Today is March 28, 1992 and we are continuing the oral history of Irwin Goldbloom in connection with the District of Columbia Federal Court Oral History Project.

S: Good morning, Mr. Goldbloom (Irwin).

I: Good morning, Ms. Gere (Sally).

S: This morning we are going to begin a new topic.

I: Yes, it involves a case that took place here in the District of Columbia before the U.S. District Court for the District of Columbia. It was actually considered by many to be part of the whole Watergate scenario, but it did not start out that way. The case had a number of ramifications from both civil and criminal aspects, as well as political overtones. The case is worth describing. The events that led to the development of this lawsuit occurred well over a year before the Watergate break-in. It involved the establishment of a price support for the Department of Agriculture's milk price support program. The details of this are somewhat vague in my mind since I have not addressed the issue directly for a number of years. In any event, the case resulted from what appeared to be an unusual circumstance in which the Department of Agriculture had initially established a price support number which was the number at which milk would be supported. This had a major impact on how much dairy farmers would get for the milk that they produced. This is by no means, or at least at that time during those years, it was by no means an unimportant number. It affected the price of milk throughout the country. A very complicated milk pricing system meant an awful lot to dairy farmers because a swing of a dollar or more one way or the other made substantial differences in what dairy farmers were able to realize for their labors.

I believe this took place in 1970, the exact date escapes me. There was a number that had been established and the number appeared to be lower than the organized dairy farmers of America had thought should be the case. There was a quite a bit of furor within the dairy industry or at least the dairy farmer industry. We have to be careful because the dairy industry is complex and they have a lot of different groups.

In any event, organized lobbying and protests took place and eventually the Secretary of Agriculture made a reassessment of the milk price support situation and raised the price by a substantial

percentage. Again, I forget the exact details, but he did raise the price.

When he did that, there was a great hue and cry from other interests and as a result, a lawsuit was filed by Ralph Nader against the then Secretary of Agriculture, challenging the price support decision on the ground that it was improper, arbitrary, and capricious and would affect consumers in an adverse way. This lawsuit was filed, in my recollection I may not have the exact dates accurate, but it was filed clearly a year before the Watergate break-in. So, it is hard to see how even in itself, it is related to Watergate and yet it became an event in the Watergate phenomenon, which strongly affected the whole issue of the dairy price support.

We began litigating that case on behalf of the Department of Agriculture and I was the principal attorney for the Department. It was at that time in my view a rather straight-forward administrative law case. It had some interesting administrative law issues but on its face it did not appear to be extraordinarily difficult or provocative.

There was this allegation of an improper raising of the price and I would, in the normal fashion, ask the Department of Agriculture for a litigation report and they gave it to me. It turned out that they reported back to the Department of Justice that there were good and sufficient reasons, having reexamined the issues, when they made the original determination. The Secretary looked at these issues and determined that the price should be elevated. It is fair to say that there were obvious political issues associated with the case. I am not suggesting for a moment that I was oblivious to them. Nevertheless, there are always issues about politics in major cases of administrative law. You tended to take them in stride in part because of the way that these cases got litigated during the '70s. There were a lot of public interest law firms and public interest lawyers who would raise a political specter about virtually every governmental action.

In any event, we got the details of the case and were assured by the officials of the Department of Agriculture that the case was clearly defensible and there was nothing inordinate about the decisionmaking process. In order to defend the case

properly, as it turned out by the time the case was actually brought, there had been a change in Secretarys at Agriculture. The Secretary that had made that initial determination and then the amended determination had left and he was now in private industry. There was a new Secretary, and the new Secretary was not the one that had anything to do with it.

In order to defend the case, it became necessary to go out to meet with the former Secretary and to get his story about how the decision had been reached, and I did that. I traveled out to St. Louis, actually I remember going with David Anderson, who was another attorney in the General Litigation Section, and we visited Clifford Hardin, who had been the Secretary of Agriculture at the time. Secretary Hardin, prior to becoming Secretary of Agriculture had been head of the University of Nebraska. He then became Secretary of Agriculture and, having left that position, was working for the Ralston Purina Company. He was, I forget his precise title, he was Vice-Chairman of the Board and perhaps Chief Executive Officer, or Chief Operating Officer, something like that, but he was a major official with Ralston Purina. I remember fairly well because his offices were at this building located at Checkerboard Square in St. Louis. They were in the Executive Suite at the very top of the building.

