

INTERVIEWS

WITH

THE HONOURABLE JOHN D. ARNUP, O.C., Q.C., L.S.M.



with Allison Kirk-Montgomery

THE LAW SOCIETY OF UPPER CANADA

May-June, 2004

TABLE OF CONTENTS

First interview, 7 May 2004.....	1
Second interview, 10 May 2004.....	23
Third interview, 13 May 2004.....	52
Addendum.....	89
Fourth interview, 3 June 2004.....	90
Fifth interview, 10 June 2004.....	122
Appendix: Items Donated by John D. Arnup.....	142
Index.....	144

LIST OF PHOTOGRAPHS

Figure 1. The Staff of the Oakwood <i>Oracle</i> , 1923.....	53
Figure 2. Leaders of the Bar, CBA 1953	78
Figure 3. J. D. Arnup by Kenneth Jarvis.....	117
Figure 4. Unveiling of Arnup and Gale Portraits, LSUC, 1966..	118
Figure 5. John Cartwright and Benchers, 1970.....	120

TRANSCRIPT – JOHN DOUGLAS ARNUP INTERVIEWS

Interviewee: JOHN DOUGLAS ARNUP

Interviewer: Allison Kirk-Montgomery,
for The Law Society of Upper Canada

Interview Date: 7 May 2004

Location: Don Mills, Ontario

Length and Media: Approximately 93 minutes on two minidisks.

Transcribed by Allison Kirk-Montgomery, 28 July 2004.

[Start of recording]

AKM: Today is May 7, 2004. My name is Allison Kirk-Montgomery and I am interviewing John Douglas Arnup at 1055 Don Mills Road, Toronto.

....

AKM: So which story would you like to tell first, Mr. Arnup?

JDA: Well, I was called to the bar in 1935. The Treasurer during part of my student days (and I'm not sure at this point, how much that this information is available at that funny little reception area by the reception desk in the education wing of Osgoode Hall) - the Treasurer was Mr. W. N. Tilley, KC. He was the head of the firm known as Tilley, Carson, McCrimmon and Wedd. He was strictly a litigator. He had a virtual monopoly of cases from Ontario that went to the Privy Council. And some cases from other provinces as well. The Privy Council heard Canadian cases twice a year, and Mr. Tilley almost always had at least one case on their list.

He was a matriculant. From the time that the Law Society had a law school, until about 1953 or -4, it was possible to be called to the bar without having a university degree. This was done by requiring service under articles full-time for two years, and then the same three-year combined course of articles and lectures that the university graduates also took. A lot of people don't realize, and are surprised when they find out, how many prominent lawyers, some of whom became judges, were in fact matriculants. Mr. Tilley was one of them. His partner, who also became Treasurer later, and I'll be speaking about him, was Mr. Cyril Carson, and he was a matriculant.

So was Mr. R. S. Robertson, whom I will be speaking about. He was Treasurer and later Chief Justice of Ontario. He was the head litigator in the Fasken firm. And legend has it that Mr. Robertson was creating quite a name for himself in the city of Stratford, where he grew up and was practicing law, and that Mr. Alec Fasken, the founder of the Fasken firm, went to Stratford and persuaded him to come to Toronto, under the assurance that he would be the head of the litigation group. This actually happened. Mr. Robertson, I think, succeeded Mr. Tilley - but it may have been the Treasurer who called me to the bar in 1935. He was the honourable N. W. Rowell, R-O-W-E-L-L, who had been a cabinet minister in the federal government and a prominent lawyer, and a founder of the firm, Rowell Reed Wright and McMillan. Wright and McMillan were the two lawyers whose name continued on and it is still the name of the firm.

Also matriculants were Mr. John W. Pickup, KC, who was in the Fasken firm and became a bencher, and he too was appointed directly from the bar to be Chief Justice of Ontario. Unfortunately, before he had a chance to really make his mark as Chief Justice,

he became ill and had to resign. Mr. Joseph Sedgwick, a prominent lawyer whose name will come up in several times in the course of my discussions, was also a matriculant, and two former students in my old office, each of whom later became a judge, were also matriculants, coming from the Hamilton firm as students to work in the Mason Foulds firm, which was my firm when I was called to the bar.

The question has been asked when I decided to become a bencher, which is actually a question that is somewhat too broad. Because the real question ought to be, "When did you decide to run for bencher?" Nobody was guaranteed to become a bencher, just because he wanted to. But in the 1950s, the term of a bencher was five years. There were thirty benchers, and an election was held every five years. There was one due in 1951. The immediate past Treasurer, of whom we shall hear some more in a moment, was Mr. G. W. Mason, who was the head of my firm, Mason Foulds, and if he were elected once more, he would become a life bencher. This was before the statute was changed to make a Treasurer a life bencher immediately upon election as Treasurer. So Mr. Mason was, of course, nominated because if elected, as a bencher, he would become a life bencher and not have to bother with elections any more.

A number of prominent lawyers, mostly benchers, were urging me to run for bencher in 1951 but I declined because I did not want two people from my firm, including the head man, on the ballot at the same time, and I wanted to see Mr. Mason become a life bencher by being elected once more. So I didn't run. This fact was well known to the existing benchers. And in 1952, a year after the election, a bencher from Woodstock died and created a vacancy on the bench. Convocation took the unusual step of electing me as a bencher although I had not been on the ballot the previous year. I was

naturally gratified because if it had not been for Mr. Mason's adventures, I would have been a candidate the year before. I, of course, then ran for bencher in the elections of 1956 and 1961, and was elected near the top of the poll on both occasions.

My primary concern and job as a bencher was in the field of legal education. That important committee, which of course operated the Osgoode Hall Law School, as well as controlling admission to the profession from other provinces or countries, was one of the two most important committees, the other being the finance committee. It was a little later on that the discipline committee became one of the most important aspects of the work of the benchers.

AKM: Mr. Arnup, Mr. Mason was very involved in legal education.

JDA: Yes, I'm going to come back to him in a moment and go back to earlier Treasurers. There never was a time limit on how long a Treasurer could be in office and historically, there is at least one example in the nineteenth century where a Treasurer held that office for twenty years.

AKM: Aemilius Irving.

JDA: Mr. Tilley was succeeded by Mr. Shirley Denison, with one "n" in the middle and one at the end. He was the head of a small firm called Denison Foster and Williams. Colonel Foster was the long-time lecturer in the law school in the field of practice. Shirley Denison was a bachelor and a gentle, quiet man, highly respected in the profession and by his fellow benchers. He had virtually no relatives. He left the residue of his estate to the Law Society to be held in trust to pay discretionary amounts of income to the families of disbarred lawyers who, for obvious reasons, were frequently in conditions of near-poverty. There's also jurisdiction in the trust to pay amounts of money

to lawyers who have suffered hardship through reasons of health or other causes. Several times a year to this day, applications are made for a grant from the trust, all of which, after being vetted by the staff, have to be passed upon by Convocation itself.

Mr. Denison was succeeded by Mr. Mason, who had been a bencher for a long time. Mr. Mason was a life-long Methodist and had been extremely active in connection with church union of the Methodists, the Presbyterians, and the Congregationalists, culminating in the union of 1925. Mr. Mason didn't drink, smoke, or swear. He had got his university degree from Queen's while he was still a school teacher in the Barrie area, the first two years, by correspondence, and the third year by actual attendance, following which he went to the Osgoode Hall Law School.

In bencher circles, and among the very ancient members of the bar such as myself, he is best remembered at being in the centre of the turmoil involving Professor Caesar Wright, Caesar being a nickname. His given name was Cecil, but he was known universally as Caesar Wright. Wright was a Harvard graduate and had there learned and become fond of the casebook method of teaching law. He was taking a strong position that the law school was spending too much time through the articling system and otherwise on the technique of practicing law. One bencher, quite well known, Mr. Mike Chitty, made himself famous, or infamous, by saying to the press that "Properly run, the law school was a trade school."

It was the practice in the 1950s, and I think even earlier than that, for the Ontario branch of the Canadian Bar Association to have a mid-winter meeting as well as a national meeting in August. They had those meetings in the major cities of Toronto, Hamilton, Windsor, and London. And it was also part of the tradition that the Saturday

luncheon would be given to all those in attendance, paid for by the Law Society. I guess as a quid pro quo, the Treasurer after lunch gave a speech reviewing the work of the past year -- one of the most difficult speeches that a Treasurer had to make in the course of a year. That year, in 1949, the mid-winter meeting was in Niagara Falls, and friends of Caesar Wright in effect packed the hall; more politely, they persuaded a lot of people to go to the meeting that might not otherwise have gone, because it had been advertised that the trouble in the Law School was going to be the main topic of the Friday night meeting.

I was there on Friday, and Mr. Mason made his speech. He was actually heckled during his speech. The question period got very hot and heavy, and ended in a vote -- what one might call a straw vote because it had no legal effect -- on whether you supported the views of Caesar Wright or those of what a lot of the young people present regarded as the old fogies who were the benchers. My recollection is that there was a slight majority of supporters of Caesar Wright, but it was a very difficult time for Mr. Mason. I, by this time, was working closely with Mr. Mason on legal work, and appeared as his junior in a substantial number of cases, and he used to talk to me, because in his position he wanted to talk to somebody. I was there and I was also friendly to his views.

Mr. Mason was succeeded by Cyril Carson, whom I have mentioned earlier, and who had been a bencher for substantial number of years. He took office in 1950, and as it turned out, he stayed for seven years. But the last two or three he was strongly urged by a lot of benchers, including me, to stay a while longer, because, after a lot of soul-searching, the benchers had decided to build an entire new wing on Osgoode Hall to be used as an education wing. There was an ancient house in the north-east corner of the

Law Society's property, which was occupied by the head of maintenance, otherwise known as the caretaker, but he had a considerable staff as well, and was responsible for the caretaking of all of the Law Society's portion of Osgoode Hall. So it was decided to go ahead with this building. I have memories of going down to Osgoode Hall on a rainy Saturday morning for the turning of the first sod where the new building was to be erected. I describe it as a new building but it was actually connected directly to the existing building, which had had an extension for the secretarial and similar activities on the east side of the building.

Mr. Carson was a very assiduous worker and, I always thought, a very wise and certainly industrious Treasurer.

[recorder is turned off then back on]

JDA: Under his regime, I became a more prominent benchman that I had been before. I became Vice-Chairman of Legal Education, the Chairman being Mr. D. Parke Jamieson of Sarnia, who had been president of the Canadian Bar Association, and a prominent lawyer known nationally not only for his ability and work, but also for the immaculate clothes that he always wore. He was a bachelor, and a great benchman, but he never became Treasurer. He ran once, but the person running against him was John Robinette, and Robinette was in his prime, if one is allowed to have a prime for a decade, so Robinette defeated him fairly easily.

After one year of Robinette's regime, I became the Chair of Legal Education, and remained in that position assisted by Vice-Chair Bill Howland, who, after my regime,

continued in the same capacity and followed Brendan O'Brien as Treasurer. Bill Howland was a very assiduous worker and I will be mentioning him again, because he played a crucial role in the move of the Osgoode Hall Law School to York University, which is a topic I will have some discussion about.

Well, in 1962, John Robinette, after four years as Treasurer, decided that that was enough, and there was a strong movement to elect John Arnup in his place. No one else was nominated. On the Convocation Day in May, when, traditionally, new Treasurers were elected or old Treasurers re-elected, I had put on my gown, which was also part of the tradition that the Treasurer always appeared gowned in Convocation. I was sitting, in what was then a little conference room across the hall from the benchers' library, now the benchers' reception area, waiting for the election to be held, which would be the first order of business. While I was still there, in came Mr. Martin Seymour, S-E-Y-M-O-U-R, a very prominent lawyer from St. Catharines, with whom I had become a close friend through our work together in Convocation. He said that this was going to be the last chance that Joe Sedgwick would ever have to be Treasurer; and he was very anxious to get the job because he had roots in England where he was born. The Princess Royal who had been appointed or elected as an honorary bencher some years before, the sister of the King, was coming to Canada on a state visit. A number of functions were going to be held by the Law Society and Sedgwick was very keen to be the head host, if you like. Seymour said, "If he runs against you, he'll lose, but he only wants the job for a year." So I said to him -- Sedgwick, by the way, was a good friend of mine, and we had worked on the same side on a number of cases --

AKM: Was this a surprise to you, this development on that morning?

JDA: It was the first time that it had ever been suggested to me. So I said to Seymour, "Some years ago, my partner Jack Weir and I had a discussion about our future activities. We decided that he would get on the ladder of the Canadian Bar Association (because once you became the least important of their executive committees, you almost automatically went up year by year and ended up as President), and that I would follow the route of the benchers, and hopefully someday become the Treasurer." I said, "Jack Weir is only a year away from being the President. I can't afford to give up my chances of being Treasurer for more than one year. If Joe will undertake to me personally that he will only stay a year, I'll step aside." He went back into Convocation Room, or the benchers' library actually, and passed the word of what I had agreed to. I stayed out of Convocation for the first fifteen minutes. The benchers all trooped back in to Convocation Room, and elected Joe Sedgwick as Treasurer. In the next three years, nobody ever ran against me as Treasurer, and if somebody had, a dozen benchers would have throttled him!

