed by various locals around the country challenging the conduct of the Board of Monitors. I remember the firm was concerned about the amount of the fees that we were owed, and we filed a petition for fees,

which was granted by Judge Letts over the opposition of the Teamsters -- violent opposition I might add -- and they appealed that. I was in the Court of Appeals. I think there were two other appeals I was handling, but also the appeal with respect to our legal fees. Just before I was to stand up and start arguing the issue of the legal fees, Bill Bufalino, who was by then a member of the Board of Monitors appointed by the Teamsters, leaned over to me, and he said, "Jack, I want you to tell the Court of Appeals that your legal services are not worth one red cent." And I smiled to myself, thinking, he thinks that I am going to be so upset I won't think of a word to say. I couldn't wait to stand up. And I did stand up. And I addressed the Court of Appeals. I said, "Before I start with the court please, I've been directed by William Bufalino, a Monitor appointed by the Teamsters, to inform this court that in his opinion, our legal services are not worth one red cent." Well, predictably, the three judges on the Court of Appeals looked sour at that and looked at Bufalino, and they shook their heads, and from then on, there was no question -- that's all I needed to say. The upshot of it was that they affirmed the award, and the firm eventually was paid.

Mr. Willens: Who did Bufalino replace on the Board of Monitors, if you remember?

Mr. Miller: I'm trying to remember. I don't know. I'd have to go back and look.

Mr. Willens: Who was the member of the Board that had been designated by the plaintiffs in the lawsuit?

Mr. Miller: Originally, it was a lawyer named Smith, Larry Smith.

Mr. Willens: Where was he from?

Mr. Miller: He was from New York, as I recall.

Mr. Willens: Did he stay on the Board of Monitors throughout its lifetime, or was he replaced at some point?

Mr. Miller: You know, I don't even remember that.

Mr. Willens: Did Martin O'Donoghue have some difficulty in getting a majority of the Board behind a particular reform from time to time?

Mr. Miller: Well, as I recall, for a long period of time, he was able to count on his vote and the plaintiff designee. But then there came a time when one of the offices was empty. One of the monitors, whether it was the Teamsters or the plaintiffs, I forget which. So the question then was could the Board continue to function? I had totally forgotten this. I remember ending up in settlement negotiations in Judge Letts' courtroom. He would lock the courtroom, and the Teamster "Bar Association" would come in, and Martin O'Donoghue and I would come in, and I guess Bufalino was the other monitor. I guess the plaintiffs' Monitor was not there. But in any event, to make a long story short, we finally worked out a proposed settlement which would be embodied in an injunction that would fulfill the things that Marty thought were necessary. Bufalino had to have been there, because he demanded a hearing before Judge Letts and went in before Letts and said that since the Board of Monitors is less than [three members] in effect had no client. And therefore I had no business being in the courtroom negotiating with the Teamsters and that I should be barred, should not be able to charge for the time and what have you. Judge Letts listened to all this, and he said, "Well, we'll solve that problem right now, Mr. Bufalino." And Bufalino said, "Well, how is that, your Honor?" And he said, "Mr. Miller will be representing the court from now on." And Bufalino said, "And I assume the court will pay his fee." And Judge Letts said, "We'll see about that." As I recall -- I hadn't thought of that. So in any event, there I was without a client but representing the court.

Mr. Willens: What was your assessment of Judge Letts' performance in supervising the decree?

Mr. Miller: I thought he really did an outstanding job. It would have been so easy to become involved in all the intricacies of the litigation and what have you, but he always managed to stay above the battles. He'd listen to the various things, and then he'd rule. He had sufficient control to make sure that the process continued. I really admired him for that, because it was a tough problem and there were more papers filed than you can imagine.

Mr. Willens: Had you had any experience with Judge Letts before the Board of Monitors assignment?

Mr. Miller: Well, I know I knew him. Now why did I know him? You know, I think I'd appeared before him, but I can't say [in what connection].

Mr. Willens: Do you happen to remember what his background was?

Mr. Miller: You know, at this stage I do not.

Mr. Willens: You mentioned the number of hours spent on the matter. Did you have some assistance at the Kirkland firm in representing this client?