Dave and I went there and we sat with the former Secretary and discussed all the matters about the case. He had a fairly good recollection of the events, because by then this was a fairly controversial topic. He related all of those things to us and we decided that we would use his affidavit to support a motion for summary judgment on behalf of the Department of Agriculture. We sat there and, he having told us what the facts were, wrote them out on paper. He looked at them and made some changes and revised it. These were his views, his thoughts and his description of the events. We came away from that meeting with his affidavit which he swore to and signed. We eventually attached that to a motion for summary judgment.

The motion eventually got made and one of the issues that came up in the case, when we were preparing our motion, was the fact that the price support system

was an annual determination. By the time we got around to making the motion, an entirely new determination had been made for the following year. We argued in the motion that whatever the case was, while we defended the case on the merits attacking the plaintiff's arguments, we also had a mootness argument. We contended that the passage of time and the arrival of a new price support determination mooted the case because there was nothing for the court to do about an old determination.

S: Which court was this before?

I: We were before the U.S. District Court for the District of Columbia. The judge was William B. Jones, who -- I'm not sure that he was chief judge at the time, he could very well have been the chief judge -- but he had the case. I remember -- I do not remember the specific argument -- but I remember we came out for argument and he listened to it. He was a very able judge, extremely able, very bright, very quick, very knowledgeable, stern and all that, but he was just a very, very able judge in my recollection. I believe, again I am just reaching back from memory, that he granted the motion for summary judgment on the ground of mootness. Essentially he said that a year has gone by and there was nothing more for the court to do.

The plaintiffs took the case to the United States Court of Appeals for the District of Columbia Circuit and, again, I can not remember if I handled the appeal or whether the appeal was handled by someone in the appellate section, it could very well have been that I handled the appeal. But it came up before a panel of three judges in the Court of Appeals and the decision is in the books, and they reversed the mootness decision. The essential element of their decision is the doctrine of capable of repetition yet evading review -- that doctrine which the courts use to override mootness issues, particularly arising in administrative law contexts.

My reference to timing here, is not too good because I have not gone back and put things in context. But the reversal by the Court of Appeals in effect sent the case back to the trial court. I cannot tell what was happening in relation to timing but I do know that stories began to come out that major dairy farmer groups had visited Washington and protested

the original decision on the price support determination. They had actually gone to the White House and met with the President. There were large groups of dairy farmers, the officials of these three major organizations. In the course of that, and this reminds me now because it puts it in a better time frame. I think that the original decision, the price support decision, was probably made in 1971 because, that was the year of the initial decision.

The public records reflected, that these dairy organizations had made rather major contributions to the Committee to Reelect the President. There were a number of rumors apparently out on the street, again I am just drawing on my general recollection, nothing from the case in particular, people were boasting that they had made the right political contribution and they had been able to affect this decision.

Whereupon, we embarked upon a series of depositions in which plaintiffs' counsel would be taking the depositions of various high ranking members of the dairy producer organizations and others who were associated with this thing. Depositions were also taken of members of the White House and administration people, all designed to show that in one way or another, the decision regarding price support had been basically purchased by virtue of political contributions.

S: Who was representing the plaintiffs, what lawyer?

I: They were represented by a major public interest lawyer at the time. He represented Ralph Nader. Those depositions were fascinating in that they were, this is my own judgment on that, the depositions seemed inconclusive about who did what and under what circumstances. Certainly, there were a number of principals or participants in these political discussions within these farmer organizations where they believed that having made these contributions they had produced the result that they had sought. Or putting it another way, having been solicited for contributions, they made the contributions and got the result that everyone expected.

Along about this time, the Watergate case broke. The burglary and the investigation and all of the matters about Watergate were in the press on a regular basis. Investigative reporters became very interested. At the time of the decision by the Court of Appeals, I believe there was a great deal of journalistic interest in the activities of these dairy producer organizations as well as generally in the subject of campaign contributions which were then beginning to get ginned up as a topic of public interest.

One of the things that I recall vividly about that time frame, as we were then going through the depositions, was the fact that we would go out on a deposition, and these depositions took place all over the country, from one end of the country to the other, and I traveled with opposing counsel from city to city.