So that's how I became Treasurer, and I ended up staying for three years. But in February of my third year, in making the little speech of which the Treasurer always opened Convocation, I referred to the fact that it was my third year. I said to the benchers that I had stayed too long, and should have quit after two years, and whoever was chosen in my place, ought to take this as my parting advice. As a footnote, some of them did and some of them didn't. Two people that I can think of as later Treasurers stayed for three years -- excellent Treasurers -- and if they were prepared to make that sacrifice, which was considerable, that was their decision. I'll have something to say a bit later about my election in 1963 and what I said in my speech of thanks to the assembled benchers,

because, as it turned out, it was an accurate forecast of what the benchers ought to be doing from that day forward.

The Treasurer chooses the chairs of committees. He actually presents a slate to Convocation, and in theory, Convocation approves of the Treasurer's selection, not only of the chairs, but of the members of the committee. He, of course, or she, having picked a chair, discusses with the prospective chair who he or she would like to have on their committee, and whether or not they need a vice-chair as well. The two most important committees in my day were the legal education committee and the finance committee. The finance committee continues to be a very important committee, and a number of benchers have become Treasurer from a term or terms as chair of the finance committee.

AKM: Was it an important committee in the early fifties?

JDA: It was a very important committee in the early fifties, although the critical areas of its work turned out to be in the field of compensation fund, as it was then known. But the finance committee makes the recommendation for the fees to be charged to members for the following year. Later on, during my regime, they also had the task of deciding what the fees should be, allocated specifically to the compensation fund. I'll be dealing with the compensation fund as a separate item a little later on.

But, as I have indicated to you, I have been reading the minutes for the whole of the three years that I was Treasurer. One of the things that stands out is the remarkable career of Mr. W. Earl Smith, who was the Secretary of the Law Society. I think, from about 1936 definitely, because there was some celebration of his thirty years in office. He was a remarkable man, a bachelor, who lived in the University Club. He, of course, was a lawyer, but he was a helper, and advisor, and general organizer for successive

Treasurers including me. I and the other Treasurers really couldn't have handled the job without Earl Smith. I'll be mentioning later on that he also came to play a role in the field of legal aid, and was designated as the provincial director before the events that I will be discussing in connection with legal aid.

AKM: That is a very interesting introduction to quite a long period with a number of Treasurers. You mentioned Mr. Rowell, and that would be the one I believe, who was Treasurer when you were called to the bar. What do you remember about his Treasurership?

JDA: Mr. Rowell had been a very successful lawyer, particularly in constitutional cases, and as I have mentioned, was a cabinet minister. He was also the joint chairman of a very important investigative group resulting in what was called the Rowell-Sirois Report on economic matters, with special reference to the role played in the economy of Canada by national department stores and other national vending organizations. He was only Treasurer for two years because he got appointed directly from the bar to be Chief Justice of Ontario -- curiously enough, the same route which his successor, R. S. Robertson, also followed. Unfortunately, after Rowell had been Chief Justice for something less than two years, his health failed. In a little more than two years of office, he was forced to resign and, really, never practiced law again, which was sad, because he had a great legal mind and talent. Probably, he would have been more successful if he'd been appointed Chief Justice some years before he actually was. He had a connection by marriage with the Jackman family, and my recollection is that it was Mr. Rowell's daughter who married Henry Jackman the father of the well-known Hal Jackman.

I never saw Mr. Rowell as Chief Justice, and I had never seen him before I walked in to Convocation room, where I and about twelve or fourteen others were called to the bar. This was actually October of 1935, the big Convocation having been the previous June. The reason that I was not called until October, was that when I first entered into articles with Mason Foulds, after some fairly strenuous discussion, I made the point that I had a very good summer job working in the park at Port Dalhousie for the railway company that owned the park, and couldn't afford to go to Law School unless I had that job during the summer. So somewhat reluctantly, Mr. Davidson, the managing partner, agreed to let me work for the summer in the park, and enter the employ of the law firm the day after Labour Day. So I kind of squeaked into my articles as a student. My call to the bar was delayed for three months for that reason. I squeaked into being a bencher, and I squeaked into becoming the Treasurer! [laughter] And, fortunately for me, landed on my feet on all those occasions.

AKM: Mr. Arnup, let's go back to your early days. You mentioned earlier that you and Mr. Weir discussed your futures, as young men. Do you remember when this would be? Would this be in the forties, when you were working together?

JDA: Well, Jack Weir and I didn't join together in the Mason Foulds firm until about September 1946.

AKM: Then let's go back further.

JDA: It would be, I think, about the mid-1950s, that we had this discussion, because each of us had to have made a place in our chosen field, or the conversation would have been foolish.

AKM: Yes. When you were a young student, did you know who the benchers were?

JDA: Not really. I remember walking past a room which was then reserved for discipline hearings, and sort of sneaking a look as I went down the corridor. The group sitting there that day seemed to me to be a bunch of fierce old men. When I first became a bencher myself, I was either the youngest or the second youngest, because in the year of the 1951 election, Mr. Wilfrid Gregory of Stratford had been elected a bencher -- he, by the way, is still alive, and living in retirement in Stratford -- where he has lived all his life -- but most of the benchers were very senior. And that actually started to change about 1956, when Arthur Maloney was elected a bencher and I think Arthur Martin's first election was 1956, though I am not sure about that. But in 1961, Walter Williston was elected and he was the youngest still of the new benchers. But my impression when I was a student and a young lawyer, was based primarily on what could fairly be called gossip, and that the benchers were all a very serious and conservative group.

AKM: And powerful?

JDA: Oh, definitely powerful. But even in those days, and continuing for a long time afterwards, and to some degree continuing to this day, there was antipathy on the part of a substantial number of practicing lawyers, most of whom don't really understand how much work the benchers do and in what areas. But the attitude of "them and us" has prevailed and been a real factor to be reckoned with for as long as I can remember.

AKM: When did you first think, "That's a role that I am interested in?"

JDA: Well, not too long before the 1951 election. I haven't given it much thought until then, because of the fact that we, meaning my firm, already had a bencher

who was very senior, and was about to become Treasurer, so there wasn't any occasion to think about being a bencher, until it became clear that Mr. Mason's life as a bencher was going to greatly shorten. Because it's a tradition which continues to this day, although the period of time involved is not all the same, a tradition that the Treasurer upon retirement keeps out of the way. There was a rule of thumb that Mr. Carson told me about when I became Treasurer, to keep out of the way for six months. I didn't last for six months, but I lasted at least four months, by simply not going to Convocation at all. But it is a rule that is not followed by all ex-Treasurers and I don't propose to say anything more about that aspect.

AKM: Was it an unwritten rule that only one bencher from each of the firms was the best solution?

JDA: No, at least I never heard of such a rule. An example would be that Mr. Tilley and Mr. Carson were in the same firm, but to the best of my knowledge, after his several years as Treasurer, Mr. Tilley never went back at all. Certainly, some Treasurers have taken the view that, "I did my bit, I had my turn, and now it's up to somebody else." And we have at least one former Treasurer, whom I don't propose to name, who never comes to Convocation except on the day when a new Treasurer is going to be elected, which is May of each year, and he doesn't stay very long on that occasion.

AKM: But many Treasurers retain a long interest in Convocation. Perhaps not as long as you -- over fifty-two years a bencher and an active participant.

JDA: Well, of course, for fifteen years of that period of time, I was on the Court of Appeal. I didn't mention that earlier, but I was appointed to the Court of Appeal in March of 1970 and retired on the first of October, 1985. And found what I had not

realized before, that coming off the court in 1985, I had also become a life member of the Law Society, because it was 50 years since I was called to the bar. I hadn't realized that until Ken Jarvis told me so.

AKM: In 1946, which would have been the election that you could have run, I suppose you were pretty busy with the Wartime Price Control Board.

JDA: Well, in 1946, I was regarded by the profession as a promising young man and I don't think people would have thought of me in terms of running for bench.

AKM: You certainly, under Mr. Carson as Treasurer, put in many services in terms of standing committees, but also I have a list here of special committees on which you sat, at least fifteen special committees in his term. Was that typical of how he managed things, with special committees for certain tasks?

JDA: Yes, and it still is, although the fashion has developed, not only in the Law Society, of creating something called a task force. This is a popular fiction, because their functions as far as I am concerned, are identical with the special committees of the past. The most important special committee that I was ever on was the special committee with respect to the law school and legal education in the province, which began as a committee to make recommendations with regard to this new building that I've talked about. But I don't want to get out of sequence here. I hadn't realized until this minute that I was on a total of fifteen, or whatever the number was, special committees. Mr. Carson and I had become quite friendly and he had great confidence in me. This was demonstrated during the early discussions with the Ontario universities, because he took me with him but of course, as I have said elsewhere or before, I was just up the street and it was easy for me to join him in meetings that were held in his office, for example.

AKM: So special committee meetings could be held at convenient times -- they were more informal, unlike Convocations?

JDA: Yes, they tried to work it in when it was convenient to the majority of the special committee. In my time, there was no such thing as "meeting day" which is now a regular function of Convocation, and held around the middle of the month, and lasts all day. But in my day, the chair made some enquiries as to how many people could come [say] a week from Thursday and then picked the day, and the other members of the committee were notified. Attendance at some committees were pretty sparse, an illustration being the library committee, whose function really could have been performed by somebody else, particularly because there was also a county libraries committee. Those two were merged a long time ago.

AKM: When we read the history that Chris Moore did, of Convocation and the committees, in some ways it seems that there was a very low workload in the 1950s, or at least in the 1940s, until education and compensation issues, but when I look at your resume of committee membership, you must have been putting quite a lot of time into Convocation before you became Treasurer. How did that fit with your career at that time?

JDA: Well, I made it fit. I gave priority to the work of the benchers and I used to treat Convocation Day in the same way that I treated cases. They went into my future diary and I didn't let anything interfere with that day. I learned early on that Mr. Carson did the same thing, and I found it a highly useful thing. We had some benchers, later on, who came to Convocation if it was convenient. As far as I was concerned, Convocation Day was taken, it was a date.

But to give illustrations, the committee which was then known as the unauthorized practice committee, traditionally met on Convocation Day itself, about 9:30 in the morning, because when I first became a bencher, Convocation didn't start until 11 o'clock in the morning. I notice that even under my day, it frequently started at 10:30, but it was fairly common for Convocation to have to come back in the afternoon with about a third of the membership disappeared.

Another difference between my day and the present day was that in my time, committee reports were not circulated in advance. They were read aloud by the chairman of the committee in Convocation Day itself, so that benchers who were not on the committee were hearing the problem for the first time. Nowadays, we get a huge volume in advance of Convocation, several days in advance of Convocation, with all the reports that are going to be considered, so benchers can read them ahead of time -- although some of them, if the truth were known, read them on the airplane coming in from Ottawa. But others, including myself, read them in advance, which of course, greatly shortens the time involved. But I can't resist saying that in my time, including my time as Treasurer, all committee reports began, quote: "to the benchers of the Law Society of Upper Canada in Convocation assembled, the xx committee begs leave to report..."

AKM: I wonder how many times you've heard that phrase?

JDA: Hundreds!

[Recorder is turned off and then back on.]

AKM: We have talked about the workload of committees in those days. Did that mean that in those early times there was not much business actually discussed in Convocation, or controversy?

JDA: I think, with some exceptions, the answer to that question is yes. Probably more time was taken with discipline matters, all of which until the drastic revision of the Law Society Act just a few years ago, had to go to Convocation, whose decision was, after a review of the report of the discipline committee, both as to guilt and as to penalty. The minutes disclose that some considerable time of Convocation was taken up with discipline matters.

AKM: You were on the discipline committee, from 1952 on. Is that correct?

JDA: I was appointed to the discipline committee the same day I was elected a benchers, and I sat quite a lot on the discipline committee. When I first went on it, Joe Sedgwick was the chair, which was the beginning of a life-long friendship. But there would be weeks when there was no discipline matter for the committee to deal with. Whereas now, you can have two or three panels of the discipline committee. This was something I was going to deal with later, but now is a convenient time, and it has reference to the work of the discipline committee today. A number of years ago, possibly as many as ten, Convocation was having a problem which really went back twenty-five or thirty years, of getting enough bodies to handle the discipline cases. They kept increasing the size of the committee, and finally, they decided that all elected benchers would be members of the discipline committee. And in addition, the life benchers, meaning, for this purpose, those who had been elected the requisite number of terms, are also eligible to sit on the discipline committee. But, just like cases in the courts, discipline hearings seem to get longer and longer, especially if there are accounting or other money problems involved.

AKM: Do you remember your first discipline cases when you were on the committee?

