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ORAL HISTORY PROGRAM

S. Hazard Gillespie, Esq.



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ORAL HISTORY

**Subject: S. Hazard Gillespie, Esq.
New York State Bar Association
New York State**

An Interview Conducted by: Henry L. King, Esq.

Date of Interview: May 26, 2009

**Location of interview: OCA Studio
25 Beaver Street, New York City, New York**

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Oral History Project

INTERVIEWEE: S. Hazard Gillespie

INTERVIEWER: Henry L. King

DATE: May 26, 2009

[Begin Audio File]

HK: This is an interview of Mr. S. Hazard Gillespie, a longtime member of the New York Bar and a very distinguished lawyer and public servant. He is 98 years old and has been practicing for many, many years. My name is Henry King. Mr. Gillespie and I have been colleagues at the Bar for a long time and in the same law firm, and I have the privilege of being asked to put some questions to Mr. Gillespie, which I am prepared to do. The first question, Hazard, if I may, is your early education, and what in that sort of led you to think about the law as a profession?

SHG: Well, the first time I considered becoming a lawyer was when I was in high school or a boarding school. I weighed less than a hundred pounds at that point, but I had a roommate who weighed 250 pounds, and he played on the school football team. He could toss me around and I really felt he was my superior in everything until I was introduced to a debating program that the school had. They divided the school up into two groups; wranglers and QED. I can't remember which group I was in but very quickly, I came up against this very heavy roommate of mine.

[00:02:00]

It happened that we had a wonderful librarian, and she helped me prepare my brief, and I was able to knock that guy out of the room with my arguments and debating, and all of a sudden, I realized I had something that was of great interest to me. I was only 15 years old at that time, but that's when debating really got me started.

Then, years later, my father went through some very difficult financial problems and the lawyer who was representing my father's creditors, and who were trying to liquidate my father's business and so forth, were headed by a wonderful man by the name of James Nicely. My father used to come home at night and say what a fine man this man, who was taking all of his property and distributing it among creditors, what a fine man James Nicely was. Well, the only thing I could see James Nicely seemed to accomplish was going home every night with a check, and I thought well maybe this law is something I ought to get into.

Jim Nicely, whom I later met and saw a great deal of, he headed one of our outstanding banks at a later time, he really was a role model for me. So, I decided that the law was something that I probably should go into. So that's how I got started.

HK: That's great. Now, you went on to Yale College for your undergraduate work, and then Yale Law School.

SHG: That's correct.

HK: How did you choose Yale Law School?

[00:04:00]

SHG: Well, it was very interesting. I came out of Yale College at the bottom of the Depression, the class of 1932 at Yale. It really was the very bottom of the Depression, and I didn't have enough money to go to law school. I had to make some money and I was very lucky

and got a job with a young man who hadn't been able to get into college, just because he academically was so poor, and I landed a job taking this young man all around Europe and came back in a year with twenty-five hundred dollars cash, which in those days was a great thing.

I had been admitted to both Yale Law School and to the Harvard Law School, and I would have gone to the Harvard Law School, except that I didn't know how to make money in Cambridge. I knew how to make money in New Haven. I had been there four years, waiting on tables, working at football games. I knew very quickly, how to lay my hands on some money in New Haven, so I elected the Yale Law School and, thank goodness, I did because the faculty turned out to be absolutely extraordinary. Mr. Justice Douglas¹ was there at that time, teaching corporations. Mr. Shulman, who later became Dean of the Yale Law School, but went with the Ford Motor Company doing labor work. Well, it turned out that I hit the Yale Law School at a time when the faculty was at its very best. So that's how I selected the Yale Law School.

HK: As you know, because you hired me, I went to the Yale Law School myself, and it was a little bit later, but the faculty was very good when I was there and I always loved the place.

[00:06:04]

What impressed you about the Yale Law School? You mentioned a few of the faculty members, but could you describe the size of the school and how it operated at that time?

SHG: Well, the amazing thing is that there were approximately 110, 120 students. Harvard Law School, on the other hand, had, I believe, around 700 students, and a lot of those

¹ William O. Douglas, Associate Justice of the Supreme Court of the United States, 1939 - 1975.

students at Harvard were either thrown out or dropped out at the end of the first year. But Yale, those who had been able to get in, were really helped along and given a wonderful education.

I owe a great deal to a man by the name of Wesley Sturges. Wesley Sturges taught what was called creditor's transactions, which had to do with people having problems with money that had been loaned, and they had taken security for the loan and so forth.

Sturges taught this course in a marvelous way. He later became Dean of the Yale Law School, but he just -- he got his students up and he asked them questions, and he really was the one who really taught me the law, and I really owe a great deal with Wesley Sturges, and the faculty surrounded him and then made him Dean in about three or four years after I was there.

There were others. There was Professor Lorenzen, who taught conflicts of laws, where the laws of one jurisdiction conflict with the laws of another jurisdiction, and how do you resolve the problem and so forth. It was a great experience.

[00:08:07]

HK: It was a great place. Now, after your first year at Yale Law School, you got a job as a summer associate. Could you describe that?