The deposition would be taken, it basically took around 30 days until the transcript was produced and filed with the court. The day after it was filed with the court there would be a front-page story in the Washington Post detailing the activities of the particular witness in connection with either the Dairy Producers Association or how the contributions were made or the circumstances associated with meeting with them at the White House. There had been a meeting in the Cabinet Room of the White House with the President and the Secretary of Agriculture, Secretary Hardin, and others. The Secretary of Treasury, John Connally, was also at that meeting because of the vast economic impact of the price support decision.

In any event, it was interesting because you could almost clock it 30 days after a deposition was taken, and within that 30 days I had presumably forgotten the details of what had been testified to. These depositions were illuminating but, by no means, bombshells. They were not front-page news in and of themselves because they did not, as far as I was concerned, detail specific alleged corrupt acts. But they were interesting. They were interesting because they shed insight into political fundraising and the machinations of the various organizations and individuals involved. As a result, you would pick up the paper 30 days after the deposition was taken and there would be a front-page story.

Meanwhile, the Watergate investigation certainly was heating up at that time and there were all kinds of disputes over access to government documents, things of that sort. I remember, as just as an aside here, coming before Judge Jones on discovery disputes of various and sundry items. The judge was incensed, in one way or another, about some aspect of the government's conduct, and it was clear to me that he was reading the newspapers and that he was getting his information from news articles which had either over-characterized or mischaracterized some of the deposition testimony. I remember feeling very helpless because I would stand up before this judge for whom I had a great deal of respect and still do. However, he took me to task for trying to defend what he was viewing as conduct that had been prompted by a bunch of rascals. These clearly chance comments were being made, not as a result of some intense examination of the record, but rather based on a perusal of the newspapers. The matters that were before him, that he had an occasion to say these things about, were never more than your typical discovery disputes. In any event, I found it very frustrating and somewhat alarming.

Then, of course, another bombshell occurred in the Watergate case when it was revealed that the White House had this taping system. Watergate Special Prosecutor Archibald Cox made efforts to get at the Watergate tapes. Ultimately that turned out to be one of the major elements in his being fired by the Acting Attorney General. The milk case sort of played a role in all of this because on the one hand I was representing the Department of Agriculture, actively defending this case in court, and, in a sense, another aspect of the government, the Watergate Special Prosecutor's staff was beginning to get interested in political contributions.

The Watergate Special Prosecutor and his staff were becoming interested in the affairs of the milk price support program as being an element of illegal campaign contributions, things of that sort. I felt somehow or other I was caught in the middle because on the one hand I was defending the government -- Secretary of Agriculture, the then Secretary of Agriculture and the Department with a plaintiff beating down on me trying to get information from me and now all of sudden, the Watergate Special Prosecutor was seeking to get access to documents

and materials that were involved in the case. I have a vague recollection that we accommodated some of their requests by making available to them materials which they would otherwise have been capable of either subpoenaing or getting through lawful judicial means. In any event, there was this plaintiff on the one hand that I was fighting off and a Watergate Special Prosecutor on the other. I had no idea what my relationship was supposed to be to them.

In any event, the furor over the White House tapes with respect to the Watergate Prosecutor was intensifying dramatically and everyone in the country seemed to know about the problem of the White House tapes. It was a fascinating issue just in general. When the revelation about the taping system came out, the plaintiff in my case, knowing that there had been a meeting at the White House, made a demand, and I forget whether it was by subpoena or otherwise, for a copy of the tape of this meeting with the dairy farmers, where the President had met with them during this period -- just before this change in the price support determination. I relayed that request to the White House Counsel's office. I remember going over there and discussing the issue regarding the production of the tape.

S: Who was the White House Counsel?

I: I believe Fred Buzhardt was the White House counsel at the time. Quite obviously, there were lots and lots of issues that they were concerned about as they were dealing with the Watergate Special Prosecutor and goodness knows whatever else they were dealing with. I was just a lawyer from the Department of Justice. I was Special Litigation Counsel at that time. I was a senior trial attorney. Nevertheless, I am not sure that they focused on all of the issues. But in any event, I recall quite vividly that I was able to get that tape from the White House.

S: Physically get a copy of a tape?