JDA: No, I only remember one. Joe Sedgwick and I, who were supposed to be experienced litigators, especially Sedgwick, who was twelve or fourteen years older than me. We had a case involving a man named Samuel Max Mehr, and he was charged because of some hanky-panky in connection with the Chinese consulate, whose legal work he had acquired for some mysterious reason. Charges were laid, and we started hearing the case, and Mr. Mehr was defending himself, not too expertly. One of the members of the committee was a very able man named Tim Rigney, R-I-G-N-E-Y, who was a long-time crown attorney in Kingston. Mr. Rigney used to want to catch what was then the 4 o'clock train that was headed for Montreal but stopped in Kingston. So, at twenty or quarter to four, during a hearing, Mr. Rigney took off. He'd be notified when the next hearing was, and he would turn up, but he obviously had missed anywhere from fifteen minutes to an hour and a half of the evidence. The evidence was of course transcribed, and he had read it. So we found Samuel Max Mehr guilty, and recommended that he be disbarred. That went to Convocation who approved our recommendation.

Mehr then went to court and I think in the court of instance he was heard by Chief Justice McRuer, who was a) a former crown attorney b) a former senior bencher, and now Chief Justice of the High Court. He thought Mehr's defence was ridiculous, dismissed his appeal, and the Ontario Court of Appeal dismissed a further appeal, whereupon Mehr appealed to the Supreme Court of Canada. And by this time, one of the judges on the Supreme Court of Canada was John Cartwright, a very able Ontario lawyer

who had been appointed to the Supreme Court not too long before. And Cartwright, on behalf of the Court, wrote a judgment in which they said, "You can't come and go in a criminal case, which this is like. Once you leave, you're finished." Well, the judgment was dead right, and we could have avoided it all, if the first day that Rigney wanted to catch his train, we had said, "You realize this is the end for you. Catch your train if you want to, but you can't come back." So, Joe and I were somewhat embarrassed by having been caught out on a mistake of law in connection with the handling of trials. But that's the discipline case that I remember.

I remember two or three discipline cases when I was Treasurer, but I might as well throw them in now. A charge was laid against a lawyer from out of town, whose brother had been in my class at law school. Both of them lived in a town not very far from what was then my summer cottage, which was in Western Ontario. The discipline committee found that lawyer guilty. I had been playing golf with him about four or five times during the summer, and both his brother and I and he were friends. The discipline committee recommended that the lawyer be reprimanded in Convocation. I was called upon to reprimand my ex-golf partner, who on good advice, tendered his resignation just before Convocation dealt with the hearing. But I reprimanded him, and we never played golf again.

The other case I remember involved three lawyers who had been hanging out in a well-known gambling house, I think on the far side of Etobicoke, but maybe even a little farther out. One of them in particular was quite young and he felt quite flattered to be accepted in this circle of gambling big shots. Another of the three actually acted for some of these gambling house operators, There was a hearing by Mr. Justice Roach, and

I don't remember what the precise language was, but we were advised of the evidence and of the result, because Roach had castigated all three. We decided that these three fellows should be reprimanded in Convocation, the three of them at the same time. I did the reprimand.

The youngest of three obviously was quite crushed by this and took it very seriously. In later life, he became a county court judge, and needless to say, he never went back to the gambling house again. One of them treated me and the whole of Convocation with contempt. He didn't say so, but his whole attitude was, "If you bunch of old guys think you are going to get under my skin, think again." The third man, I never was quite sure how he took it, because he was one of the stupidest lawyers that was practicing law and I don't think he really understood the process. I remember, I can see today, where those three men stood, while I delivered the reprimand.

AKM: Was the reprimand something that was written by the discipline committee? Or did you do it yourself, or was there a formula?

JDA: No, it was entirely written and delivered by the Treasurer, who had in front of him the report of the discipline committee.

AKM: How often might you resort to a reprimand in Convocation, when you were first on the discipline committee?

JDA: Well, it was used a fair amount. It was the least serious of the penalties that the committee could recommend, or did recommend. Going up the line, the next more serious was a fine, and the next one above that was a suspension, of anywhere from three months to a year or more. The ultimate penalty was disbarment. Theft of client's money, except in extraordinary circumstances, was always a disbarment offence. But fellows

who got into trouble because they had a liquor problem, or in more recent times, a drug problem, if appropriate medical evidence was given, and there was a reasonable opportunity for this man to rehabilitate itself, suspension was almost - or was frequently - the penalty recommended. It is also the most frequent penalty recommended if the lawyer has not been keeping proper books, or hasn't been paying his fees, and that kind of thing.

AKM: When you began on the discipline committee, was it because you had an interest in the discipline issues particularly, or was that the junior bench starting committee?

JDA: Neither one. Mr. Carson wanted me on the committee, because it was an important committee, and it was a display of confidence on his part.

AKM: Do you remember a lawyer named Samuel Resnick?

JDA: No I don't. But I have seen his name in the minutes of Convocation that I have been reading. I don't recall what his original offence was except that it was spectacular theft, but for a long time, he was the biggest source of grants out of the compensation fund.

AKM: Which is another topic.

JDA: Yes, that's a different topic.

AKM: I wonder if we should stop there today, Mr. Arnup. It's quarter to twelve.

JDA: I think that's fine with me. I'll turn it off.

[end of interview]

TRANSCRIPT – JOHN DOUGLAS ARNUP INTERVIEWS

Interviewee: JOHN DOUGLAS ARNUP
Interviewer: Allison Kirk-Montgomery, for The Law Society of Upper Canada
Interview Date: 10 May 2004
Location: Don Mills, Ontario
Media, length: One minidisc recording, approximately 102 minutes.

Transcribed by Allison Kirk-Montgomery, 2 August 2004, from the minidisc recording of the interview.

AKM: Today is May 10, 2004. I am at the home of John Douglas Arnup on Don Mills Road, Toronto. My name is Allison Kirk-Montgomery for the Law Society of Upper Canada.

Good afternoon, Mr. Arnup. I understand that you would like to begin with a topic that we did not cover last week that we should have in our first session.

JDA: I made a very serious omission in my list of Treasurers of years before I was Treasurer, and indeed, in some cases before I was a bencher, because I completely omitted reference to Mr. D. L. McCarthy, KC. He was elected a bencher in 1924 to fill a vacancy, and was subsequently elected in 1928, 1931, 1936, and 1941, which, on the last-named date, was the election that made him a life bencher. He was chairman of a number of important committees including the discipline committee, and was elected Treasurer in January 1939, and served as Treasurer until May 1944. He had also been very active in

the Canadian Bar Association, of which he was President from 1939 to 1941. He was a fine figure of a man. His portrait has hung on the south wall of the benchers' dining room as long as I can remember (except that at the moment we are doing this, it is off to the cleaners); it is a very fine portrait of Mr. McCarthy in a standing position.

AKM: What did he look like?

JDA: Over six feet tall, and at the time of the portrait, with white hair. I was a junior to one or another senior man in my firm, with Mr. McCarthy on the other side. In the way that lawyers talk about other lawyers in their relaxed moments, I've learned both from observation and from gossip some things about Mr. McCarthy. He loved advocacy and appearing in court. He was very fluent. The only trouble was that he hated preparation, and various of his juniors had to work very hard to force him to do more in the realm of preparation.

There is an interesting story which was told to me originally by Mr. Kenneth Morden, who later became a judge of the Court of Appeal. At the relevant time, Morden and McCarthy were at a small firm called Armstrong and Sinclair. Morden's function was supposed to be to put cases in proper shape for McCarthy to take them on. One Monday morning, McCarthy came in, walked into Morden's office, and tossed a brief down on the desk, and said, "That's a fascinating case that you gave me over the weekend." At which point Morden opened the brief, just to disclose the first page, to which was attached a note saying, "This case is going to be adjourned. You don't have to read it."

I wanted to make an addition of something that was in my mind with respect to Mr. Tilley, but I had omitted it, although I had a good deal to say about Mr. Tilley. He

was a very aggressive advocate and permitted no interruption, not even from the court. And if the court tried to ask him a question which was not in the sequence that Mr. Tilley intended to deal with the subject matter, he didn't hesitate at all to say to the judge, "Just be patient! I'm going to get to that, and I undertake to do so." I have spent a good deal of time both myself and in instructing juniors, of a more graceful way of ending up saying the same thing, but if necessary, answering the question even though it might be out of sequence. I also want to say that Mr. Tilley, because of his nature, was known in some circles, mostly younger lawyers, as "Tilley the Bully." But one ought not to detract from the excellence of his advocacy.

Then I decided since we last talked to add one word about my own career, which I have not attempted to sketch in any detail. One thing which turned out to have some considerable importance was my occupation during the War. I was turned down by the Army because of poor eyesight, but in 1942, Mr. Dalton Wells approached me. He had left his office, which was with a firm in Toronto, in order to become enforcement counsel for the Wartime Prices and Trade Board for central Ontario. That office dealt with investigation and where appropriate, prosecution, of breaches of the regulations, the most important of which were the regulations respecting rentals and tenancies. I had known Wells for some time, primarily through our joint membership in the Lawyers' Club, of which he had been a president, and I was soon to become president, and he asked me to come and join him as deputy enforcement counsel. I thought that if there was an opportunity to assist in the war effort, I ought to take it, and I went to the managing partner of my firm and secured leave of absence. I had a great deal to do with the rental regulations, with the result, that, without boasting about it, I became an expert, and

Toronto lawyers used to phone me frequently for advice, which of course they got free.

Finally, I wrote an article for the Canadian Bar Review, called "Recent Cases under the Rent Regulations." Not a very catchy title but an accurate one. The Canadian Bar Review not only printed the article, but they printed several hundreds off prints, which they gave away and which were eagerly sought after by the Ontario bar and even the bar of other provinces. Because of the success of that enterprise, I wrote a second article called, "More Cases under the Rent Regulations." The Canadian Bar again printed that, and printed an off print, and even some of the county court judges, under whose jurisdiction a great deal of the rent regulations fell, had got a copy of my two articles.

When the job came to an end, somewhat prematurely because my partner G. A. Gale had a nervous breakdown because of the added load of the wartime job with Kellock having gone to the Court of Appeal, and I having gone to the Wartime Prices and Trade Board, I went back to my firm. Very soon after I was back in circulation and word got around to that effect, I began getting telephone calls from lawyers seeking my advice on landlord and tenant matters generally, and the government regulations in particular. Such cases began to take me to the Ontario Court of Appeal. Within six or eight months, I had established a considerable practice in appellate work, which would not otherwise have been available to me at my age and stage of career. I also got to know all of the judges, so that my wartime job actually had a very considerable influence on my career subsequent to the War. I found much satisfaction and gratitude from the opportunity that gave me to appear in various courts, but particularly in the Ontario Court of Appeal.

AKM: Mr. Arnup, you have talked about Mr. McCarthy's long career. He would have been the wartime Treasurer. Could you tell me a bit about the Law Society and its functioning as far as you appreciated it as a young lawyer during the War?

JDA: Yes. I mentioned the other day Colonel Foster, a partner of Mr. Shirley Denison. He had had an estimable record in the First World War and when the Second War broke out, he organized a regiment called the COTC, the Canadian Officers Training Corps, which actually trained at the vacant property at the rear of Osgoode Hall, and across the street in the very considerable property owned by the government as an armories.

There had been a very substantial number of lawyers and students who enlisted in the First War. The number of casualties in the First War was much greater than those in the Second World War. But there were, none the less, substantial casualties of young men, all of whom I knew, either by name or in person. There is a carved plaque at the east end of the Great Library in Osgoode Hall, with the names of those killed in the First War.

The Law Society commissioned Cleeve Horne, who was not only one of Canada's distinguished artists, but also a very competent sculptor, for a sculpture which sits in the main rotunda in the first floor of Osgoode Hall. The Law Society, close to Armistice Day, has a ceremony of a brief nature, one year in the Great Library, and the next year on the ground floor surrounding this statue. The prime portion of the ceremony consists of one of the benchers reading all of the names of lawyers and students who were killed in the First War, and the considerably shorter list on the following year of those killed in the Second War.

For a long time, the Treasurer was able to ask a bencher who was himself a veteran to read the list on the appropriate occasion. But we are running out of people who were even in the Second War and are still living, and who have some connection with the legal profession (because the European Second War ended in 1945), not only people in the active service who went overseas, but people doing legal work in Ottawa in military headquarters. That was a function that was very necessary. One at first blush wonders why so many lawyers were needed just because Canada was fighting a war. But there are all kinds of jobs with a legal connotation, including help with the estates of soldiers killed in the War. When I went to Ottawa during the War, as part of my wartime job, I would always run into half a dozen or more fellows my own age wearing a uniform, in one of the three branches of the service.

AKM: Did you say that it was 1942 that you moved to Ottawa and began work on the Board?

JDA: I didn't move to Ottawa but I did say 1942. My job was in Toronto but my territory, or our territory, extended east to Kingston, north to Orillia, and west to Hamilton, and we had an office in all those places I've mentioned. I only was in Ottawa periodically for meetings of all of the Wartime Prices and Trade Board counsel from all over Canada, because there was an office in every province. I made some friends who were friends for life, who were wartime counsel in the same comparable job that I was.

[Recorder turned off and on.]

AKM: Did your job involve a lot of travel, Mr. Arnup? I believe you were newly married at this time.