SHG: Well, I believe that I really started what later became called the summer associate program. I had such difficulties in the first year at Yale Law School that I really wanted to go to a law firm and see, well is this something that I really ought to get into, because I had such trouble. I knew some of the partners at Davis Polk, and I went down there and I said I would like to get a job working here, just to see how your firm operates, and the managing partner then, a man by the name of George Brownell, said, "Oh, we can't do

anything.” He was a graduate of Harvard Law School, by the way, and he said, “No, we just can’t do anything of that sort because we really are so afraid that our clients would be afraid, that some legal opinions that had been given by the firm might be tainted because somebody who was not a lawyer, a licensed lawyer, was not involved. And I said, “Well, I’ll take a job as a messenger, so I could see the inside of a law office.” Well, I talked my way into Davis Polk, and I was the first summer they ever had. They called me a summer boarder, that was the name they gave me, they didn’t call me a summer associate, and I sat with the messengers and when they went off on a vacation, I would fill their place. I sat right by the door, on a bench, and just delivered papers. That was my summer at Davis Polk.

[00:10:09]

HK: Now you told me, and I think it would be worth putting on the record here, of a time when you were asked to get an order signed. It’s a fascinating story and the aftermath of the story as well. So maybe you could put that on the record.

SHG: Well, the man who managed the office, he was not a lawyer. His name was William Bruder, but he was the manager of the entire office and he had been with the firm at that time 50 years. One of the stories that he loved to tell was watching people walk across the ice on the East River, from Downtown Manhattan to Brooklyn, in the blizzard of ’88. He had just started working at Davis Polk, but he witnessed people walking across the river. Well, Mr. Bruder called me in. Mr. Bruder hired all the bookkeepers, he hired all the messengers, he did all of that work, and Mr. Bruder said to me, “Mr. Gillespie.” And why he called me Mr. Gillespie, at his age and the age that I was, but he said, “I’ve got

something I want to have you take up to the Bronx and get signed by Judge Hammer² of the State Supreme Court, who was sitting in the motion part of the Bronx County State Supreme Court. You take it up to his chambers and this is where he's to sign, and you won't have any problem with it." Well, it was a terribly hot day. Gosh, the subway, there was no air conditioning of any sort, and I went on the subway and rode the subway up past 125th Street, and to the first stop in the Bronx, got out, found the Bronx County Courthouse, went up inside. It was beautiful.

[00:12:11]

The courthouse had just been opened up there at that time, and I finally got up on the third or fourth floor, and I walked down the hall and there was a big mahogany door and there it said, Hon. Ernest L. Hammer, Supreme Court Justice. So I rapped on the door, nothing happened. I waited a few moments, I rapped again, I tried the door handle, the door handle was solidly locked, so I then went to Mr. Bruder, found a public telephone. You put a nickel in those days. I called Mr. Bruder and I said, "There's nobody there." He said, "I sent you to have that order signed, don't come back without it being signed." Well, it was then about five o'clock, and so I sat down and I waited for about half an hour I think, and I got up and pounded the door again, still no sign of anything. I really was getting very discouraged. By that time, it was going on six o'clock, I knew Mr. Bruder would be gone and all he'd say to me was, "Go back again and wait until Justice Hammer comes." Well, I waited and I waited and I was really exhausted, and it got to be six o'clock. I went and hammered on the door one more time, and this time the door flung open, and who should be standing there, but he really looked like a cherub. His skin was

² Ernest E. L. Hammer, Justice of the Supreme Court of the State of New York, First Judicial District, 1926 - 1953.

pink. He was wearing an undershirt but without T-shirt. It was just an undershirt and his arms were all pink and so forth and so on, and he couldn't have been nicer. He said, "Come in, come in, they're all tied up."

[00:14:18]

I wondered what he was talking about and he said, "Come on, come on, come on," and he took me over to the window in his office and he had been sitting out on the roof, overlooking the Polo Grounds, watching his favorite football team, I believe the Giants, but I don't know who it was. But anyway, they were still tied up when he got there, but somebody hit a homerun and he was absolutely -- he couldn't have been more excited and pleased and he said, "That's it, that's the game, come in now. Now what can I do for you, young man?" I said, "I've come here to get this order to show cause signed and so forth," and he said, "But why do they send a young man like you? I thought they only had messengers." I said, "well I'm a summer" -- I didn't say I'm a summer associate. I said, "I'm just a summer boarder and they told me to --" He sat down, he didn't even look at the thing, he just scribbled his name on it and so forth, and then he said, "What is your name?" I said, "Well my name is Gillespie, Hazard Gillespie," and he said, "Well, I'm very pleased to meet you; I hope I'll see you again some time."

I took the order out, it was seven o'clock by that time, went back and climbed in the subway. I went back to the office and I got in but Bruder had gone of course, and I left the order and so on. The next morning, Mr. Bruder said, "Well, I told you to wait until you get it signed and you got it done and that's fine." This order to show cause of course, brought on a motion, and it also had a stay in it. Why Judge Hammer didn't look at that, I don't know, but he didn't.

[00:16:06]

In any event, he signed it. So, years later -- I know Henry is thinking I'm talking too long, but I'll get through this.

HK: No, this is good.

