Oral History of Richard Hibey, Esq.

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is James Rocap, and the interviewee is Richard Hibey. The interview took place at Richard Hibey's home on Cathedral Avenue on Tuesday, October 24, 2023. This is the thirteenth interview.

MR. ROCAP: Good afternoon, Dick.

MR. HIBEY: Good afternoon, Jim.

MR. ROCAP: This I think is the last of our sessions, and then we'll work on transcription and so on. We don't have a whole lot to talk about today, but a few things that we wanted to wind up on. There are two substantive events that we wanted to chat about. The first is what you called the lightning rods case, and the second one is the law school at Barry University. We'll talk about those two things first. So why don't we chat a little bit about the lightning rods case?

MR. HIBEY: I did a considerable amount of work for the architectural firm, Hellmuth, Obata, and Kassabaum, known as HOK. They had a worldwide clientele and from time to time, there were issues of import that they needed legal advice on, and I was fortunate enough to be sought out to give that advice. It ranged from what we used to call in the old days sensitive payments to a foreign entity, to architectural malpractice here in the District of Columbia at the Sheraton Hotel, to the lightning rods case.

In the matter of lightning rods, HOK was sued by a manufacturer of a lightning rod system that the manufacturer alleged HOK disparaged in the lightning rod industry. They filed their case in Buffalo federal court because the plaintiff was located in Buffalo. The plaintiff was a family business which touted

a revolutionary lightning protection system. Perhaps it will be appropriate for me to try to give a thumbnail sketch of the issue.

MR. ROCAP: Yes. That would be helpful.

MR. HIBEY: I think ever since the days of Benjamin Franklin, lightning protection of a particular building was accomplished through the use of a box configuration, to wit, a lightning rod on each corner of a building with leads running from the rod all the way down into the ground so that when there was a strike, the lightning energy would simply go into the ground. These people asserted that that expensive and protracted process was no longer necessary because they were proposing in their product a single lightning rod over the affected area with grounding wires flowing from it in the center of the building. The lightning rod tip that was at the center of this particular configuration was radioactive. The argument was that because it was radioactive, it could attract lightning energy to that single antenna or pole and neutralize any strike that was visited upon the building.

Our experts just didn't believe that. So there were technical arguments that led to the conclusion that this did not provide adequate lightning protection. This family business sued HOK and the Lightning Protection Institute for product disparagement. I appeared in Buffalo, moving to compel the production of one of these lightning rod systems in discovery in the litigation so that I could give the material to my experts, and they could test the effectiveness of it.

My experts were located at the New Mexico Institute of Technology, I think it was called. They had an elaborate laboratory in the mountains of the Socorro mountain range in New Mexico.

The plaintiffs resisted my discovery request. The judge compelled production. I agree to pay for the system, but I needed the whole system, and the court agreed with me. There came a time when I had to walk the mountain. As I remember it, the location in New Mexico of the Socorro mountains boasted a lightning season of about thirty days where you could always expect as many as three independent lightning storms to strike in New Mexico.

MR. ROCAP: Every day?

MR. HIBEY: Every day for thirty-one days or something like that. I kept track of that because I wanted to see the result for myself. Well, that particular season, there were no lighting strikes during strike season, but a day or so after the anticipated event, lightning did strike, and it absolutely decimated the one-rod system. We compiled our report and filed it with the court, and to my knowledge, nothing further came of the case.

There is one aspect of this that I found amusing and tantalizing. There was a one-hole golf course on the mountain. You'd have a team, and at the top of the mountain, there was a tee-off, and you hit the golf ball, and it would go down the mountain, and your team would be in place to locate it, and then you'd go down there take your second shot, and all the way down to a green at the bottom of the mountain.

MR. ROCAP: You were teeing off the cliff?

MR. HIBEY: Yes. And they had a tournament. I never tried hitting down the mountain but that was strange to me and fun.

MR. ROCAP: If you're a lightning engineer, perhaps that's the way you entertain yourself. So as far as I can tell, you've gone from nuclear engineering in the Geisen case to espionage activity in Clair George and Jonathan Pollard to the active state doctrine in the Marcos case to the finer points of being an executive producer of a major television show and many, many more experiences that we've talked about all within the life of a single career of being a trial lawyer, not to mention all of the physical forensic evidence that you had to become an expert in when you started out.

MR. HIBEY: I think you got it right. Mary Ellen and I used to put a caption on my career as it would appear in an obituary where it said "Represented Dictators and Spies" [laughter].