JDA: Yes, I was married in 1941, but my job did not require a lot of travelling. I might go to Orillia every six months, or Hamilton about the same, usually to make a speech promoting the Wartime Prices and Trade Board and its head, who was at the start and for three years a Mr. Donald Gordon. I used to go to local offices and tell about what work we were doing, and what a great man Donald Gordon was.

AKM: So you practiced from 1939 to 1942 in a wartime situation. How did your own practice change in that period?

JDA: Well, it didn't change much until 1942 and that's when I left the office completely and went to the Wartime Prices and Trade Board, one block south on Bay Street. But in the firm, in August 1942, Mr. Roy Kellock was appointed direct from the bar to the Ontario Court of Appeal. About three years later, he was appointed to the Supreme Court of Canada. But that meant that two people from the litigation side of the Mason Foulds firm were gone. Mr. Mason's work, which was rather specialized, didn't change much. But poor Bill Gale, who was a very capable lawyer, had a greatly increased load. One of his classmates, who had been a student with the Rowell Reid firm that I mentioned earlier, and always had had a yen to do litigation, had been working since graduation as a trust officer with the Canada Permanent Trust Company. So Bill Gale thought that this was a great chance for this man, whose name was Jack Millar, M-I-L-L-A-R, and persuaded him to leave the Trust Company and come and work with Mason Foulds, which was a life-saver for Gale. By the time the War was coming to an end, Millar had had his fill, very thoroughly, of litigation. His unfulfilled dream had turned out to be a nightmare, and he went back to the trust company. And I came back to the firm because of Gale's illness.

Then, immediately after the War, Mr. Jack Weir, who had had an office on the third floor of the Sterling Tower--we were on the tenth floor--was discharged from the army because of being seriously wounded, and came back. Somebody made space for him in the Sterling Tower. But he had no clients, except those friends of his father who was a traveller from the Biltmore Hat Company, and shooed a lot of clients in Jack's way. He turned up in a case before the rentals administration, which was kept on as an operative branch of the government for a good many months after the rest of the Wartime Prices and Trade Board was dismantled, and did a superb job in a case against Bill Gale.

So Bill Gale came to me and said what a narrow escape he'd had, and what a great job Weir had done, and what did I think about our asking Weir to join us. I said, "From all I've heard he's a very bright man. He probably needs clients, and we've got them. So let's get him up here." The two of us got Jack Weir up here, and the result was, we hired him, and it was a great boost for us. He was a wonderful lawyer. Unhappily, he got cancer and died about five years after I went on the Court of Appeal.

AKM: Who was the managing partner of your firm at the time Jack Weir came on board?

JDA: He was a man named W. W. Davidson. He had been in the First War. So had Mr. Foulds. Davidson, in the last week of the First World War, got hit by shrapnel and his right arm was shot away just above the elbow. So he had to learn to write with his left arm. He had been with the old firm about three years before the War, and of course came back to the firm, which was reorganized because two of the senior partners of the firm which had been in existence up to 1932, had retired completely. There's a story about Davidson that is widely known and widely disbelieved by a lot of people who

have heard this story. Out in the west end of Toronto there was a lawyer named W. C. Davidson, and in a farm accident, he had lost half of his left arm. The two met each other not long after the War, and for many years thereafter, in alternate years, one of them bought a pair of gloves, kept the one that fitted his hand, and sent the other to the other Davidson.

AKM: Do you believe that story, Mr. Arnup?

JDA: Well, it was told to me by our Davidson himself, and I actually saw a package arrive, which wasn't opened but it was the shape of a glove box and it arrived just before Christmas. The two Davidsons had a nodding acquaintance but weren't really friends. But it was a very sensible arrangement.

AKM: Why do you think there are so many good stories about lawyers and by lawyers? Lawyers are good tale-tellers; I think I can understand some of that, but they are also good subjects for tales, and I wondered what your opinion is about that. Do you think it's true, first of all?

JDA: Well, the relationship is not immediately obvious. But, lawyers have been the butt of jokes ever since Shakespeare wrote, "First, let's kill all the lawyers." He was uttering a reflection of what was common even in his day, and still gets a laugh when that particular play is done anywhere in Canada. So lawyers have been the butt of jokes, but they tell stories about--I was going to say themselves, but that's not quite true--they tell stories about other lawyers! It requires, of course, a considerable exercise in memory, and a pretty good story to start with, but I started collecting stories about lawyers or by lawyers many years ago, and still tell some of them with great success.

AKM: You mentioned earlier Mr. Tilley. Lawyers have reputations as well as stories, as you say, and Mr. Tilley's reputation was that he was very aggressive--"Tilley the Bully." I'd like you to describe his tactics and then tell me how you think a person with Mr. Tilley's style would have done, let's say, when you were on the Court of Appeal.

JDA: Not as well. I think the style of advocacy was already changing when I went to the Court of Appeal. I think two people in Ontario who had a good deal to do with the change in style were John Robinette and myself. But, you have to remember also that some of the judges, who were of the same temperament as Tilley, had been appointed to the Court of Appeal. So sometimes it was an even match, but not often. Tilley himself had what I would call a sardonic sense of humour. He wasn't much of a story teller, but there was one story about him that I always thought was typically Tilley.

There was a case called *Honeydew v. Ryan*, and Mr. Tilley had been retained. He did trial work as well as appeal work in very important cases. Tilley was retained of course by the Honeydew Company. He used to bring his own lunch in his briefcase, his own lunch consisting always of one ham sandwich and something that came in a flask. Nobody was ever able to prove definitely what was in the flask, but some of his own office people were satisfied that they knew what was in the flask. Anyway, in the Honeydew case, there was a lawyer appearing against him, who was not a very good counsel though he was with a very good firm, but a firm that didn't do much litigation. While Tilley was having his lunch, one of his juniors came into the room in the old City Hall where he was eating his sandwich, and he said, "I've been talking to Mr. So-and-So, who said to me that every time he hears Mr. Tilley argue a point of law, he says to

himself, 'You don't know any law.'" Tilley looked up and said, "So the news has reached him!" But there aren't very many Tilley stories around.

AKM: You mentioned that he was a bully. Was that in his treatment of witnesses as well as opposing counsel?

JDA: Well, I would put it that he came close to the line that separates cruelty and rudeness from just aggressiveness. I once saw him cross-examine a young lawyer. Well, not really all that young, he would have been at that point around thirty-five or forty, and he was, despite his age, actually a junior in the Denison Foster firm. He had drawn a will for some rich old lady with whom he had become very friendly, and the will ended up with a gift of thirty five or forty thousand dollars to this young lawyer, and a lawsuit ensued. Of course, that young lawyer had to give evidence. The case caused great interest and excitement among law students and young lawyers. I fell in the category of young lawyer. This case was being tried right in Osgoode Hall, which was contrary to the agreement with the government but Tilley had no doubt arranged it. A lot of students sneaked in who had something to do in Osgoode Hall, and then went to watch this fascinating case, in which Tilley, by the way, was the winner.

He did quite a bit of trial work because he and therefore his firm acted for the CPR, and they were involved in a fair number of wrecks and collisions with vehicles and that kind of thing. For quite a long time, because of the importance of the client to the firm, Tilley took some of those trials. But by the time I was interested in who was doing trials, Tilley was virtually finished with trial work because he had lots to do with appellate work, some in the Court of Appeal, and a fair amount in the Supreme Court of Canada.

In those days, up until 1949, there was a right of appeal to the Privy Council in London. John Robinette and I were in what we thought was the last case to go, because there was a grandfathering clause: if you had a case that had begun before the 1949 repeal of appeals to the Privy Council, you could still carry on with an appeal. The law reports giving the judgment of the Privy Council in Canadian cases have a lot of Tilley cases. About half of his Privy Council cases would be in Ontario, but the other half came from Ottawa and Vancouver and Edmonton, because you could appear before the Privy Council if you were a member of the bar anywhere in Canada. It was the same in the Supreme Court of Canada, and still is. An Ontario lawyer can argue a Manitoba case in the Supreme Court of Canada. I was just breaking into the Western Canada market with about my fourth or fifth case when I got appointed to the Court of Appeal and had to give them all up.

AKM: We'll discuss [that] later in another interview because I'm very interested, of course, in your judicial career. Just sticking with styles of advocacy in those days, for a moment: it seems that, just to oversimplify, advocates were either flamboyant, or well-prepared. Is that a fair comment?

JDA: Yes. There were more flamboyant lawyers in the 1920s than there were in the 1930s and later. One of them, who was in the flamboyant field, although he had other talents as well, was Mr. Arthur Slaght, S-L-A-G-H-T. I heard a couple of his cases that I wasn't involved in, but I wanted to see this great trial lawyer. Both cases I saw him in were criminal cases, though he did both civil and criminal. It was about the time that I was a law student in the 30s, when the flamboyant style was on its way out.

AKM: Why do you think that happened?

JDA: Well, people realized that you didn't really gain much by that style of advocacy. Juries got smarter, no longer fifty or sixty percent comprised of North York farmers. The judges too didn't appreciate flamboyant style without a solid basis of established law. Some people never had it, that style. I was one of those who never had it. So was John Robinette.

AKM: How would you characterize your style? I know that preparation has been a cornerstone of your career - you have said that in the past - but as far as style, what image did you want to get across to judge and jury?

JDA: The watchword of my style of advocacy was clarity. In difficult factual cases, and the prime example is the Texas Gulf case in which I had to have a reasonable knowledge of five different sciences, I used to say to the instructing solicitors and sometimes to the expert, "You get it into my head, and I can get it into the judge's head." And that was a good test. Because if I didn't understand it, there was no way I was going to get it across to a court.

AKM: You mentioned the pressure on your colleague, Bill Gale. There must have been an awful lot of pressure on you at many times in your career, including, for instance, during the Texas Gulf case. How did you deal with that on a daily basis? What about with your family as well?

JDA: Well, there are days and weeks and months that I would like to have back so I could do them over. We raised a family of four girls and they were primarily raised by their mother, and I have said that, both privately and publicly. Because I did a lot of work at home, I never stayed downtown, the way a lot of lawyers did and do. I went home at the same time every night. But I frequently went home with a briefcase. In the

Texas Gulf case, for example, we were getting daily transcripts. They had a whole team of court reporters, four, I think, in all, who were working twenty minute shifts. When their shift was over they were going to a private room in the courthouse and dictating what they had taken down, and they would give us the transcript the next morning. That night I would read it, because there were a lot of words with which most people were unfamiliar, and certainly the court reporters were unfamiliar with them. Quite early in the Texas Gulf case, the first thing that happened every morning, was that Arnup got up and read into the record the corrections, because everybody had a copy of the transcript, and the teams involved had several copies. Every junior had his own copy.

[Telephone interruption. Recorder turned off and on.]

AKM: We were discussing the press of work and the Texas Gulf case. That case sounds like it required a genius of organization.

JDA: Yes. The case began in October 1966 and lasted until April of 1968. It would be tried today entirely differently, because we had no computers in 1966. I'm pretty good at organization, and there were close to a thousand exhibits, most of them correspondence or photographs or strip photographs taken from the air.

Eventually, and very quickly actually, I evolved a system where we had two filing cabinets. One had all the papers arranged chronologically, and the other one had all the papers arranged by order of exhibit number, copies in all cases. So if you knew the date, you could look in one filing cabinet. If you knew the subject matter but not the date [or] if you knew what the number of the exhibit was (and of course we had a continuous flow of lists of exhibits, because every trial lawyer keeps one) [you could look in another]. But today, that would be all done by computer, and the computer could keep the exhibits

in the same way that I've talked about, by separating dates and exhibit numbers, but infinitely much more as well. Close to three quarters now of trial judges have learned to use computers and put it on the desk beside them. They used to have to take notes by longhand, and if you weren't sure about something you got the court reporter to read it back to you. Nowadays, most of them are computer-literate.

AKM: You would have left just before, I imagine, that you would have begun to use a computer if you had stayed.

JDA: Well, there weren't too many computers in 1985 when I left, and nobody on the court had one.

AKM: Right. Back on the organization, for instance in the Texas Gulf case, who would you have had doing the work of determining, say, the subject matter of a document? Doing the actual categorization?

JDA: Well, I had four juniors, and one part-time junior, all from Osler Hoskin, who had hired me. Back in the Osler Hoskin office, I had somebody in charge of reading law. Her name was Bertha Wilson. And she was quite good at it! At that stage, which was very early in her career, she didn't have what I call a feel for a case.

AKM: What do you mean?

JDA: Well, the most obvious thing is, "Are we winning or losing?" - the flavour, if you like, of the way the case is going in.

AKM: How would you determine that? How would you know where you were at?

JDA: Well, you start by practicing for twenty-five years. It's an acquired skill. Some people never acquire it. Most of them would be pretty stupid when they graduated

and didn't improve much. An experienced trial lawyer, indeed an experienced court of appeal lawyer, can tell how he or she is doing, by little things like comments and questions, the look on the judge's face: if he looks puzzled, you better have another crack at that one.

AKM: Bertha Wilson, I guess, was in the office most of the time, at that point in her career, wasn't she?