SHG: It was seven or eight years later that I had a motion in a very complicated lawsuit that I had worked on, and Mr. Davis, John W. Davis, the head of the firm, was with me, and the night before he said, "You like this motion so well, why don't you argue it?" God, the idea of a young man getting a chance with Mr. Davis around, the clients all expected Mr. Davis to argue, I was thrilled. So, lo and behold, we went to court and Mr. Davis, here where Mr. King is, and the door opened behind the bench and who should come walking in but Judge Ernest E. L. Hammer. He was all in his robes and his face was still quite pink, but he was fully dressed and so forth, and he came on the bench and when he came on the bench, he bowed, "Mr. Gillespie, it's nice to see you again." I couldn't have been more thrilled. I know Mr. Davis wondered where it could have been that I'd ever seen Hammer, Judge Hammer, before, and I of course told him afterward. But in any event, I like this story because I tell it to young lawyers and say, "no matter how lowly a job you're given, go ahead and do it, and it will turn out it may be of help to you and so forth." Now, I think that's what you wanted.

HK: Yes.

SHG: I hope I didn't talk too long.

HK: Exactly right, exactly right. But since you've mentioned Mr. Davis's name -- Mr. Gillespie just suggested that he could add something to what he's just said.

[00:18:03]

SHG: Well, I'm very pleased to say that Judge Hammer decided the motion in my favor, and it went to the Appellate Division and they unanimously affirmed. The other side then applied to the Court of Appeals, and the New York Court of Appeals affirmed Judge Hammer. So, it was a complete success story.

HK: You mentioned Mr. Davis, and I think this may be a good time to have you describe who he was and a brief word about his background because you worked so closely with him over the years.

SHG: Well, I was extremely fortunate. When I came to Davis Polk and sought a job on a permanent basis, when I finished law school, I was just in a -- there were three or four other lawyers, one of them became quite famous. His name was Oren Root, and Oren Root is the man who discovered Wendell Willkie and created the Willkie Clubs, and persuaded Wendell Willkie to run against Roosevelt. In any event, it was a group of three or four lawyers, and I was just in a pool and doing general work, and all of a sudden, I got a call one day. I think I had been there -- it was the summer of '36 that I started, and I believe it was the summer of '37, that Mr. Davis wanted to see me. Mr. Davis called me in and he sort of pointed his finger to sit down, and he told me that he was involved in a case in the Supreme Court of the United States and that all his helpers had resigned to go either in the Army --

[00:20:14]

At that time, war was of course a great threat, it was 1937. But in any event, he said, "I'd like you to take these briefs and I've been asked," Mr. Davis said, "to reargue this case in the Supreme Court of the United States." It was argued this past year, and at that point, President Roosevelt's court packing plan had fallen apart and he had appointed Hugo

Black³ to fill the vacancy on the Supreme Court, and the Court granted re-argument of this *Bonneville Dam* case, it was called, and Mr. Davis was then called upon by the contractors who were involved in the case, to present the argument, the re-argument, when the time came. So I got this chance to write Mr. Davis's brief.

Mr. Davis had been, before he came to Davis Polk, of course was a Democratic candidate, John W. Davis. In 1924, he ran against Calvin Coolidge,⁴ very, very unsuccessfully. He hated politics. That was the convention, the Democratic Convention, in which they had 84 votes before they finally -- I think one man was Alfred E. Smith⁵ and another man was McAdoo. The Democrats couldn't make up their mind and finally, they said to Mr. Davis, you've got to do it, and very reluctantly he did do it.

[00:22:14]

So he had been a candidate for President of the United States. He had been Solicitor General of the United States during Woodrow Wilson's presidency,⁶ and afterward, Woodrow Wilson sent him to the Court of St. James as Ambassador of the United States to the Court of St. James. Then, he went to the Peace Conference at Versailles, in 1918, and on the way back, on the Atlantic liner, he ran into his old friend, Frank L. Polk, and on the way back, they decided they'd like to practice law together in New York. And so they agreed, before they got back to New York in 1919, to practice law together.

Allen Wardwell, a very long-term Democrat and a man who led the Red Cross to Russia during World War I, he heard that Mr. Davis and Mr. Polk were coming back on the liner together, and he went and met them as they came off and said, "I can provide you with

³ Hugo Black, Associate Justice of the Supreme Court of the United States, 1937 - 1971.

⁴ Calvin Coolidge, President of the United States, 1924 - 1928.

⁵ Alfred E. Smith, Governor of the State of New York, 1919 - 1920, 1923 - 1928.

⁶ Woodrow Wilson, President of the United States, 1912 - 1920.

J.P. Morgan and Guaranty Trust Company as possible clients. How about forming a firm together of Davis, Polk, Wardwell.” Later it became Gardiner and Reed, but today, Davis, Polk and Wardwell is still the name of the law firm, but it was formed really, on the landing pier in New York, when Mr. Davis and Mr. Polk came back from the Peace Conference.

[00:24:26]

Well, I was very lucky to get this job writing Mr. Davis’s brief in the *Bonneville Dam* case, but there was one thing that happened that I will take a moment to tell about. When we got down to Washington, and this re-argument was the first case on the docket, of the fall -- the October, I think, of ’37. There was pending, before the Supreme Court of the United States, a motion to unseat the new Associate Justice, Hugo Black, on the grounds that Mr. Black had not fully or properly reported his connection with the Ku Klux Klan in his Senate confirmation hearings, and it was a very serious thing and the Court adjourned the opening of the fall term, so it could consider this motion. We sat in Washington for six days while they were making up their minds about this motion.