I: Physically get, well I got a copy of the tape. But I did not get the actual tape, but they made a copy of the tape for me. I remember also that they had delivered the tape to me in December of 1973, just

as I was about to embark upon another one of these depositions with opposing counsel. It was sometime early in the month of December. I remember, only because I thought about it at the time right afterwards. We were going to take a deposition of Herbert Kalmbach, who was another Watergate figure, out in Newport Beach, California. As it turned out, opposing counsel and I were going to take the same plane to California. I remember going out to Dulles Airport and taking the tape with me and handing it to him aboard the airplane or at the gate, in effect, complying with his discovery request. We went to California and he took the deposition of Kalmbach, and I came back. It was just before Christmastime of 1973. What I had not focused on at the time, was that this was basically the first White House tape that had been disgorged by the White House.

S: It actually had President Nixon's voice on the tape?

I: It actually had President Nixon's voice on the tape. I had listened to the tape before I turned it over. It was an interesting tape. It was nothing worth listening to, in my judgment, based upon my limited knowledge of all the other circumstances. But, since I was not in the Watergate Special Prosecutor's office, I did not know what else they had. Obviously, I am not suggesting that there was nothing on it. But from the perspective of my case, it was an inconsequential tape, but it was an item of evidence.

We came back from California and I remember vividly getting a telephone call from a television anchor-type reporter sometime after I returned from California. In those days I used to get calls from reporters on a regular basis. There were reporters who covered this particular case in detail. They would follow it. In fact, the reporter would write the stories of the depositions. This was his case to follow, so it was not a random reporter that had the case, there were certain reporters who followed it. But this was a voice out of the blue, although I cannot remember who it was, but it was somebody I recognized as a celebrity-type journalist. He was frantically asking me about this White House tape and did I know that it had been played at a cocktail party at Georgetown. I said I knew about the tape but did not know about any cocktail party in

Georgetown. I had no knowledge about it and frankly I could not help him at all. I could not shed any light on it.

I would typically, over the years, get calls from reporters. They were always seeking inside information. This was easy because I had no information to give him. I just simply said, sure I knew about the tape but I do not know about whatever happened to it. Later in the day I got other calls from other newspaper men. Before the day was out, I had at least three or four calls from newspaper men, then from other people in the Department asking me what I knew about this thing. It was sort of, again, I have the timing a little bit upset. I do not know whether it was a day after. There was a lot of furor the next day. It was reported extensively on radio and television. There was indeed a great deal of news coverage about the playing of this tape at the cocktail party.

S: Had anyone from any newspaper or television station actually gotten a copy of the tape itself? Or was this story still confined to the fact that it had been played somewhere else? Or do you recall?

I: I do not recall. I do not believe that anybody had a copy of the tape. I do not think the copy had been disseminated. I do not believe that it had been heard by any of these particular reporters. When they asked me about it they were more interested in just the mere fact of the existence of tape. The subject matter did not seem to be the most interesting. Again, I could not shed any light on what had happened. But the next thing I knew, I got a call from the court saying that there was going to be a hearing the next day. The judge wanted to know what had transpired with this tape. Of course, I went down to court and opposing counsel was there. Judge Jones was in a fierce mood. My recollection may not be accurate, but I do not believe that we, that is the government or I, had moved or done anything to seek any kind of relief concerning the tape or to seek any sanction. The judge had done this sua sponte.

Of course, the courtroom was mobbed with reporters and journalists of every kind. In those days, the television cameramen were stationed in front of the courthouse and they would chase you up and down the

street every time you came in and out of the courthouse trying to get you to say something about the case. They had fingered everyone who they thought was involved in anything associated with Watergate. I do not know whether it happened that day.

I remember, though, that the hearing was very difficult for opposing counsel. He was sternly and harshly reprimanded by the judge. In fairness to him, I think it is fair to say as I stood there in court and the judge did question me about the tape, you know that I had produced it. I had a terribly hard time keeping a straight face. While counsel had done something that he probably should not have done in the sense of treating this evidence lightly by playing it at a cocktail party, the fact is that there was basically nothing on the tape that was embarrassing or revealing of any inside information about price support or dairy farmers or the President or anybody else as far as I could tell. Others may have listened to that tape and found or heard other things on it. In fact, I'm sure they did, because the Watergate Special Prosecutor focused on that tape quite extensively.

But, from my perspective, and I admit it was quite limited, it was sort of half humorous. I had, as I said, up until that point regularly appeared before the judge and was excoriated for resisting turning over information or trying to hold the line somewhere or another. The judge had been beating on me because of what he was reading in the newspapers. Now all of sudden now, he was beating on my opponent. Taking the heat off me somewhat just seemed to be a welcome relief. But more basically, the whole thing seemed to be a tempest in a teapot.