JDA: Yes, I would send word back of an area of law in which I wanted to be briefed, with some indication of how urgent it was. I think she had at least one helper as well.

AKM: I am interested in technology and the everyday way of handling such a case. So when you say you would send word back, did you write longhand notes, or did you have a secretary who followed you around and took notes? How did it actually work?

JDA: No, my four juniors were all from Osler Hoskin, so I would just speak to one of them, usually the most senior of them, but sometimes the second man, and say, "Before too long, we're going to need some law on this point." Then he would go back and find Bertha and turn her loose.

I was the despair of law clerks, which we began to have in the Court of Appeal. I was brought up originally as a student in doing research on the law and making memoranda more for Kellock but occasionally for Mr. Mason. When I was on the Court of Appeal, if I had the time, I loved to do my own research. I had access to a law clerk and I got along fine with law clerks. Some of the judges, not many, but two or three, would have a discussion with their law clerk and kick the case around for an hour, and then say, "Turn out a draft and I'll have a look at it." I never did that in my life.

AKM: I imagine, as you became a more and more senior counsel you didn't get the chance to do your own research as often. It must have been difficult.

JDA: No, that's right. I had some very bright students, four of whom ended up in the Court of Appeal, not at the same time. But they had learned my methods.

AKM: You must have also been able to pick legal talent quite well.

JDA: Oh, yes. Not necessarily when they were hired because with the number of people we had, the number of recommendations was extensive, and we usually had a committee that chose our students to put under articles. But I had a lot to say about who got hired as a lawyer in the firm.

AKM: To go back--we are straying, quite enjoyably for me, over a number of topics--to Mr. McCarthy, whom we had started on much earlier, you mentioned that he was the chairman at the Law Society of the discipline committee. Would you like to begin discussing that aspect of Law Society work, and yours, or would you like to leave that until Thursday?

JDA: No, I don't mind doing some talk about it.

AKM: All right. What about if we start in that pre-1950 period, before legal aid?

JDA: Well, Mr. Carson put me on the discipline committee as soon as I was appointed, or elected, a bencher. It was at that point not unlike trial work in the courts. We didn't have a discipline counsel; that came much later. We acted as the counsel and did the questioning.

AKM: When you say "we"--

JDA: Usually the chair. I never was the chair of the discipline committee. I later, very much later, became the chair, indeed the first chair, of the appeal panel.

AKM: This was in 1999, was it not?

JDA: I couldn't tell you the date now, but it was the first panel appointed. You could only be appointed for two years, and in two years, the appeals panel when I was on it, heard only one case. Three or four times I had a motions day, but the motions day primarily insisted on building a fire under the lawyer involved, who had filed a notice of appeal, and then gone to sleep.

But anybody on the committee was entitled to ask questions. About half the time, the solicitor who was charged had counsel--.

AKM: This is in the 1950s?

JDA: Yes, and about half the time, they appeared without counsel.

JDA: What kind of counsel would you have had to work on the committee? Did you receive documents ahead of time?

JDA: No, you knew virtually nothing about the case except the piece of paper that had the charge on it.

AKM: So you would be in a room with your fellow committee members, I guess that was Joseph Sedgwick?

JDA: He was the chair, and you might have as many as five committee members. We frequently had five committee members, but there was no set minimum, but you never sat with less than three.

AKM: So you often only had a piece of paper ahead of time, basically an agenda, saying who you would see, what cases you would be discussing. How much paperwork would there be once you started the hearing?

JDA: Well, that depended entirely on the nature of the case. If the case involved a single instance of theft of trust money, you often had very little, because the man who stole trust money didn't keep much in the way of records.

AKM: That's true. I know from my reading and our previous conversations, that the main issue then and now--the main cause of disbarment then and now--is theft or criminal conviction relating to professional misconduct.

JDA: Well, conviction may come before or after.

AKM: Yes, would it often be after a charge, or was it invariably in those days after a charge, that you would assess someone?

JDA: Well, in the 1950s, the Law Society was frequently ahead of the normal criminal process. Nowadays, again depending on the nature of the case, a committee decides from time to time, that this is the kind of case where we should let the criminal people go first. If the lawyer is convicted, then we may have laid a charge but not done anything with it, except serve it.

AKM: Do you think this is a change, following McRuer and so forth, in due process? Would you attribute it to that?

JDA: I think it is more a practical matter. What is the easiest way to do this and do it right? You may have a case where you say, "Let the criminal court go first," or you may have a case where we say, "We can't wait for them. We'll do it now, as soon as we can get a panel together."

AKM: You remember last week you mentioned the Samuel Mehr case, and you and Mr. Sedgwick's embarrassment following that case. When I did some research, I

found that Samuel Mehr, or someone named S. Mehr, had been disbarred and reinstated in the 30s and 40s. Is this the same person, do you know?

JDA: Yes, it's the same person. But I think, and this is just an impression rather than memory at this point, he got into trouble a second time, several years later, and ended up being disbarred.

AKM: After the 1955 hearing?

JDA: Yes, that's correct.

AKM: Could you describe how a hearing would go? Was it called a hearing at that point?

JDA: Somebody on the staff would have looked into the facts of the case, but that person was probably not a lawyer. Once in a while, if there was a quite complicated case, even in the 1950s, the panel would appoint someone to prosecute the case. In the 50s, we didn't have discipline counsel, and we now have eight or nine, some of them pretty new, and some of them much more experienced. In today's market, there is something close to a discipline committee bar. Those fellows get quite a lot of it, and a couple of them in particular are very good.

AKM: This is a defence bar?

JDA: Yes. On the other hand, those lawyers who were charged and don't have any money often ask a friend, which turns out to have been a mistake, because the person they ask is really out of his element.

AKM: I guess it has become a complex branch of law just like most other branches.

JDA: Yes. We not only have discipline counsel, but we have a deal with the Advocates' Society to provide duty counsel to advise the accused lawyer. They do that on a volunteer basis. I am not sure if they get paid something for being duty counsel for the day. I've never been interested enough to make any enquiries. But we nearly always have duty counsel present. We used to have one frequently when all the cases had to go from the committee to Convocation itself before there was an appeal panel established by statute.

AKM: So in the 1950s, your committee would make a recommendation and it would be voted upon by Convocation.

JDA: That's correct.

AKM: And you would have a vote as well, regardless of whether you had been on that hearing panel. Am I correct?

JDA: Yes. I don't ever remember any protocol that you had to retire. But by the 1980s, the practice had developed, and was faithfully followed, that anybody who had been on the committee hearing left Convocation while that case was being heard by Convocation.

AKM: In the 1950s, did Convocation generally agree with your recommendations, or rather, the discipline committee's recommendations?

JDA: Generally speaking, yes.

AKM: Did Convocation also have to vote on public and private reprimands as well as on more serious suspension and disbarments?

JDA: Yes. Convocation had to sit and listen to 25¢ cases as well as \$25,000 cases.

AKM: Did you find it an unpleasant task to be on that committee?

JDA: No. It had the flavour of trial work. It was conducted on a legal basis and I enjoyed the work.

AKM: We mentioned Shirley Denison and his will last time, and his sympathy, or concern, for the families of disbarred lawyers. Over your years on the discipline committee, which direction did your sensibilities go? Towards or away from sympathy?

JDA: Well, I don't think you could put a tag on the committee's, but there was definitely a situation in Convocation. A long-time and very highly regarded bencher named Hamilton Cassels, whose name in university and forever thereafter was Laddie Cassels, had had a prominent role in World War 1. When we were discussing the question of penalty, Laddie Cassels, sometimes in Convocation, and sometimes privately to a bencher who seemed to be wavering, would say, "But he's a veteran." He used to keep an eye open for cases where a good word from somebody well known would be given greater attention in Convocation than somebody who had a small office a hundred miles north of North Bay.

AKM: Was he on the committee?

JDA: I don't think so, but he was a regular attendee in Convocation.

AKM: And influential?

JDA: And influential, yes.

AKM: As the Treasurers changed from the 50s when you began, through Robinette and Sedgwick and before that with Carson, did the Treasurer influence the work of the discipline committee particularly?

JDA: Never.

AKM: No? I meant style.

JDA: I know. I can't speak of earlier days before I was Treasurer and had been appointed to the Discipline Committee. I don't have any views about that, but he didn't know any more about the case, as a general rule, than anybody else.

AKM: In the preparation, as you mentioned, I think, the vast majority of complaints were dealt with at an earlier stage and did not come to the discipline committee. Was it Earl Smith in those days who would work with the chair of the Discipline Committee, for instance, to determine which matters might come forward?

JDA: Well, that's one way to put it. I would put it, that it was Earl Smith's job to find enough people to constitute a panel, which he was very good at.

AKM: Although you enjoyed discipline work, apparently other benchers did not.

JDA: No, there were some benchers who didn't like being on the discipline committee, and there still are, even though nowadays everybody is on the discipline committee.

AKM: Yes. Should we stop there for today, Mr. Arnup?

JDA: Well, if you've got another ten minutes, you can open the subject of..

AKM: Or we can continue on with it.

JDA: I want to continue on with it, because there is an aspect of this we haven't touched.

AKM: Please.

JDA: One that I have in mind, which could I suppose become a separate topic, is the compensation fund. When the compensation fund was first established, that was its

name, by the way, for forty years or more. It's now called the Lawyers' Fund for Client Compensation--.

AKM: So much for clarity.

JDA: --thanks to Mr. Ruby, who didn't think "Compensation Fund" really explained what it was all about. From the institution of the fund, its duties were assigned to the discipline committee, because obviously it was dealing with crooked lawyers, dishonest lawyers, some of whom had been before the discipline committee, others of whom had not, including those who had just disappeared. The minutes are full of instances where the discipline committee or the Treasurer reported what a burden the compensation fund had become on the members of the discipline committee. In addition, the matter of funding the compensation fund was an almost invariable choice of subjects and very important at budget time.

In my time as Treasurer, the special fee allocated to the compensation fund was larger than the membership fee in the Law Society itself, the relative figures being hard to digest for any lawyer who has practiced in the last twenty years. In the sixties the annual fee to be a lawyer was fifty dollars, but the compensation fund started at fifty dollars on its own, and in my regime got to seventy dollars, so it was the larger half of the annual fee of lawyers.

There were pretty strict limits on how much could be paid out with respect to the clients of one particular lawyer.

AKM: This is at the beginning?

JDA: Right from the beginning, but the amount changed, constantly increasing. Now, of course, there is no limit, and we've been hit a number of times by claims totalling in the millions.

AKM: Were you in favour of the compensation fund at the beginning, when it started in 1954?

JDA: I was one of those who strongly pressed for it.

AKM: What were the models for the compensation fund at that time? Do you remember?

JDA: No, I don't. I think we were the first province in Canada that had one.

AKM: I think so, in Canada. I understand the first payouts were not until 1956, so it was only a very short number of years before trouble loomed. Were you in favour of the compensation fund because you could see the defalcation numbers going up, or were they separate phenomena?

JDA: Well, this may sound like a digression, but in fact, of course, it leads directly to discipline and the compensation fund. Neither John Robinette nor Joe Sedgwick paid much attention to the fact that, very quietly, in various places in Ontario, some lawyers were stealing their clients blind. When I became Treasurer, all of a sudden--and that's not extreme, all of a sudden--cases began to surface of defalcations, some of them fairly heavy. I remember at the first speech I made, in that mid-winter meeting that I talked about (and this one, I think, was in Hamilton, but that doesn't matter), I proceeded to list, with some details but no names, the lawyers and the areas of the province in which these defalcations had taken place and come to light. It was a substantial list. My punch-line on this aspect of my speech was this: "Wouldn't you like

to be Treasurer of the Law Society?” Because it was in the first two years, the biggest problem that I faced.

AKM: And that was a surprise to you.

JDA: Well, I don't want to attach all the blame to Robinette and Sedgwick though a substantial part of it belongs to them. There were thirty elected benchers and you would have thought that word would have reached some or even a number of them that in such and such a town, it was common knowledge that lawyer “X” was near bankrupt, but had been stealing clients' money none the less. So part of the blame has to go to Convocation. One of the things we did, and I was one of those who strongly urged this: we didn't have any staff that was investigating these things. I was one of a relatively small group who said we should hire a chartered accountant, which we did, a very bright young man named Robert Anderson, and he did a good job. Then, because of the relative silence of the bar about what was going on, Convocation with my approval, but not necessarily with my leadership, started to conduct blitz audits. They got the chartered accountants' association to help, not on a volunteer basis but on a modest fee basis. One year, we did a blitz on all the lawyers practicing east of Yonge Street, a huge job, but they turned up quite a lot. They were also able to give a lot of good advice to lawyers, especially sole practitioners, who hadn't stolen any money but whose books were a mess. And then later we did a blitz of all the lawyers west of Yonge Street.

AKM: No difference, I'm assuming?

JDA: About the same results. That moved to a system whereby every lawyer had to turn in a certificate of a chartered accountant, certifying that the records were in accordance with the regulations of the Law Society.

AKM: That was a minute that was approved during your stewardship?