Well, I went to court with Mr. Davis when his case, the *Bonneville Dam* case, was coming on to be argued, and lo and behold, the Supreme Court came in at the opening and everybody in Washington of any importance was seated in Court, because they all wondered whether the Court was going to unseat Black or whether they were going to seat him. It was absolutely extraordinary.

[00:26:12]

Mabel Walker Willebrandt was there, and she was famous at that time, and Attorney General Wickersham was in the Court, it was tremendous. I sat there next to Mr. Davis,

waiting our turn to be heard, and the Court came in and it was fascinating because when they came in, Black did come in with them, but it was very apparent that he had no idea how the Court was going to rule on this motion to unseat him. The Chief Justice -- oh what was his name, at that time? -- Hughes, Charles Evans Hughes,⁷ started in and I give you my word, he talked for almost 10 minutes and you could not tell whether he was going to decide, motion granted, he's unseated, or whether he was going to decide, we're going to dismiss this motion. You just couldn't tell for 10 minutes and Black, you couldn't see Black, because he was so far down in his seat on the bench, you just couldn't see him. He was just petrified.

In any event, finally, Chief Justice Hughes said, after considering all of these arguments, the Court has concluded that we do not have jurisdiction to pass on this motion and we dismiss the motion. Well, by that time, I looked down and there was Black, he'd slid up in his seat and he was sitting up and he was smiling. I can't remember there was applause or not, but I had the distinct feeling that there was applause. Everybody was very pleased that he was -- and he went on to be a wonderful Justice of the Supreme Court of the United States.

[00:28:15]

I've talked too long.

HK: I don't think so.

SHG: That was my connection with Mr. Davis. Now, I went back to the Supreme Court with Mr. Davis a number of times, but I think that story is for another day.

⁷ Charles E. Hughes, Associate Justice of the Supreme Court of the United States, 1910 - 1916; Chief Justice, 1930 - 1941.

HK: Well, this group should know that at the time that Mr. Gillespie was working for Mr. Davis, Davis had argued more cases in the United States Supreme Court than any other lawyer. This was in part because he was Solicitor General of the United States, whose job it is to appear in the Supreme Court, but also, after he ran for the presidency, was much sought after as counsel, particularly on Supreme Court matters. So, Mr. Gillespie had the good fortune to be able to be with Mr. Davis, writing his briefs and then attending with him, in the Supreme Court. Forgive me for that diversion.

SHG: Thank you for it. I had the good fortune, 15 years of sitting at Mr. Davis's side and really discussing with him, his argument. And if I may take just one second further.

HK: Yes.

SHG: When I went away during World War II and left to serve with the 8th Air Force in England, I received a note from Mr. Davis. He was down at his winter home. He had terrible pneumonia, twice he nearly died, and the third time it killed him.

[00:30:03]

But he was down in Yeamans Hall, South Carolina, and I received this note overseas, where I was, and in this note, after writing about the weather in South Carolina and so forth, he said, "I hope that the covetous hand of Uncle Sam has not placed itself on your shoulder, but if it does, I shall miss you." And I'm quoting him exactly because this meant so much to me. "I shall miss you more than I can say. No one has ever done better work than you." Mr. Davis never said you've done the best. He would always -- and when he talked about our law firm, he wouldn't say it was the best firm, but he said, "I hope there's no better firm than ours." So when I got this note from him in his

handwriting, "No one has done better work than you," I want to tell you, well it's the most treasured thing that I possess of a physical nature to have gotten that.

HK: Good, good story. Now, you might say a brief word about Davis Polk in those early days, as the structure of the firm and how it has grown from the size it was then when you joined it and as it is today with 750 lawyers and 150 partners. You might just say a word. I think that could be of interest to the group.

[00:32:00]

SHG: As I recall it, when I first went there, in the fall of '36, there were 35 lawyers, of which there were 13 or 14 partners. And as Mr. King has just said now, there's 750 lawyers and how many partners?

HK: One-fifty.

SHG: One-fifty. Mr. King has been a managing partner of that firm in later years and he and I were associated on a great many matters together. He kept me from making mistakes, I can assure you. We had a wonderful time together and we got to the Supreme Court together once and it's been a very happy association.

HK: Has the firm changed in its ethics and character?

SHG: I like to think that its character has not changed. Its emphasis on integrity, its emphasis on respect for our fellow lawyer, I think is just the same as it ever was, and I come in almost every day. I commute in, and the firm has been good enough to let me have an office and a secretary, and I've been coming in for 75 years now, into the firm. I do think the culture of the practice of law in the Wall Street firms has changed. The law firms today provide a great deal more in young lawyers' training than they did in my day.