Mr. Miller: Oh, yes. I had one of the finest young lawyers that ever lived -- Howard Willens.

Mr. Willens: Enough of that. Do you have any recollection as to how you approached the various associates of the law firm when this client first approached you and you recognized that you needed some associate help?

Mr. Miller: You know, I don't, as a matter of fact. Can you refresh my recollection?

Mr. Willens: Well, as I recall, three associates did end up working nearly full

time on the case. There were only four associates at the time, and I was the junior-most of the four. But Raymond Larroca, who is a name partner of yours for many years, and I guess --

Mr. Miller: Joe DuCoeur.

Mr. Willens: I guess Joe DuCoeur, Raymond and I were the three. But that only left one associate who was not actively engaged. Do you recall now that I've refreshed your recollection as to whether your partners in the Kirkland firm thought you were placing unreasonable demands on the limited associate body?

Mr. Miller: Now that you have refreshed my recollection, I realize that I probably had placed an undue burden on the firm, particularly when I was using most of the associate help without a guarantee that we'd ever get a dime. So what started off as I think a firm acceptance that well, this is out of the ordinary, it's something that would be interesting and something that we should undertake, I think towards the end they began to worry that I had involved them in a quagmire that would impair the profitability of the firm, if nothing else. But it was an excellent training source for the youngsters, as well as myself.

Mr. Willens: That was certainly true in my case. This was a very unusual representation in private practice, as I recall. Was it your first exposure to the problems of labor racketeering in the United States?

Mr. Miller: Yes, I assume it probably was.

Mr. Willens: How do you think that representation influenced your subsequent career and your attitudes?

Mr. Miller: Well, obviously when Robert Kennedy called and asked me if I would run the Criminal Division, the assumption always was that it was my background with respect to the Teamsters Union that caused him to eventually decide to choose me. I don't

believe I was the first choice. I think others were considered. I've been told that. I had met him on one or two occasions. We were definitely not close, and of course I was politically with the wrong party. I was a Republican precinct chairman, as a matter of fact. So I just don't know. I assume that that might have been the reason. I hope another reason was that I thought I was a pretty good lawyer. I think I had a reputation as one, I don't know.

Mr. Willens: Did you have any personal dealings with Senator Kennedy or his staff during the course of the Board of Monitors representation?

Mr. Miller: I don't recall any dealings with Senator Kennedy; we're talking about Jack Kennedy now, of course. His staff on occasion I would meet with to get information. Who was the general counsel?

Mr. Willens: The general counsel of --

Mr. Miller: Of that Committee.

Mr. Willens: I don't remember. But was Bob Kennedy working on the Hill at that time for the so-called McClellan Committee?

Mr. Miller: Well, Bob Kennedy started off in the Department of Justice in the Internal Security Division and then eventually ended up working for the McClellan Committee. But Adlerman was the General Counsel.

Mr. Willens: So you recall having some meetings with Mr. Adlerman?

Mr. Miller: Yes. If I needed information about some of these various lawsuits that were filed, either I or a member of the firm would go down and talk with him. I think I met Paul Tierney, who died just last week as a matter of fact and ended up as Chairman of the Interstate Commerce Commission.

Mr. Willens: How about Walter Sheridan?

Mr. Miller: I met Walter Sheridan.

Mr. Willens: What was his job at the time?

Mr. Miller: He was an investigator for the McClellan Committee. I did deal with him fairly often, I would say, as to trying to find out, when these petitions were filed, what the facts were and whether or not the Committee had any information. We were taking depositions on certain issues that had been raised. I remember one was the case, and one involved a bank out in Indiana. One was out in Kansas City, was it?

Mr. Willens: I don't know; I keep thinking of Sun Valley, but I don't know where that was.

Mr. Miller: Well, Sun Valley, yes. That was down in Florida.

Mr. Willens: Compared with your other professional assignments, the Board of Monitors representation involved a certain amount of public exposure in the community, isn't that correct?

Mr. Miller: Yes.

Mr. Willens: Did you feel that as a result of that representation you got to know more lawyers and others than you might otherwise have done?