JDA: No, that was a little later. Finally, the system was modified again, so that each lawyer had to turn in his own certificate, although I think one person can do it for a firm, with a quite elaborate questionnaire, the object of which is to see whether that firm or that lawyer is complying with the regulations. To make a false statement in that kind of statement is a disciplinary offence. The cooperation of the bar has been great and of course, they don't have to pay a chartered accountant any more, unless they already have one.

AKM: The blitz audits, like Windsor and Toronto East, could not have been secret, could they? They required massive amounts of manpower.

JDA: No. This was something that I said, and if I hadn't said it, somebody else probably would have: "We should announce this in advance. The wider circulation we give the news there's going to be a blitz audit, the more people will scurry around and get their books in order."

AKM: Which is the goal.

JDA: And this actually happened. I've already said that in a number of instances, the chartered accountant, for free, gave advice to lawyers on how their books could be improved.

AKM: You mentioned earlier the responsibility of Convocation, and I've read somewhere that one of the things that you tried to institute was greater reporting requirements on the part of lawyers over other lawyers. Can you tell me a bit about that? In your time did you try to make that a formal requirement?

JDA: Well, it was not a regulation at that time, but there soon became one. That regulation imposed a duty on lawyers to report cases they were sure constituted a breach of regulations. In support of this regulation, I remember saying that any lawyer who receives a cheque drawn by another lawyer on his trust account, and the cheque bounces, ought to be in touch with the Secretary's office right off the back, to say, "Your Mr. Anderson ought to go to such and such a place."

AKM: Do you think the bar gradually became more willing to take on that sort of responsibility?

JDA: The answer to that, I think, is yes, but alongside that, you have to put an observation that I can't prove, and that is: lawyers who want to do something crooked do so in a more sophisticated way.

AKM: Nowadays.

JDA: Nowadays.

AKM: Do you have any comments about the Lang Michener case?

JDA: I never really knew much about it and only casually read about it in the press. It was a very embarrassing thing as far as that firm was concerned. But they aren't the only big firm in Toronto who have had an embarrassing event, usually by somebody who is a partner in the firm, but not one of the oldest or most senior partners. It's very distressing to the members of the firm, but it is also damaging to the members of the firm. That's not the kind of publicity that you spent all this time in the days of Daniel Lang and Rolly Michener building up a reputation.

AKM: Do you think that the size of law firms today and perhaps, problems of control or culture, have something to do with the embarrassing events that we are talking about?

JDA: I don't think so, in the sense of being a cause, but I think the size of the firm and the intricacies of the organization make it harder to catch than it does with a firm of ten or twelve. You take the McCarthy Tétrault firm – I've asked a couple of their fellows how many lawyers they have; they're not sure. One of them, a very senior person there, said, "I think it's seven hundred and sixty." But that, of course, is in four or five cities.

AKM: I have some other questions that perhaps we can leave.

JDA: Yes, I think we've reached--.

AKM: I want to repeat back your words, though, in one of your speeches. You said, "I want to be remembered as the Treasurer who insisted every chance he got, that at the root of our future lies our standards of professional ethics and responsibility." Would you still say that, now?

JDA: I hope so. I still believe it.

AKM: All right, we'll stop there, Mr. Arnup. Thank you.

TRANSCRIPT – JOHN DOUGLAS ARNUP INTERVIEWS

Interviewee: JOHN DOUGLAS ARNUP

Interviewer: Allison Kirk-Montgomery, for The Law Society of Upper Canada

Interview Date: 13 May 2004

Location: Don Mills, Ontario

Media, length: One minidisc recording, approximately 68 minutes; interview continued on one microcassette recording, approximately 54 minutes. Total recorded, approximately 2 hours 2 minutes.

Transcribed by Allison Kirk-Montgomery, 12 August 2004.

AKM: Today is the 13th of May. I am with Mr. John Arnup at his home in Don Mills. I am Allison Kirk-Montgomery for the Law Society.

Mr. Arnup, I want you to look at this photograph of you at Oakwood Collegiate, which I know you looked at the other day. Maybe you would like to talk about Oakwood a little bit.

JDA: The photograph that I have turned over to you is a photograph of the entire staff of the school magazine called the Oakwood Oracle, which was published once a year. Despite the fact that I am one of the youngest looking persons in the photograph, I was the editor-in-chief. This was my staff, and I know who they all are.



Figure 1 Staff of the *Oakwood Oracle*, 1928¹

AKM: Can you tell me?

JDA: They are mostly dead. In the back row, from left to right, is a man named Melville Ransbury, who eventually became a high school teacher, I think somewhere in the London area. Next to him is a man named Leonard Griffiths, who eventually became quite senior in the Laura Secord Company. On his left is Gordon Davidson, who is one of the group of five great close friends, three of whom are in this picture. He has moved

¹ Photograph donated by J.A. Arnup to The Law Society of Upper Canada.

to New Brunswick because both he and his wife are somewhat unwell and they have a daughter down there. The big tall man was named Stuart, and I don't know what happened to him. On his left is Donald Hutcheson, H-U-T-C-H-E-S-O-N, who became a certified general accountant. His widow is still living but Donald Hutcheson has been dead for twelve or thirteen years. I remember the next two fellows as being part of the team but I can't at this point put a name on them. I appear to have had the only copy extant of the Oakwood Oracle in which this picture appeared and I gave it to the school some years ago.

AKM: They would very much appreciate that, I'm sure.

JDA: Then in the middle row, the teacher is a historian named Kirby and next to him is a girl with respect to whom I remember "Betty," but I can't put a last name on her. On her left is Helen Dingle. Next is Grace Cowan. Next is Pat Lipset who married a classmate of mine in Victoria College and so I saw a good deal of her during college days. On her left is a man named Eugene Starnaman, S-T-A-R-N-A-M-A-N, who was an interesting character, who had a number of unusual ways of making money but never became rich. He stayed in Toronto.

AKM: Unusual ways then in high school?

JDA: Later. I forget the man on the extreme left and sitting in the front row. He was from one of the junior years. Then the next person is myself [front row, second from left]. Then a man named David Davies, who went into business in Toronto. Finally, is Hal Tidman, who is the third of five close friends. He was in the engraving business founded by his father. He's still alive, and lives on Avenue Road near York Mills Road.

AKM: Is that everyone in the photo?

JDA: That's everybody.²

AKM: May I look at it for a moment? This morning, when I was looking at it, this morning, I said to myself, "There is no crease sharper than the crease on your pants." Look at that.

JDA: That's correct.

AKM: Were you a dandy?

JDA: [pause] Well, when that picture was taken, I was fifteen years old, and in my final year I was sixteen, and besides being the editor of the paper, I was the valedictorian in the fall Convocation, except that I don't think at high school they called it Convocation, but graduation, in any event.

AKM: In so many of your pictures, you are the youngest person; you are the youngest-looking person.

JDA: Well, I had the good fortune to look younger than my years, for most of my life, but I was young in high school. In my final year, fifth form as we then called it, my next younger brother and I played on the junior basketball team, in which you could not be more than sixteen. And neither one of us was ever old enough to play on the senior team!

AKM: Yet you were the leader in the writing department here.

JDA: Well, I wrote a fair amount of the Oakwood Oracle.

AKM: What did you write about?

JDA: Well, it was the typical high school thing in which graduating individuals were invited to say something about themselves and their future. But I wrote about sports

² See Addendum, "Notes from Meeting with J. D. Arnup, 28 June 2004."

and the year's activities in sports, and an editorial about which something which I conveniently have completely forgotten.

AKM: Did you have to write how you foresaw your own future?

JDA: No, I didn't write anything about my own future.

AKM: Did somebody write about you?

JDA: I think there was very little about me except casual mention as member of this team or that team, and of course, at the front, my name as editor in chief of the magazine itself.

AKM: Did you have a nickname back then, Mr. Arnup?

JDA: No, and I was never fond of being called Jack. Only about two people in my life persisted in calling me Jack.

AKM: Were they related to you?

JDA: No.

AKM: Was being young an advantage or disadvantage through your career?

JDA: I think it was a disadvantage. I went to university four months after I became seventeen, and looking back, I regard myself as having been immature for a university course. My youngest brother, who was headed for medicine, was even younger in high school, and the family decided, with his concurrence, for him not to go to university for another year. So he went back to high school, took over again a couple of subjects such as chemistry that he was likely to have some use for, because he had already decided he wanted to be a doctor, and a repeat of two or three subjects. I don't suppose he wrote an examination in them because he'd already passed and had a department of education certificate.

AKM: Did you think that was a good idea? Did you wish that you had done that?

JDA: It took me a few years to realize that I would have been better off to have done that myself. I came to think, and still think, that I would have been better off to go to university a year later than I did.

AKM: How do you think you would have been different, or what would have turned out differently?

JDA: I think I would have been a better student, for one thing.

AKM: Did you not get very good marks?

JDA: No, not in university. I was in a very difficult course, English and history.

AKM: Lots of reading?

JDA: A lot of reading, but in second year, we wrote seven exam papers in Latin. I did not do very well in them.

AKM: You mean in a course in Latin you had to write seven papers?

JDA: Yes.

AKM: Were they all about Ovid and Caesar?

JDA: Well, a couple of them were about Latin literature, but others required you to write intelligently in Latin. That requirement has long since disappeared. I think they take one Latin course in the course of a four-year term.

AKM: Did you enjoy your university courses, despite, perhaps, not entirely applying yourself?

JDA: I enjoyed it, but I enjoyed some of the side entertainment as well, much too much of it.

AKM: Such as?

JDA: Bridge in Hart House. Billiards in Hart House. And I played all four years on the Victoria softball team, which played in the gym in Hart House, and over four years, won the championship twice, losing to University College who won it the other two years of the four. But that was fun!

AKM: Fun playing on the team. When did you learn to play bridge?

JDA: Mostly in university. There was a group of ne'er-do-wells who played after lunch in the card room in Hart House. Some of them continued to play and one in particular, who had been in the course at Victoria College called classics, which he entered on a scholarship, lost the scholarship, but he became nationally known as a bridge player, and ended up owning a bridge club, in two different locations. He's long gone too.

AKM: Where did you play in Hart House? Was it a big club?

JDA: There was a room called the Card Room, which probably had four or five tables that would seat four.

AKM: And was it quite well organized?

JDA: No, whoever turned up played.

AKM: Did you continue to play afterwards?

JDA: Yes, I became a very good bridge player. I don't play as much anymore, but I'm still a good card player. I haven't kept up on some of the esoteric conventions that have crept into the game. But I still enjoy a game of bridge.

AKM: Did you play with your wife?

JDA: Yes. At the cottage, my youngest brother the doctor and his wife, and my youngest sister and her husband, and my wife and myself, used to play almost every night, and we'd play in a different house of the three. It was a very close-knit group.

AKM: Did your five fast friends play bridge with you?

JDA: No.

AKM: I was thinking about when you became Treasurer in '63. Did you find being the Treasurer a lonely job?

JDA: I don't think lonely was ever a feature of it. I had several quite close friends who had become friends without regard to my being Treasurer or their being Treasurer. I became a close friend of Earl Smith, the Secretary, which was a good thing, because in those days the business wouldn't operate if you didn't have the cooperation of Earl Smith. He was a wonderful organizer and administrator.

AKM: Did you find that you were able to keep your friendships going outside the profession at that time, given all the demands on your time?

JDA: Yes, but not as close as before. I tended to have a close relationship with three or four of my partners in the law firm and my close friends outside the firm were mostly lawyers.

AKM: Did you use any of those people as sounding boards for some of the major issues you were dealing with as Treasurer?

JDA: Not with the non-benchers. I talked freely to a large number of benchers, but I didn't seek advice, except on very rare occasions, and then mostly with Jack Weir, who was very active in the Canadian Bar Association.

AKM: Maybe we could talk about your agenda. Did some of your policies reflect some of the Canadian Bar Association's? Did you and Jack Weir work together on a direction for the profession?

JDA: No, the two roads were parallel but never equal. They struggled with different things.

AKM: Can you give me an example? For instance, legal aid. Now when you began, this was obviously a large contribution of your Treasurership, and something you instituted. Was the Bar Association not particularly interested in the development of legal aid at that moment?

JDA: There wasn't much in the way of joint activity, although several provinces were experimenting with legal aid, and most of them were keeping a close eye on what was happening in Ontario. That was 1963, and Mr. Carson's plan wasn't working very well at that point, is that correct?

JDA: That's correct.

AKM: Did you choose that as something you wished to work on during your Treasurership?

JDA: I think the subject chose itself. It was something that had to be dealt with.

AKM: Was there a lot of publicity in the papers about people not being able to have access to lawyers? Or how did it choose itself?

JDA: Well, I want to go back a bit if you are going to move into legal aid.