[00:34:12]

In my day, all I could do was to be a messenger, but today, they take on 150 lawyers a summer, who have just finished two years at the law school, and they give them some idea of what working in a law firm may be. Now, that didn't occur at all in my time, but these lawyers, if they don't stub their toes, all get an offer at the end of a summer, for permanent employment. In my day, they used to have courses on trial work and they used to have courses on -- do a lot more with Moot Court. Today, the law firms, there are at least 10 other law firms that hire as many summer associates as we do, and the law firms have assumed a lot more in the training of young lawyers than was the situation -- there was none in my day. So there's been a big change in the culture.

Also, of course one of the great things about the Wall Street law firms today is that there are a great many females, and it's added to the breadth of the practice. We have a lot of female partners at Davis Polk today.

HK: Yes.

SHG: And there are also minorities, a great number of minorities. The culture has definitely changed, but I like to think that the respect for each other and the integrity -- those two things -- I like to think have been pretty well kept.

[00:36:14]

HK: Thank you, Hazard, that's well said, and I totally agree with that. Now, you spent some time during World War II, away, and then you also became the United States Attorney for the Southern District of New York. Could you briefly describe those years and what you did?

SHG: I was very fortunate. I got a call one day from the Attorney General of the United States under President Eisenhower.⁸

HK: Was that Herbert Brownell?⁹

SHG: No, it was not Herbert Brownell. This man succeeded Herbert Brownell. I'll come up with his name in a moment,¹⁰ but he succeeded Herbert Brownell. I knew Herbert Brownell very well and admired him tremendously, but he was a successor. I'll think of it in a moment.

In any event, this man called me and said, "You know, we did propose to you, the possibility of your becoming a United States District Judge, and you declined that offer because you said you felt that you wanted to be a participant, someone who was arguing on one side or the other, and I assume for that reason, you wouldn't take the job as U.S. Attorney for the Southern District of New York."

[00:38:08]

And I said, "Oh, no, oh, no, is there any possibility of this?" And they said, "Well, yes, your name has been brought forward, and would you accept it if it were made?" And I said I certainly would, but of course it calls for confirmation by the United States Senate. I said, "Well, the answer is yes, overwhelmingly yes, if it happens." Well, Senator Javits¹¹ raised objection over it. He said, "I'll only vote for confirmation if Mr. Gillespie will agree to, if nominated, to run for Governor of the State of New York because this is a normal thing for the U.S. Attorney to do," and so forth. I said, "If that's the cost of getting the U.S. Attorney's job, I have to decline."

⁸ Dwight D. Eisenhower, 1953 - 1960.

⁹ Herbert Brownell, Jr., Attorney General of the United States, 1953 - 1957.

¹⁰ William Pierce Rogers, Attorney General of the United States, 1957 - 1961.

¹¹ Jacob Javits, United States Senator, 1957 - 1981.

Well, I had talks with Senator Javits and he said, "Well, we build you up, we make you into so forth and so on," and I said, "That doesn't make any difference, all I'm interested really, is being the best trial attorney I can possibly be." Well, fortunately, the Junior Senator from the State of New York, who came from Buffalo, was a very good friend of mine. He talked Senator Javits into dropping that and I was confirmed and I had the great opportunity of serving as what is probably -- it is the Office of U.S. Attorneys around the United States -- where most of the cases that the government is involved in, that go on up to the Supreme Court of the United States, gets started in the Southern District of New York. So I was tremendously lucky.

[00:40:13]

HK: I'd like to ask you about two cases you had as the United States Attorney. One had to do with *Lady Chatterley's Lover*. Could you describe that for us?

SHG: Yes. I had received a call from the Attorney General of the United States. It was not Herbert Brownell, it was the one who succeeded him and the one who had handled my appointment and so forth, and he said, "The President has had a call from the Postmaster General," whose name I can't recall at the moment. But in any event, "The Postmaster General has just received in the mail the publication by the Grove Press of a novel written in England by the man who wrote *Ulysses*," whose name escapes me at the moment. But in any event, "The Postmaster General has held hearings, he's called expert witnesses and he has decided that this is obscene and should be barred from the mails. However, the publisher of this book the Grove Press is going to file an injunction suit to get that order of the Postmaster General set aside, and the President has asked me to call you and tell

you that he wants you to go in and handle the matter and uphold the hand of the Postmaster General.”

[00:42:17]

Well, I laughed and I said, “There’s one thing that I’d like to have time to think about this.” And I had a wonderful chief of my civil division, his name was Robert Ward.¹² He later became a United States District Judge, Robert Ward, he’s no longer living, but he was a great lawyer. Bob Ward and I talked about this and I called the Attorney General and said, “I will argue this case and seek to have the hand of the Postmaster General upheld, but only on one condition, and that is that he has done all of the things that are needed to be done by an administrative officer. He has held all the hearings, he’s called experts, he sought public opinion and he’s done all those things and, therefore, the court should not interfere with an injunction.” And, fortunately, the Attorney General of the United States called me back and said, “The President accepts that and you go ahead and make that your argument.”

Well, the extraordinary thing is the case came on to be before an old friend of mine, Frederick van Pelt Bryan,¹³ United States District Judge, who I served under him in World War II. He was a close personal friend. When he returned from the war with his wife, they came and lived in my family. But he had just the best time in the world, because when the time came up to argue this thing, he had the press in there, he had everybody, and the first thing he said, “Mr. Gillespie, before you start, I’m going to ask you to read the five areas of the court, and you don’t have to argue that they’re obscene,

¹² Robert Ward, Judge of the United States District Court for the Southern District of New York, 1972 - 1991; Senior Judge, 1991 - 2003.