MR. ROCAP: Wonderful. So the last thing we wanted to talk about involved Barry University and the law school there. This occurred back in the 1990s and ending up in a nice gesture to you in 2002, but could you describe what Barry University was and how you got involved and what you did for them.

MR. HIBEY: Barry University is a multi-campus institution founded in the early 1940s by the Dominican order of the Catholic church. I'm reasonably certain that the university was established and operated by Dominican sisters.

The Dominicans had a 650-year-old tradition of teaching. Barry was very socially conscious and was there for people with limited means. They had a full university. They had, and have, a wonderful School of Podiatry. The nun who was

involved in the return of Elián Gonzalez to his family in Cuba when that particular issue that occupied the national attention, wanted a law school. So they established one and immediately had people who probably could not afford traditional law school tuition or might have been on the lower rung of eligibility, nonetheless they wanted law school and wanted to be lawyers and practice law.

The school, as I understand it, had tried twice before to get ABA accreditation and failed. So the nun tapped into her benefactors who agreed to conduct a search for counsel and pay the legal fees associated with the accreditation process and the services of counsel.

We diligently prepared. As I remember, the Board of Trustees of the nascent law school and of the university itself were very cooperative in responding to my requirements in building a proper case for the ABA to consider. We got the accreditation. It was very emotional for the sisters, but that's only because they understood how momentous it was that they could finally allow their kids to complete their educations in law and thereby be eligible to take the bar exam and hopefully pass. So it was a great experience because I knew what it meant to the students.

MR. ROCAP: It's a huge benefit. I take it the sisters decided to recognize you.

MR. HIBEY: The administration a couple years later I think notified me that I would be awarded an honorary degree on the occasion of the university's graduation of its first accredited law class. And by the way, others who had gone to the law school before the law school was accredited were now allowed to take the bar. So it was a win-win. And then they notified me that they wanted to give me this honorary

degree. And, of course, the pomp and circumstance, all very nice. I had a moment there where the academy recognizes your efforts as it were. It pleased me. The icing on the cake was on graduation day, they called up the names of each member of the graduating law class, and they called this woman's name, and she was, you could tell the way she carried herself, a force of nature because in addition to striding up have the degree conferred on her, she had her baby under her arm. I thought to myself that's really great. This woman is going to be a lawyer. That child is probably going to be okay in all the right ways.

MR. ROCAP: Wonderful story. Okay, so I think that finishes all of the various events, litigations, representations, that we wanted to talk about. I think it's needless to say there are many, many others that we haven't talked about, but these are the ones you selected, and I certainly agreed with you would be terrific examples of your career and what it's like to be a trial lawyer in the District of Columbia over the years. I know you also wanted to mention something about your recollections over time with respect to each one of the cases. I'll turn that over to you.

MR. HIBEY: Yes. Simply to say that I operated strictly from memory in these interviews. My wonderful interlocutor attempted to give temporal context to these cases by doing research to a degree that allowed us to fix the time and the place and the circumstances associated with a particular event, and for that, I'm extremely grateful. At the same time, knowing that a lot of other things happened during my career, to the extent that I overlooked one or more cases, that's on me, and I apologize in advance. This could not have been an exhaustive rendition because I

was at the bar for over fifty years, and a lot was going on in my professional life over that time.

MR. ROCAP: I want to close by asking you one question. We've talked over these twelve or thirteen sessions about a fabulous career. I think anybody would agree with that. As you reflect back, what do you think makes a great career. What made this a great career for you? What makes a great career for a trial lawyer?

MR. HIBEY: I would say that approaching these cases with a degree of humility about what I was going to encounter kept my ego in check and allowed me to inhabit the skin of the client. The cases were never about me. I was careful not to endorse a cause but rather to understand what caused the difficulty that brought the client to me. I guess it's another way of saying I tried to keep my understanding of the case to be simple. In turn, it gave me the opportunity to appreciate the client's point of view to the full extent that that point of view should be honored. It gave me the opportunity to tell the client in certain circumstances that he could not defend the matter along the lines originally insisted upon. And it freed me up to appreciate the perspective of the case without it being dictated to me irrevocably by the client.

I also felt that the truth needed to be respected at all times, even when it hurt. It was also a joy to be associated with like-minded lawyers who understood that an unpopular client nonetheless deserved the best representation that could be given in the circumstances.

MR. ROCAP: Thank you for the privilege and the honor of doing these interviews with you.