In a good many quarters, I am regarded as the founder of legal aid in Ontario, and I have to confess that I haven't done too much to try to disabuse a very flattering association in the eyes of a good many people, but the fact is, that Ontario had a well-

developed legal aid organization before the events of 1963. Earl Smith was the provincial director, and there was a county director, in certainly more than half of the counties of Ontario. In a good many places, the local director was the local registrar of both the Supreme Court and the Surrogate Court. But, it was voluntary, and you didn't get paid at all. Then finally, some very modest payment arrangements were made. But my real contribution to legal aid, in a plan that bears some relationship to subsequent history of legal aid, was to persuade the government that there was a great need for legal aid in Ontario, and the Law Society could not keep on trying to run one on a voluntary basis; that it was an enterprise that the government should pay for as part of the human rights of its citizens. And it was this theme that I put forward first to the Attorney General, who was a friend of mine, and from there, the two of us to the Premier.

AKM: Was that Mr. Fred Cass?

JDA: Fred Cass was Attorney General. He was a Victoria College graduate but I didn't know him then because he was some years behind me, but I'd got to know him professionally because I did some government work.

AKM: For the highways?

JDA: Yes.

AKM: I was reading about Mr. Cass and he had an unfortunate political situation develop in 1964. Do you remember that, about the police bill? Can we talk about that?

JDA: I remember it very well, and what I remember about it most was for about a month, one or other of the three Toronto newspapers phoned me about 8 o'clock in the morning, for a statement about this or that or the other thing in relation to it. I tried to keep out of it personally, and as head of the Society, I thought there was enough activity,

pro and con, that we should mind our own business. I used to get a little annoyed at being phoned at 8 o'clock or earlier, three or four mornings a week, for about a month. But we didn't take a position as an organization, and I didn't take a position as the head of an organization.

AKM: What was your personal opinion?

JDA: I thought my friend, Fred Cass, was in trouble, and so he was. Two or three times I said to newspapers, you fellows ought to keep in mind that he's been a good Attorney General. Nobody ever says that. All they say is, "This is a terrible thing he's doing with his so-called police bill." No newspaper ever made any comment on his work as Attorney General.

AKM: I imagine by that time you weren't too surprised in what newspapers were interested in and what they weren't.

JDA: That's right. I did not have a close relationship with any newspaper except I became friendly first with the main legal affairs reporter for the Globe, and later with the same man who wrote for two different newspapers in succession, and ended up as a feature writer for Macleans, and died in the last year.

AKM: What was his name? Was his name Cameron?

JDA: I can't remember offhand. No. If the name comes back to me I'll tell you.

AKM: What kind of relationship did you have with him?

JDA: Well, I think it could best be described as a mutual trust. If I told him something in confidence, which occasionally I did, I knew that he would keep the confidence, and I wouldn't find the headline the next morning in a Toronto paper. And

he on his part trusted me that I wasn't stuffing him with something that I wanted publicity for, but was not entirely accurate.

AKM: I think when you first became a bencher, perhaps, the Law Society had hired a public relations firm. Do you remember that? It didn't last very long.

JDA: Yes.

AKM: I wonder if you can tell me about that.

JDA: Well, their main function was to assist the public, and in the process, to disabuse the public of immature or wrong impressions of the legal profession. One of the most successful things they did was to propose and organize and distribute a pamphlet – I've forgotten the exact title but it's in the minutes – but in effect was, “So you're buying a house? You need a lawyer.” Their services were later discontinued, not because they were unsatisfactory, but because they had in effect educated a substantial segment of the benchers, and we decided we could do it ourselves. The production and distribution of pamphlets at the reception desk of law offices and things of that kind was a quite successful programme, which was appreciated by quite a number of people.

AKM: I notice in one newspaper report, I think on the professional handbook development, Ken Jarvis was the person who spoke to the newspapers. Did you find it necessary to organize who was to talk to whom on what topics, and so forth, the way that it is very carefully done today, for everyone?

JDA: No, I had no part in organizing that, and it would have been a very difficult assignment anyway, because there were certain benchers who were always good for a quote. In addition, there were always one or two benchers who would be at Convocation

in the morning and talking to the press in the afternoon, including talking about things that were supposed to be in camera.

AKM: What did you do about that?

JDA: Well, you couldn't do much about it. I think, not more than once or twice in my entire term did I speak to someone privately, and say, "You really shouldn't talk to the press about things that are supposed to be confidential." It didn't do much good, but it made me feel better.

AKM: Last time, you were telling me about waiting outside Convocation in 1962 when Joe Sedgwick in fact became the Treasurer. You probably had your speech in your pocket since you thought you were going to be elected at that moment [as Treasurer], but you didn't deliver your maiden speech until the next year. Would it have changed very much, do you think, from 1962 to '63?

JDA: No, and you're right that I undoubtedly had a hand-written memo in my possession, because it became notorious: "Arnup is always scripted." [laughter] I didn't read speeches, but with the advantage of a good memory, I liked to have the actual chosen phrase in front of me. It was completely accurate that I was always scripted for an event where I knew I was going to have to say something.

AKM: Did you like speaking in public?

JDA: Yes.

AKM: Always?

JDA: Yes.

AKM: And always had a good memory?

JDA: Yes.

AKM: You never had stage fright.

JDA: I wouldn't say that. When I started lecturing to students and young lawyers, I used to say almost every time, "When the day happens when you stand up in front of the Court of Appeal, or even a single judge, and your knees aren't shaking, you are in the wrong profession. What comes out at the top out of your mouth may sound calm, but don't worry about it if you are in fact having a turmoil in your stomach, because that's natural."

AKM: And that's what you experienced.

JDA: Yes.

AKM: What about those Canadian Bar Association mid-winter speeches? You said that those were very important speeches for most Treasurers to make. Were they a bit nerve-racking in terms of how they would be met?

JDA: They were very carefully written and closely followed, but they were fun to make because you had a very attentive audience who were very much interested in what you had to say. So you didn't have to go through an ordeal of persuasion that you were going to be interesting because the topics *were* interesting.

AKM: I imagine you must have given two or three dozen speeches at least around the province during your period as Treasurer.

JDA: That's true.

AKM: Did you usually go with your wife? Was there quite a bit of social obligation for her, your position?

JDA: No. My wife didn't enjoy the social side of having a husband who was Treasurer, and she didn't go to all the head tables that she was invited to. The Treasurer

of the Law Society gets invited to, I was going to say, every head table in town. For dinners of the accountants, the engineers, the doctors, and the dentists, when they are deciding who should be at the head table, depending on the organization, the Treasurer of the Law Society is always invited, and so is the Chief Justice of Ontario. It was particularly the social side of Chief Justice [dinners] and similar occasions that my wife felt somewhat uncomfortable unless she was lucky enough to be seated beside somebody that she already knew. But she was very loyal and faithful, including being in the receiving line for the reception that followed calls to the bar, and that kind of thing. That involved her sitting in a preferred place in the audience beside the wife of the Chief Justice. Actually the dean of the law school and his wife were always invited, because it was also a graduation.

AKM: There wouldn't have been much expectation for you to entertain in your home, was there?

JDA: No.

AKM: But your girls were in their teens at this point. It must have been a busy time for her as well as for you.

JDA: Yes, I have already indicated that if the truth were told, it was my wife who really brought up the four girls. Mind you, I was not an obnoxious father. I used to take the kids skating, and at the cottage, fishing. I don't think they felt neglected, although they knew how busy I was.

AKM: Would it have been possible for you to have such a career without being so busy?

JDA: Being busy *is* your career, and if you're good at it, you get offered more work than you can handle.

AKM: Today, I guess partly because so many women are in the field, there is more discussion and thought about balance of work and life. Do you think that is an achievable kind of goal?

JDA: I don't think I can answer that because the whole profession has changed radically. It's thirty-five years since I was a practicing lawyer, and the legal world has changed drastically. The biggest firm in Toronto, in my busiest years, was the Blake's firm, who had about twenty-five lawyers. McCarthy's probably had close to twenty-five. Now they have seven hundred. I don't know how many there are in Blake's but it's a lot.

AKM: So that was not something that was discussed among you and your legal friends, issues about balancing work and other responsibilities? It wasn't a topic of the day?

JDA: We didn't talk about it much but those of us who were busiest all had the same problem.

AKM: What about Sturgeon Lake? How long have you had that cottage?

JDA: We rented it in 1955 and we bought it two years later, and we've been there every summer since. I was actually brought up at a little village on the shores of Lake Erie, because both of my parents came from that part of the country. My mother was born in Elgin County and my father in Norfolk County next door. We acquired a cottage with money that was left to my mother by her father, a small amount. We acquired that cottage, I think in 1916, and the family was really brought up in that village, the name of

which was Port Bruce. It was a fishing village with summer residents as well. Only a small number of people lived there all year around.

AKM: Is that where your fishing came from?

JDA: Well, they were commercial fishermen with nets out in the lake. I'm talking about fishing off the dock in Port Bruce. We backed onto a river, and we used to fish occasionally in the river, but more often on the dock. Hook and line fishing primarily for perch.

AKM: Your daughters liked fishing?

JDA: Half of them did and half of them didn't.

AKM: When you went to the cottage, did you manage to get away completely from practice?

JDA: Originally, we did not have a phone in the cottage, and that was deliberate as a protection for me. I used to leave the number of a little store half a mile down in the centre of the village. If you phoned there, he would find some kid to bicycle down and say, "There's a message for you at the store." I had to go to the store to make a phone call. That was a form of protection.

But when the girls got of an age when they were staying in the city during the summer, with summer jobs, my wife said, "We've got to have a phone now." So we put in a phone, and I called together five of the young men in the office, two of whom were my juniors, and the others in the summertime did some of my work when my people were away. So I said to the five, "I've finally got a phone. But there are going to be some rules. When you phone me, the first thing you have to do is justify the call, and if I don't like the answer, I'm going to hang up!" The result of that warning was that,

although they put in a phone, it was about five weeks before the first time anybody phoned me! Which was fine.

I hardly ever came back to the city once I got to the cottage. One year, Cyril Carson and Joe Sedgwick, and John Robinette and I made a pact that we would take-- I've forgotten whether it was five weeks or six weeks in the summer--and nothing was going to interfere with that. So we didn't all shake hands, we just agreed on some occasion with a drink in our hands. And we'd all been in our cottages about three weeks when Stafford Smythe, Connie Smythe's son, was arrested, and they phoned John Robinette. John went back to Toronto and stayed there eight or nine days, but Carson and I held firm and Joe Sedgwick didn't work much in the summertime anyway, so he didn't care. But I've had a few clients, who had an ongoing matter that nobody else could handle, because part of it was confidential. I've had clients, groups of two or three or four, come to the cottage and sit on the front lawn and tell me their problem, rather than my go to Toronto even though it was only two hours. So I carefully guarded my summer holidays against all comers.

AKM: Was it hard to go back to the city at the end or were you ready?

JDA: It all depended on the summer. If it had been a good summer, it was hard, because originally, like so many people, we moved out and closed the cottage on Labour Day. It was only after I became a supernumerary judge that my wife and I started staying up through September.

AKM: You mentioned clients. Did you pick your clients? How does the selection process work or how did it work?

JDA: I didn't pick clients, they picked me. I turned away clients if I couldn't find a place to put the time their task was going to require. Naturally, I tried to persuade them to take somebody else in the office. Sometimes that was successful and sometimes it wasn't. But I kept careful account of what I was booked for, and I've already told you that I booked Convocation days as one was gone as far as clients were concerned.

AKM: And your summer.

JDA: Yes.

AKM: So you must have been very good at calculating the amount of time that any particular client or case would require.

JDA: I was better at getting along with clients than I was at estimating how long a case was going to take. In the Texas Gulf case, Robinette and I had each been retained two years before the case actually began at trial. John and I agreed that this case which on paper, at least, involved \$500 million dollars, would like to have it tried by Chief Justice Gale, who was Chief Justice of the High Court or Trial Division. Gale was a former partner of mine but a close friend of John Robinette's because they both had cottages at Southampton, the lawyer's haven. So we went to Gale and asked him if he would take this very important case. Of course he said how long do you think it's going to last, and we said, "About six weeks." The case ended up, as you know, taking 164 days. When we got to end of the evidence, Robinette argued for ten days. I argued for sixteen days. Robinette argued for four days in reply. So the combined argument was longer than most cases in their entirety.

AKM: And you won.

JDA: So you tried your best to estimate how long a case was going to last, so you could fit in some other case at the conclusion of the first one. But we, two very experienced counsel, missed by a mile how long Texas Gulf was going to take.

AKM: So other clients must have been, for instance, frustrated because they were waiting for you to finish.

JDA: No. I realized early on and particularly during the lengthy period of examinations for discovery on both sides, that this was going to be a long case, and as important from a monetary point of view as anything I had ever done, by far. So about six months before the case was going to start, I began turning down all new work. I said to a couple of my partners, "I'm going to have to take the chance on what's going to happen when the case is over: am I going to be in the doldrums for weeks at a time?" But in fact, what happened as the case was coming to a conclusion, I was being offered more briefs than I'd ever had in my life.

AKM: Because of the case?

JDA: No. I already had an established reputation and they would have hired me anyway.

[start of microcassette recording]

AKM: As you say, you took a risk, maybe a big risk, wondering what was going to happen at the end of the case and how long you would be employed. Did your income vary a lot in those years or was it something you could count on and budget for?