Mr. Miller: Oh, I don't think there's any question about that. Of course, I'd known Ed Williams. The first time I met Ed Williams was when we were representing *The Times Herald.* The Senate Committee investigated *The Times Herald* use of a cropped photograph of then Maryland Senator Tydings, I guess it probably was, come to think of it, and Earl Browder, the socialist. I remember there was an inquiry on that. There was a criminal case involving campaign funds. I remember that we recommended that this individual, whoever it was, hire Ed Williams as his counsel. I had known Ed before, but we worked together on that

case. And then of course, he became General Counsel to the Teamsters and I spent a lot of time with him and with other people in his firm.

Mr. Willens: Was he active in representation of the International during the period that you were representing the Board of Monitors?

Mr. Miller: Yes.

Mr. Willens: What is your assessment today of Ed Williams as a person and a lawyer?

Mr. Miller: Well, he was obviously a top-flight trial lawyer. No question about that. I guess we danced to a different drummer. We were friends. We would have lunch together, but I don't think we were ever close.

Mr. Willens: How did the Board of Monitors litigation ultimately come to conclusion?

Mr. Miller: As I recall, we finally had a final judgment settling it, but I can't really remember.

Mr. Willens: I have a recollection, which may have no basis, that there came a point at which the Court of Appeals concluded that the litigation had become the quagmire that you referred to earlier and that it perhaps was not an appropriate use of judicial resources.

Mr. Miller: Yes.

Mr. Willens: Does that have any resonance with you?

Mr. Miller: I'll tell you what I remember, and we can check the records easy enough. But I remember that maybe the Court of Appeals had indicated that, but certainly I thought that we finally did have a closing settlement agreement that was worked out in Judge Letts' courtroom, but the record will show. As I sit here today, I don't have a specific recollection

of how it came about.

Mr. Willens: But as it happened, the papers suggest that it came to conclusion just a few months before you were invited to join the administration as the head of the Criminal Division.

Mr. Miller: You know, I don't even know that. What was the timing?

Mr. Willens: Well, the piece of paper that you're referring to did tabulate hours and costs for the period from a point in 1959 through the end of 1960. It may be it extended into 1961, but I don't have any personal recollection.

Mr. Miller: My recollection is it was over by that time. I have a recollection I'll tell you about later.

Mr. Willens: What is your overall assessment today of the utility of the Board of Monitors technique for implementing that kind of controversial consent decree?

Mr. Miller: The Board of Monitors lacked sufficient power, really, to accomplish the end. Subsequently, you had litigation involving the Teamsters where there has been appointed in effect almost an independent overseer who has had the authority to effect the reforms by direct orders. And I'm told without knowing that that had been very effective. The Board of Monitors' power and authority were not really clearly spelled out in the consent decree. In retrospect, I think everyone would agree it was a procedure worked out whereby Jimmy Hoffa would assume the presidency of the Teamsters Union as so-called provisional president under this consent decree, and once that happened, the game was set. He was not about to accept anything that would cause him to have to step down and he was going to continue to run the Teamsters Union as it had been run in the past. That is my personal estimation.

Mr. Willens: What is your recollection of the first approach made to you with

respect to entering the administration as Assistant Attorney General?

Mr. Miller: How did it happen, you mean?

Mr. Willens: Yes.

Mr. Miller: Well, I remember it quite clearly. I had attended a meeting at the Department of Justice early on where matters were discussed, but they were only interested in what information I had derived.

Mr. Willens: A meeting with whom?

Mr. Miller: Well, Bob Kennedy was there, I remember, and I think Bill Hundley.

Mr. Willens: This would have been early in the administration?

Mr. Miller: Yes, very early.

Mr. Willens: January or February?