¹³ Frederick van Pelt Bryan, Judge of the United States District Court for the Southern District of New York, 1956 - 1972.

but I want the ones that offend and which really would justify my granting an order that supports the Postmaster General.”

So here I was, I had to get up and read these sections aloud in the open court with the press all there and so forth, and in about two months, Judge Fredrick van Pelt Bryan came down with a decision in which he said this could not be barred from the mails. He listened to my arguments but he said, “I can’t follow those.” The fascinating thing was that the case, we went to the Court of Appeals, the Second Circuit, and there were three judges. Judge Harold Medina,¹⁴ who later became famous for his trial of the Communist case, and was a close friend of mine, and there was another man on the Court by the name of Leonard Moore.¹⁵ Leonard Moore wrote a dissent and agreed with my argument, so that I was really very grateful to Leonard because it meant that at least there was some substance to what we had. That was the end of that case.

[00:46:09]

HK: I mentioned that there was another case that you handled as the United States Attorney, an argument in the United States Supreme Court, which you told me about, and I thought was fascinating, involving the very famous lawyer Louis Nizer on the other side. If you could describe the argument that you made and the result of that, I think it would be useful.

SHG: I must say, it was a case that did interest me tremendously. I received another call from the Attorney General of the United States, who said that the Justice Department was very interested in having upheld the Taft-Hartley Act. This is the law, the congressional act which controls the relations between labor leaders and corporations for which the labor

¹⁴ Harold Medina, Judge of United States Court of Appeals for the Second Circuit, 1951 - 1980.

¹⁵ Leonard Moore, Judge of United States Court of Appeals for the Second Circuit, 1957 - 1982.

leaders' unions represent. And he told me a little bit about the case, but I said just wait a minute. I said, "I drew the indictment in that case," which indicted -- there were very few indictments that I personally took a part in, but I did draw this indictment, which indicted Paul Fruehauf, the head of the Fruehauf Trailer Company, and this famous labor leader, whose name escapes me at the moment, it's Dave something.

[00:48:06]

Fruehauf, according to the Labor Department, had loaned this labor leader \$500,000, right when the labor leader was in negotiations with the Fruehauf Trailer Company. The Labor Department said if they can get away with this, it just means the end of the Taft-Hartley Act. Well now, the Taft-Hartley Act does prohibit gifts and payments of money, but it does not prohibit loans, and according to Fruehauf and his lawyer Louis Nizer who is a famous trial lawyer, according to them, this money was repaid and repaid with interest. They argued that the indictment was faulty because the Taft-Hartley Act does not prohibit loans and in this case, the loan had been fully repaid with interest.

Well, the Chief Judge of the Southern District of New York, Judge Sugarman,¹⁶ dismissed this indictment. He did it though, before any jurors were seated, because he said if it comes back -- it was quite proper of him to have done. If the case comes back, I don't want them to plead double jeopardy. He said, "I assume the government will take an appeal to the Supreme Court of the United States to argue that this is violative of the Taft-Hartley Act."

[00:50:16]

¹⁶ Sidney Sugarman, Judge of the United States District Court for the Southern District of New York, 1950 - 1974; Chief Judge, 1966 - 1971.

Well, I called the Solicitor General and he said, “Yes, we will take that appeal,” but he said, “You like this indictment, you drew it, how about your arguing it in the Supreme Court?” Of course, that was like, what an invitation. I just loved the idea of arguing a case in the Supreme Court and I said, “Yes, of course, I will.” Well, the young man who worked with me on this brief, very, very helpful, and we put the briefs together and I said, “Mr. Davis” -- John W. Davis, who we’ve talked about here before -- “used to say to me that if you could find a simple analogy that your argument would come down, the Court will remember that when they leave the bench and it will keep your case in mind, by all means, use it.”

Well, I decided that what I was going to say to the Supreme Court, you know down there, there are three little lights; there’s a green light when you have used only 15 or 20 minutes as is allotted, then it comes to amber, that says that you have two minutes left, and then it turns red and by gosh, you’ve got to sit down, if you’re right in the middle of an argument. This little light is up there and it comes flashing on. Well, I decided that what I was going to say was that Mr. Nizer’s argument in support of Fruehauf and this labor leader comes down to the argument that the matron made when she drove through a traffic light and the police officer stopped her and she said, but I backed up and therefore, I didn’t go through the red light. And of course, the police officer apprehended her and that was the end of her argument.

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My assistant, who was working, said you just can’t make that kind of an argument to the Supreme Court of the United States. Well, when the time came and the lights came on, and when I was making my argument, and the green light went off and the amber light

came on, I decided to grasp the nettle and say, Mr. Nizer, who was a famous trial lawyer at that point and a famous appellate lawyer, he did a lot of liable cases and so forth. The light came on and I said Mr. Nizer's argument comes down to that of the lady, and I went through my little spiel and so forth, and I finally finished it up just as the light came red, the red one came on. Well, I looked over at the guy who had been working for me and he wanted to get under the bench, he was so upset that I'd been so crude to do this particular thing. All of a sudden, from over the Supreme Court bench, I saw an arm come and it was the arm and hand of Felix Frankfurter,¹⁷ a Justice of the Supreme Court whom I had met through Mr. Davis, but he knew me on a first name basis. Justice Frankfurter said, "Mr. Nizer, will you please start just where Mr. Gillespie left off, and tell us how your case differs from that of the lady who went through the red light and claimed that she had not."