S: The opposing counsel had actually taken the tape and played it in his home?

I: Apparently. He had gone to some kind of, I do not know the facts or the details, but apparently it either had been at his home or somewhere else, where he said I have this White House tape. The furor that occurred, because of the press reports and what the judge was expressing, I only vaguely saw at the time. I came to realize much later, the country was in this great chaotic situation in which the President was resisting the disclosure of White

House tapes. The Watergate Special Prosecutor, Archie Cox, was hammering away at the President and the White House to get access to the tapes. It was the most, one of the most critical issues, which was then being unfolded in the developing Watergate imbroglio. Here, the tape had come out and had been treated lightly. It had been treated with something less than the kind of reverence or dignity or respect that one would have expected in context. The lesson, of course, is that you never take anything that is evidence and treat it in a cavalier fashion.

S: Well as a result of that, did Judge Jones either impose sanctions or did you from that point forward have materials exchanged under seal or in camera?

I: No, I do not recall that he did -- I do not think there was any particular sanction. I mean certainly -- it was an oral dressing down. I do not recall that there was any particular sanction. I do not think we sought any sanction.

Eventually, the milk price support issue was littered throughout the Watergate period. It was taken up by the House Judiciary Committee and was considered as a possible plank in the impeachment process proceedings. I think it was ultimately voted -- it was not voted -- there was not an affirmative vote, but it was considered as a potential plank or charge in the impeachment proceedings.

The case I believe ultimately went off favorably to the government. We ultimately moved for summary judgment on the basis of all the depositions that had been taken and all of the discovery. I believe Judge Jones ruled on the basis of evidence that there was no direct showing that the decision that had been made was inappropriate. Again, I may be wrong -- it's been a long time since I looked at the case.

There was another side issue though associated with it. That is the original affidavit that we had submitted on behalf of former Secretary Hardin. It was viewed by some as not being accurate. This was his affidavit. We had sat there with him and prepared it, but we knew none of the facts. Eventually there was a group within the Watergate

Special Prosecutor's Office which was assigned to process that part of the investigation. I was called before the grand jury, the Watergate Grand Jury. I testified about the circumstances in which that affidavit was prepared. I believe the Watergate Prosecutor eventually decided not to prosecute. I do not know what his ground was -- but my feeling was that he could not make a case that this was a falsehood. It was written in such a way that you would have to argue -- you could have argued both sides of the issue. My involvement in that case was over. The Watergate Special Prosecutor, however, did go after John Connally, in connection with some aspect, not necessarily the same aspect, of Connally's involvement with the dairy people. That was a public trial in which we know that Connally was acquitted.

S: Was this the one where he was represented by Edward Bennett Williams? The argument basically was something along the lines that when one had as much money as Connally did, he would not stoop to take such a modest amount. It was something like $10,000, something like that?

I: I do not know the details. I did not follow the case myself. My recollection is that that was a distant cousin of the events, because some of the people involved were associated with the milk industry. It was a long drawn out case.

There is only one other thing worth mentioning. I found it to be a fascinating comment. I cannot think of the name of the chap who said it. He later became Secretary of Agriculture, perhaps in the Nixon administration, but he was then an Assistant Secretary of Agriculture. I remember he was not involved in the case. He may not even have been involved in the actual events that had transpired, whether he was or not, I do not recall. I remember meeting with him because he was sort of the client, the principal person, the client long after Secretary Hardin had left. This is before the case really heated up, but while it was beginning to heat up. His comments, which I found interesting, were that there are a lot of deep psychological sensibilities about milk that relate to our infancy.

I: Whenever you have something that is associated with milk, it dredges up primordial instincts that are

difficult to control. The hullabaloo about this case -- the interest that it seemed to generate, derived more from that than from issues of public responsibility or corruption or things of that sort. I mean corrupting milk -- corruption in milk -- in a sense these are two things, which when you marry them, will get people upset. That certainly turned out to be true.

S: What an interesting observation.

I: Freudian.

S: Definitely Freudian.

I: But it is not something you would expect to hear over at the Department of Agriculture. I certainly did not expect to hear it, but I thought it was interesting.