Mr. Miller: Yes. Very early on. I don't know, it was a 2-day meeting reviewing some of the things that I had ascertained during my representation. But I came home from work one night and found my wife very upset with my two sons and said, "Now I know you've done something wrong. But the family will stick by you, and whatever you've done wrong, we'll tough it out." And I said, "What the hell you talking about?" thinking of all the things that I had done wrong and wondering which one might have surfaced. And she said in very somber tones, "The Attorney General of the United States wants you to call immediately." And this was 7:15; I was just coming home from the office. So I thought, well, so I had a drink, and then I called, and Angie Novello answered the phone. I had met her before. I said, "This is Herbert J. Miller, Jr." She said, "Jack, come off it." I said, "Why am I being called?" She said, "Wait a minute. I'll put the Attorney General on." Bob came on the phone and said, "I want you

to be the Assistant Attorney General of the Criminal Division. Can you do the job?" And I said, "Well, I can do any job that there is, but you've got to know that I have some problems." He said, "Well, what are those?" I said, "Well, I'm a Republican, and I'm a Republican precinct chairman, and the firm I'm with was started by Colonel Robert R. McCormick of *The Chicago Tribune*, and I represent clients that are the antithesis of what I think the Kennedy administration is going to be all about." And he said, "I don't give a damn about any of that. Are you sure you can do the job?" And I said, "Sure. But shouldn't we discuss it?" He said, "All right. Make an appointment tomorrow afternoon." So I called Angie back, and she said, "Come in at 2:00." So I went back and I outlined all this stuff, and he said, "Fine. Do you want it?" And I said "Yes. I'll need a month or so to get rid of my practice." He said, "That's unacceptable. You've got a week at the most and I hope less."

Mr. Willens: So was there any reservation at all expressed on his part about your Republican affiliation?

Mr. Miller: Not at all. Not at all. None whatsoever. He must have checked around enough that he trusted that I would play it straight. Because if you stop to analyze it, you know, the President's brother is Attorney General, and the Criminal Division, while maybe not the most important position publicity-wise, if anything went wrong in that Division or any suggestion that the Criminal Division was being used in a partisan manner, it would be something that would really operate to the detriment of the Kennedy administration. In retrospect, it's just unbelievable that he would in effect take that chance with me, because he didn't know me that well.

Mr. Willens: Aside from the 2-day meeting in which you had participated earlier in the year?

Mr. Miller: No, it was not. It was just half a day.

Mr. Willens: Half a day.

Mr. Miller: Yes.

Mr. Willens: Do you have any other information as to who may have contributed to his judgment that you be hired?

Mr. Miller: Well, I'm sure that Walter Sheridan, who I'd become fairly close to, and John Cassidy working with Walter. But beyond that, I really don't know.

Mr. Willens: Was John Cassidy now working with Walter Sheridan? Or was he employed by the Criminal Division at that time?

Mr. Miller: You know, that I don't remember. He was going to be, if he hadn't actually gone over.

Mr. Willens: Did you know that Walter Sheridan was going to be part of the Criminal Division roster at the time you agreed to be the Assistant Attorney General?

Mr. Miller: Yes. I knew he was officially over there at the time. I reminded Walter, as a matter of fact. He called me shortly before President Kennedy nominated Bob Kennedy to be Attorney General, and I spent an hour and a half on the phone explaining very carefully why that should not happen. Which I'm sure was reported to him. I've never been so wrong in my life, because he was just an incredibly effective Attorney General. Everybody was proud to work for him.

Mr. Willens: Did you in fact manage to arrange your affairs in private practice within a week?

Mr. Miller: I think in less than a week I was over there. I was sworn in as some kind of a special employee and then started right in. Eventually I went up and testified

before Senator Eastland for the Senate confirmation.

Mr. Willens: Do you have any recollection of the confirmation process?

Mr. Miller: The confirmation process was incredibly simple. I went up. I think Glenn Beall, one of the Maryland senators, introduced me.

Mr. Willens: Was he a Republican or Democrat?

Mr. Miller: He's a Republican. The questioning was quite perfunctory, I remember that. I think if you'd look at the printed hearings, I doubt if it was over three or four pages.

Mr. Willens: At the time you were confirmed, had the other Assistant Attorney Generals been publicly announced or appointed?

Mr. Miller: Yes. Just about all of them were on board -- Burke Marshall, Katzenbach and Oberdorfer.

Mr. Willens: Did you know any of them?

Mr. Miller: I had, for some reason I can't remember why. I remember I'd met with Katzenbach before the call came about some matter. I don't even remember what it was at this stage of the game. I knew Burke Marshall because of the Hush-A-Phone case, among other things.

Mr. Willens: Had you known the Deputy Attorney General before you were appointed?