[00:54:14]

Well, Louis Nizer got up and he never was able to get to his argument in chief, it was extraordinary, and the Court did unanimously -- no, it was eight to one, unanimously reversed and sent the indictment back and the case, I should tell you, Louis Nizer did try the case, he won the trial, but he lost that argument in the Supreme Court of the United States, and the Taft-Hartley Act was upheld, and it does apply to loans. It was thanks to that wonderful analogy and the help of Felix Frankfurter that it occurred.

HK: Good story, Hazard. Now, you've worked on so many important cases; fact specific cases, law cases, over the years, and I wonder whether you couldn't spend a moment talking about the Grand Canyon case.

¹⁷ Felix Frankfurter, Associate Justice of the Supreme Court of the United States, 1939 - 1962.

SHG: Yes, it's difficult, this case. You know, a lawyer often has to be an expert in legal matters, matters to do with the law, but sometimes they have to develop the facts. Now, in a great many cases, you get the assistance of detectives and agents, who go out and develop the facts for you in a case.

[00:56:09]

In 1956, there was a terrible air disaster over the Grand Canyon. A TWA Constellation was flying in the direction of Kansas City and a United Airlines DC-6, they had both left from Los Angeles in the morning, about 40 minutes apart. The DC-6 was a faster aircraft and it left 40 minutes after the Constellation. They had a collision over the Grand Canyon and 128 people died. All the crews of both aircraft and all of the passengers crashed into the Grand Canyon.

During World War II, my particular work for the Air Force had to do with aircraft catastrophes and aircraft crashes, and I said to my wife -- this is a Saturday afternoon, we were at the horse races. One of my favorite occupations is to follow the horses. At any event, we were at them and I said to her, you know, "I just think that investigating something like that would really be absolutely fascinating."

[00:58:07]

I went home and I had a phone call from my partner, who handled insurance work for Chubb, and he said, "Could you be in Kansas City on Monday morning and represent the aviation airline insurance company, the client of Chubb, in the investigation that's going into this." I couldn't believe it, I couldn't believe it. Needless to say, yes of course I could. I flew out Sunday night and I was in Kansas City.

The first thing that we had to do was to of course -- this catastrophe, with 128 passengers onboard, two aircraft, it was crippling to an insurance company. The reports of the preliminary investigation had indicated that TWA had climbed through the fog and gone up in front of the United Airlines plane. The United Airlines plane, being the faster of the two, had overtaken and had hit the two, and the two crashed into the canyon. Well, we were able to find out, from an American Airlines plane that flew from San Francisco to somewhere, I think Santa Fe, New Mexico, that he had flown over the Grand Canyon and there was no fog above 2,000 feet. So, that established that the accident occurred in clean air and absolutely clear.

[01:00:15]

The captain who testified in Kansas City -- there just wasn't any doubt that these airplanes were in clear air. That brought into effect, a rule of law in flying, that the overtaking aircraft must keep clear of an overtaken aircraft. They must see and be seen, is the rule, and so we had to establish that this aircraft, this TWA aircraft, that it left 40 minutes ahead of time, was in front of the United Airlines plane when the collision occurred. We decided that the first thing -- we learned from the chief pilot of TWA, that he had taken a small aircraft and had flown over the Grand Canyon and had seen a bit of a wingtip down in one of the deep gullies of the Grand Canyon, and he said, "I think if you can get down in there, can find that, you will find evidence which will prove beyond any doubt, that the United Airlines plane was the overtaking aircraft and was the burdened aircraft." Well, we then tried to organize helicopters and our insurance company AAU said, "Oh, God, don't use helicopters, they break down." It was way back

in the days when helicopters were terribly dangerous. “The great heat down in the canyon, it’s too dangerous, take a boat and go down the Colorado River.”

[01:02:15]

Well, we finally decided to retain a helicopter company located in Denver. They had almost lost their license because they’d flown over the hospital in which President Eisenhower, after his heart attack, was on the roof of the hospital and the helicopter took a picture of him there in his bathrobe and they almost lost their license to fly a helicopter. But we got three helicopters and we went down into the canyon, 5,000 feet down from the south rim, and we also went and rented a little aircraft, and I rode around in the little aircraft for one day, and all of a sudden, we spotted a wing tip. We then went back with the helicopters that we had rented, we used one as an emergency, to get us out of there if anything happened to the other two, we had the other one down at our camp that we established, and the third one we used for exploring.