Mr. Miller: No. Well, he was in that meeting, but that's the first time I'd ever met him.

Mr. Willens: What was the reaction within the Kirkland firm to this invitation to join the Kennedy administration?

Mr. Miller: I assume they thought I would be better off staying in private practice, but I can't remember that. It was a great surprise. They were no more surprised than I was. You should know better than I what the reaction was.

Mr. Willens: How about your family reaction? Your father's reaction and your mother's reaction?

Mr. Miller: Oh, my father was both pleased and worried. My mother was very upset.

Mr. Willens: Why so?

Mr. Miller: Because I was going to work for a Democratic administration.

Mr. Willens: She had strong political views, I gather.

Mr. Miller: She had very strong political views. I think my father sort of felt the same way, but he was very supportive.

Mr. Willens: How about Carey?

Mr. Miller: Well, she didn't know what to think. You know, it's a new endeavor. She didn't know what we were getting into. But she was very, very supportive. Told me to absolutely do it, don't even give it another thought.

Mr. Willens: How did you go about trying to get a handle on what the Criminal Division had done and what it ought to be doing?

Mr. Miller: I got you to come over there, if you want to know the truth of the matter. But what I did before you got there, I sat down with Bill Foley, who was the career first assistant Criminal Division and said, "Okay, tell me about this situation. What's going on?" And the rest of it just came from the flow of paper and calls and decisions that had to be made. Ed Silberling had been brought down from New York. Actually, he thought he was going to have

my job, and he ended up as head of the Organized Crime Section, which was going to be a very important part of the Attorney General's program. But I went around and met the various section heads and sat down with them and tried to find out as quickly as I could what was going on. I remember immediately becoming enmeshed in the Attorney General's crime program. I had to sit down, and I remember one of the first things I did was help draft legislation or revise some that had been drafted. I spent a fair amount of time early on testifying on the Hill.

Mr. Willens: In support of the proposed legislation?

Mr. Miller: In support of the proposed legislation. And all of it went through. It was the first major set of legislation in that area that had gone through in some time, as I recall.

Mr. Willens: Is that what we called at the time the "Travel Act"?

Mr. Miller: The "Travel Act" was one of them. Yes, indeed.

Mr. Willens: What was the general thrust of that federal effort, as you recall?

Mr. Miller: Well, leaving legislation to one side, I think the major thrust was to try to get a focus on organized crime and to do it by trying to bring some semblance -- there was always some, but even more -- of coordination. The first thing that I found out was that there were 26 federal investigative agencies, all of whom had their own hierarchy and all of whom had their own statutory jurisdiction. Of course, you'd normally think of the FBI as being the lead investigative agency, and indeed it has the broadest investigative authority. But it traditionally did not operate in the fields where organized crime had staked out its business operations. So we set up a unit, called an intelligence unit, to try to coordinate the knowledge that the various agencies had with respect to particular operations or individuals. We wanted legislation which would give the FBI jurisdiction it did not have -- traveling across state lines and thereafter committing an act of bribery, let's say. And trying to focus the effort on what the problem was.

Mr. Willens: Certainly the published reports at the time and the intervening years suggested the Bureau had made a conscious decision not to get involved in some aspects of organized crime. Is that a correct evaluation?

Mr. Miller: Well, I don't know if it's a conscious decision, but the Bureau's reputation was based on areas other than organized crime. They did a fantastic job in their area. Of course, the question came up immediately, what was organized crime? That's one of the first questions I asked. And I received the standard answer -- it's an organization of more than one person and they're organized to commit certain criminal acts. So then I said, "Well, is there a Mafia?" Well, for years the Bureau had taken the position that the Mafia as such did not exist. I found out after I'd been at the Criminal Division for a while that there was a major opus delivered to the Criminal Division called "The Mafia: Part 1." And I think two copies were delivered, and within 24 or 48 hours, both copies were retrieved and returned to the FBI.

Mr. Willens: When were they delivered?

Mr. Miller: That was before. It was in 1959 or 1960. I found that out by talking to people in the Criminal Division. But the whole issue came to a head over Valachi.

Mr. Willens: Who was Mr. Valachi?