Well, I went with the exploring helicopter. I found this piece of wingtip about five or six miles from our camp, and the next day, I went with a crew of a man from the Federal Aviation Administration, a man from TWA, the chief engineer. There were about four of us and one of them, a man by the name of Paul Pennoyer, lawyer, aircraft pilot, and we climbed. We left at dawn and we climbed over ridge, over ridge, these five or six miles, and then found this tip of the wing in this draw. We brought over a helicopter, we dropped a rope down, and Paul Pennoyer and I tied this rope on it, and Paul went out and waved to the helicopter pilot. He picked the wingtip up, took it around, and the helicopter pilot took it down to our camp. We had to fly it out in the middle of the night, just because the helicopters had more lift at night, and we took it out to the edge of the

canyon. It was flown to New York and a year later, United Airlines was established, in an FAA report, as being the overtaking aircraft, and TWA was exonerated.

HK: I take it that the wingtip showed that the United Airlines plane actually hit the fuselage.

SHG: Well, Henry, I'm glad that you called that out. When we got down in there and found that wingtip, the chief engineer from TWA and a man from Lockheed, looked at the front edge of that wingtip and found pieces of the bathroom of the TWA Constellation in the front of that wingtip, and thereby established the overtaking aircraft, thank you very much.

[01:06:01]

So, does that answer your question?

HK: That answers my question. That was a wonderful case and Hazard has been talking about that case forever, and justifiably, it was a wonderful case. There are so many other cases that Mr. Gillespie has handled, in the Supreme Court and in the courts, not only as U.S. Attorney but as a trial lawyer for our firm. He served as President of the New York State Bar Association for a year, and I was wondering whether, as President of the Association, there's anything that you wanted to tell us.

SHG: Well, I think you mentioned that to me, and I think the thing that really -- perhaps there were two things. One was getting the New York state income tax forms to conform with the federal forms, so once you did your federal form, you didn't have to do a different form for your state. That was great, but I think the one that gave me the greatest satisfaction was moving the admission of members of the Bar of the State of New York to the Supreme Court of the United States. I moved the admission, I think there were over 350 lawyers from across the State of New York. It's a requirement, when you move the

admission of a candidate for admission to the Supreme Court of the United States, that you state to the Court that you've met and know the candidate, and that his credentials warrant his being a member of the Bar of the Supreme Court of the United States.

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The Court, believe it or not, sets aside a day every couple of years, for different states to come there and for the admission of groups like this, and during my presidency, they gave me the opportunity. Well, this meant traveling all over the State of New York and getting to know these people, so I could state to the Supreme Court, that I move the admission of so and so, I know him and I know him to be -- There were 350 lawyers and there have been many of them that have come up to me since then and have told me that they were so pleased that they'd had the chance to sign a brief. Some of them have had a chance to argue but most of them said, I had a chance to sign a brief that was in the Supreme Court, and I couldn't have done it if you hadn't moved my admission to the Supreme Court. I think that's always given me a lot of satisfaction.

HK: I should think so. Instead of trying to resurrect these well-known cases that you've had, I wonder whether you couldn't conclude this interview with some observations or recollections about the Bar in general and the practice of law in general. I think it would be constructive to the group that will be looking at this history, to know, from somebody of your distinction and length of service, what you think of the practice of the Bar in general.

[01:10:06]

SHG: Well, I can't imagine any more rewarding profession than practicing at the Bar. Now, this is, in my case, it has meant appearing in court, in different courts, of both the State

and Federal system. I can't think of anything more rewarding. I do think there's one message that I'm very anxious to pass along to future members of the Bar, and that is how much the Bar owes to the judiciary. I believe we could not create the great body of common law that we have today but for our judiciary. It's an appalling thing that the judiciary are not compensated really for the value of what they contribute to our entire social structure. The Rule of Law, it exists because of the caliber of the men who -- and women. I should be very careful about that, because there are some wonderful women judges, some wonderful women lawyers, and there are going to be more.

[01:12:07]

But to me, the one message I think I would like to leave behind is that the practicing Bar should get out and support the hand of the judiciary. I do believe that law schools should have departments, as I believe they do in some of our European friends, where they literally teach courses in becoming judges. We're very, very lucky that so many good lawyers have been willing to sacrifice the work at the Bar and to give their lives to being judges. I would hope that what I could leave behind is a request that men and women really consider the possibility of becoming judges.

Now, we in New York State, the Court of Appeals, have just had the term of a wonderful Chief Judge, Judith Kaye,¹⁸ who really has done for the Bar and for the court system, a tremendous, tremendous favor, by giving up her private practice and going in and doing that work. So I think that the one thing that I would like to pass along to younger people at the Bar is considering the possibility, but making it attractive. It's up to us lawyers to make being a judge an attractive pursuit.

¹⁸ Judith S. Kaye, Chief Judge of the New York State Court of Appeals, 1993 - 2008; Associate Judge, 1983 - 1993.

[01:14:05]

HK: Very good, Hazard.

SHG: Thank you.

HK: You have the opportunity, if you would like, to add to anything, but I think we've generally covered what we intended to do and I am grateful to you for having taken the time to do this, and I'm sure that the people who will be looking at this oral history will feel the same way. So, I thank you.

SHG: Well, I think you, Henry. Henry and I, having been together since 1952, I'm very grateful to him because he knows the way my thoughts go, and he's given me this opportunity to talk. I appreciate it.

HK: Well, we've had a lot of fun together and this has been one of them. So, thank you all.

SHG: Thank you.

[End Audio File]