Mr. Miller: Well, Valachi was, as he testified, a long-time member of the Mafia going back into the '30s if not the '20s and was in prison for -- I forget the offense, but he was in for a long period of time. While imprisoned, somebody attempted to kill him, and he managed to kill that person himself. So I remember getting a call from the Assistant U.S. Attorney who said, "You know, this fellow was in prison, but he'd been charged with a murder and was telling this rather strange story about the Mafia." So I got the Bureau of Narcotics to go down and interview Valachi. Eventually he was taken out and placed in another prison where

they could have access. They debriefed him for I guess about 2 months.

Mr. Willens: Why did you select the Bureau of Narcotics?

Mr. Miller: Because the Bureau of Narcotics always took the position that the FBI was dead wrong -- that there were Mafia families operating within the United States. They had all kinds of information to support their belief, but the official position of the Department of Justice was that it didn't exist. So after the Bureau found out that Narcotics was interviewing Valachi at great length, they were very, very anxious to. But we waited until Narcotics had finished and provided us with a report, and then the Bureau took over. And they interviewed him at great length and eventually came up with a report that there was this organization called the Cosa Nostra.

Mr. Willens: Did the Bureau's report differ in any significant respect from the Bureau of Narcotics?

Mr. Miller: I can't recall -- certainly not in the substance.

Mr. Willens: At that point, did the Bureau then assume jurisdiction?

Mr. Miller: Yes. Then, for example, there was an article that Hoover sent I think to the *Northwestern Law Journal* describing this organization, the Cosa Nostra and the families and what have you. From then on, the only thing left was to try to make sure that the public understood. Senator McClellan wanted very much to have Valachi as a witness. There was strong opposition to that. But I felt it was absolutely necessary to do it so that if we're going to have an effective fight against crime, then at a minimum you've got to know what the hell you're fighting and what's going on. And that's not only true at our level, but true of law enforcement at the various levels -- state, county, municipalities and throughout the country. So Valachi testified and laid out what he knew, and the press reaction was, he was the songbird, but

it did effectively establish the presence of these organizations. Thereafter, it was an accepted fact. So that was a substantial accomplishment.

Mr. Willens: That was accomplished in the early years of your tenure, as I recall. Was that 1961 or 1962?

Mr. Miller: I forget the date, but it probably would have been, yes. And it had a dramatic effect on law enforcement efforts with respect to the Mafia. It also had a dramatic effect on the type of legislation that was enacted. For example, I know we tried to get wiretapping in, but that didn't go. I don't think that happened until after I left. I remember testifying on it. A limited type where there would be court approval, that kind of thing. Now, as you know, the law permits in effect a trespass, to plant a bug under a court order, and if you look at some of the major Mafia prosecutions to date, you'll find that they are based on recorded conversations which spell out totally the type of operation, the type of crimes, and indeed what the Mafia consists of.

Mr. Willens: Do you feel that the Department of Justice was successful in facilitating cooperation among the various law enforcement agencies at the federal level during your tenure?

Mr. Miller: How successful we were, I don't know. We tried very hard, and at a minimum what we were able to do was to get the information of the various agencies ourselves and act as a conduit, if nothing else. But I do think it certainly was the case before that they were each acting very much independently, and Robert Kennedy as the Attorney General was able to cause them to cross reference with one another and to work together a hell of a lot more than had ever been accomplished in the past. And anything that wasn't done because of lack of cooperation, we'd step in and be the conduit of the information and solve the problem.

Mr. Willens: Do you feel that the Criminal Division assumed a new set of responsibilities under Bob Kennedy?

Mr. Miller: In that field, very definitely. Very, very definitely.

Mr. Willens: What was the reaction of the career staff in the Division to this new set of priorities and programs?

Mr. Miller: Originally I had the feeling they thought that this was sort of a -- oh, say a publicity stunt, you know, everybody comes in with talk about how they're going to achieve things, and they expected some publicity and then the whole thing would die down. But as a practical matter, the thing never did die down and just continued right on, at least up to the assassination of Jack Kennedy and Robert's leaving.

Mr. Willens: Why don't we leave it there for the day, Jack, and we'll pick it up at this point. Thank you.