JDA: Well, I don't want to talk too much about that aspect of it, but the answer to that question is no. I did the Texas Gulf case on a prearranged per diem basis, and I charged extra for the work I did at night reading the transcript every night, and I charged

for that on an hourly basis. But all of the money I received as fees went into the pot at the firm. It increased the level of aggregate earnings on both of the years that I was involved.

AKM: Did you have a formal written partnership document at that point?

JDA: Yes.

AKM: And had you, from your early days with the firm? Not a partnership but at least some sort of formal contract?

JDA: Well, I didn't become a partner until shortly before Mr. Mason retired, although the name of the firm was changed from Mason Foulds Davidson and Gale, to Mason Foulds Davidson and Arnup, but I was not in fact a partner.

AKM: You won the big case, of course. Did it shape your friendship with Mr. Robinette in any way?

JDA: No.

AKM: Too professional for that. Did you enjoy battling against him?

JDA: Oh, I think we both enjoyed it. We knew each other's methods, which in many ways were similar. I had the advantage of a certain amount of preparation because I had four juniors, but I also had backing of a multi-million-dollar company based in the United States. John was hired by a not-very-big mining company with only a small fraction of the assets that Texas Gulf had.

AKM: Given matched opponents such as you and Mr. Robinette, do you think it comes often down to the resources that are available, in terms of the outcome?

JDA: No, it would be a great mistake to try to isolate any single factor, because the decisive thing after a hundred and forty days was, "Which of two people who had

made the original deal orally was to be believed?” I had a strong feeling, indeed an opinion, that my cross-examination of their man was going to be, if not absolutely conclusive, of very great assistance when we got to the end of the case, and that turned out to be right. The judge didn’t believe him.

AKM: I guess that would be an important thing to assess, in terms of advocacy skills, that sense of believability of a witness – credibility.

JDA: Oh, yes.

AKM: In terms of litigation, and we were talking about discipline last week a little bit, what kinds of perils of the practice of litigation might there be? People in real estate law have certain dangers posed to them in terms of professional misconduct. What area would that threat come from in litigation?

JDA: Well, you have separated [end of minidisc recording; start of microcassette] litigation from professional perils. Real estate was not a great source of litigation. It was a substantial source of disciplinary problems in a whole variety of ways, some of which I will mention when we get down to discipline as a heading of its own. In terms of numbers or volume, there were other aspects of legal problems that were much more frequently in the courts than anything having to do with real estate.

AKM: You mean in terms off discipline?

JDA: No, I mean in terms of civil trials. It’s equally true in terms of discipline. The number of cases that arose because of some mishandling of a civil case such as a motor accident was very small compared to the number of cases that arose through the lawyer investing clients’ money, or being supposed to invest clients’ money, in mortgages, which was very big business over a long period of time. Eventually, the Law

Society had to, one by one, bring in rules that were intended to safeguard clients involved in a real estate transaction.

AKM: Do you think regulation works reasonably well? Do you think there is some other route to protecting the clients?

JDA: No, I think regulation is the best way because it has two prongs, if you like. One is the prosecution of proven misapplication or negligence. But the other acts as a constant threat to lawyers who are considering doing something that is wrong. The threat of disbarment or substantial penalty acts as a deterrent in itself.

AKM: Do you think that often that kind of unprofessional or criminal behaviour is a planned act?

JDA: I think that frequently it is more or less unplanned, and then it works perhaps on a small scale. Then there is the enticement of similar opportunity with much bigger money. Then it becomes a snowball rolling down a hill, picking up size and speed as it goes. Of course, what frequently happens is the robbing of Peter to pay Paul. The first capture of clients' funds by the lawyer may be a relatively small amount. Then there's the enticement of a client who has a bigger-size deposit with the lawyer. The lawyer falls by the temptation and does it on the bigger scale. The simile of snowballing is really quite accurate. The ultimate size of it depends a good deal on what length of time has gone by before the misappropriation is discovered.

AKM: So early detection and the duty to report would be very important in something like that?

JDA: That's correct.

AKM: Because of your position, you've known or been acquainted with many lawyers who have committed unprofessional acts like this. Were you often surprised by the behaviour, for instance, that people that you might have known well have succumbed?

JDA: Absolutely. The discovery of misappropriation of funds is frequently a surprise to other members of the profession practicing in the area, and on occasion, a surprise even to the lawyer's own partners.

AKM: In one of your speeches, I think it was in 1969, or perhaps in another one in 1966, you said, "the heart of the trouble is not merely the occasional dishonest lawyer, but a blurring and lowering of our ethical standards throughout the whole of the practice of law in this province." Do you remember feeling that or thinking that?

JDA: I remember thinking that, and I still think that today. I think there's a ripple effect. People who have no connection with lawyer "X" read in the paper that, for example, he's been arrested for defalcations, and has robbed twenty clients and the total is \$180,000. Other lawyers who regarded the defaulting lawyer with some degree of friendship and respect are stunned that that lawyer has done what he is alleged to have done. But some people who read it in the newspaper who aren't lawyers at all say, "That's lawyers for you!" Others, who have some impression of the standing of the lawyer who has committed these acts, are surprised and frequently their respect for lawyers generally drops a notch or two, although they have no connection with the defaulting lawyer.

AKM: It's a dilemma, isn't it? Because you can't have deterrence without publicity.

JDA: I think that's true. But on the overall picture, I think publicity is a small part of the deterrence. Most lawyers know that theft, even of relatively small amounts of clients' money leads to disbarment.

The defence bar starts looking for psychiatric problems or alcoholism or, in a number of cases in the last twenty years, a drug problem, and the best they can hope for is permission to resign, or in some cases, a fairly lengthy suspension, though I have always felt, and still do, that a sentence of a fairly lengthy detention is really not effective, because if you take a man out of the profession completely for, say, three years, he's finished. He can't start all over again.

AKM: What about reinstatement? A very few people are reinstated. Did you have many instances of successful reinstatement while you were on the discipline committee?

JDA: Very few. I don't remember a specific one but there were some. They were all cases where the original offence was borderline, or was caused by some disability, particularly medicinal or psychiatric, under strong evidence that the lawyer is cured.

AKM: When you say strong evidence, what kind of evidence might that be?

JDA: Professional evidence, usually medical.

AKM: Like psychiatric. Might that in some cases ever be opposed or rebutted by other psychiatric evidence in your experience?

JDA: Yes. In quite a number of cases, experienced discipline defence lawyers, when they heard the story, send the man off to the psychiatrist to see if there's some psychiatric disability that can be put forward as a partial excuse for what happened, and

end up with a suspension, and then later on, an application for reinstatement with evidence of the same nature that the solicitor in question is a “cure.”

AKM: The other day you mentioned Mr. Tilley and his lunchtime flask, although you say you weren't sure what was in it. Alcohol seems to have played quite a bit of a role in many instances of professional misconduct and I know there have been studies by the Bar Association and so forth. Do you think in your time in practice that alcohol was more of a problem for lawyers than for other groups? Was there a particular affinity?

JDA: Well, it's dangerous to generalize on that question, but my opinion would be that it was more frequent with lawyers than say, doctors or engineers.

AKM: Why do you think that would be?

JDA: I really have no idea. Stress is a factor but stress is not confined to the legal profession.

AKM: Do you think it might have something to do with the conviviality and the masculine nature of law at that time, until the 1960s?

JDA: I have to answer that by saying I really have no idea. It is too complicated and too varied in its application.

AKM: You're right. You seem to have steered the shoals of all of these professional dangers quite well. What do you believe that that's about?

JDA: I think, to some degree, lawyers have an ability to distinguish between right and wrong, and that is not quite as relevant and therefore not quite as common in certain other professions. Although I am sure that those members of the bar today who specialize in cases before the College of Physicians and Surgeons – and this is quite a discernible group within the bar – could tell you how frequent this kind of problem is

among doctors. I don't really have enough experience or exposure to have any firm opinion on the subject.

AKM: I'd like you to look at one more photograph. I should have brought this out earlier because it reminds me of this photograph [staff of Oakwood Oracle] too. This is a wonderful photograph of you in 1953, I think it says, with Robinette, and who else is there?



Figure 2 Leaders of the Bar, CBA 1953³

JDA: It is a great collection of leaders of the bar.

³ Photograph donated by J.A. Arnup to The Law Society of Upper Canada.

AKM: Exactly. Leaders of Oakwood [in the one photograph] and leaders of the bar [the other photograph] with you in the middle, looking very young, again.

JDA: [On the left of the photograph,] Edson Haines, who later became a trial judge, had a highly successful practice in Toronto in the negligence and insurance field, and had a very busy office and a very busy practice. The next, of course, is John Robinette, who later was recognized all over Canada as Mr. Number One. On my left, George Mitchell was the leading negligence lawyer in London, had a big practice, and acted for a number of British insurance companies who were insuring drivers in Ontario. He was very highly regarded in England, because when he was on some of these trips of the Advocates Society, he was put up in a posh residential building that one of his insurance clients owned. Mr. Springsteen was one of two or three prominent litigators in Windsor. The last one, of course, is Mr. Arthur Martin, who was fairly widely thought at that time to be the best criminal lawyer in Ontario, and who by the end of his career was regarded as the best criminal lawyer in Canada.

AKM: “Canadian Bar Association Windsor,” you have on the back. Do you remember that day?

JDA: I don’t remember much about that particular meeting. I think several of the people were on some kind of panel, but what it was about, I have no idea now.

AKM: You used to smoke a pipe.

JDA: Yes.

AKM: When did you give that up, or did you?

JDA: Oh, yes. I also smoked cigarettes. I gave up cigarettes on New Years’ Eve of 1960.

AKM: Was it tough?

JDA: Yes. I continued to smoke a pipe for ten years after that.

AKM: What was the etiquette of smoking in your profession, with clients or outside the courtrooms?

JDA: It was treated as quite natural. A large proportion of litigators in particular smoked. You could tell that in the corridors of a morning or afternoon recess, and one of more of the lawyers would be smoking a cigarette out in the corridor.

AKM: What else would you like to talk about today? I've neglected your headings.

JDA: Well, I would like to talk some more about discipline, because I've included under that heading, some topics which I didn't know where else to put them, but they have a discipline overtone.

The first thing I want to mention under that classification is the Mr. Justice Landreville case, which was the most difficult problem that I had to deal with in my three years as Treasurer. I don't intend to say much about it because Mr. William Kaplan wrote a whole book about it that was published by the Osgoode Society. In many ways it's a rather sad story but I'll confine myself to my part in it.

In the fall of 1965, I became aware that a number of benchers were very upset by the evidence that was coming to light about Mr. Justice Landreville and his dealings with the company known as Northern Ontario Natural Gas when Landreville was in practice in North Bay and was also the mayor of the town. NONG, as it was popularly known, had been building a pipeline all the way from Alberta to Ontario, and in the process they were interested in getting a foothold in larger municipalities in Ontario. Landreville ended up

with a substantial holding of NONG shares while he was still mayor of the city of North Bay, and hadn't paid for them. The inference was that it was never intended that he would pay for them. In any event, he was charged criminally with, in effect, bribery, as the recipient of the bribe. There was a preliminary hearing which lasted several days and he was discharged at the preliminary hearing, which is unusual. The rumours beneath the surface continued and in the meantime, Landreville had been appointed a judge of the High Court.

There was a group of benchers who thought the evidence was very strong of improper conduct of Landreville while he was a member of the bar practicing in North Bay. This group was urging me to appoint a committee with a view of eventually doing something about this. I suppose the underlying sentiment was that a man who would do this is not fit to be a judge. In the meantime, I was discussing with Bill Gale, who was the Chief Justice of the Trial Division, what, if anything, should be done, because Gale on his part was trying to persuade Landreville to resign, in the hope that the whole mess would quietly go away. The pressures in Convocation continued, and I did appoint a committee, putting on it a couple of benchers who had been the loudest in their demands that something be done.

AKM: Who would those be?

JDA: Well, one was Mr. Arthur Patillo, whom I made the chairman of the committee, but there were five in all, and all highly reputable lawyers. They brought back a report which, in effect, said, the government ought to take steps to remove him from the bench. There was a recital of facts and the committee also included a demand that the Treasurer send a copy of their report to the Minister of Justice. There was

considerable debate in Convocation on this subject. I was still somewhat reluctant because I had some misgivings about Convocation taking steps to remove a judge, but this was a unanimous committee report and a strong support for that view in Convocation. I then became involved because there was a leak to the press that Convocation had taken this action and the press started hounding me for a copy of the report. I said, "The report has been sent to the Minister of Justice, along with a letter from me, and it's now his letter. The accompanying report, if anybody's going to release it, should be the Minister of Justice. The Minister of Justice was a Québec lawyer who didn't much understand things like Ontario's discipline committee and he was hesitating and being bombarded by the press, but eventually he did release it. The only other part that directly I had to do with this was that the Minister of Justice changed. I had met the Minister of Justice because I had had him to lunch when he was given an honorary call to the bar.

AKM: Was this Mr. Favreau?

JDA: Yes. I met him actually in the Chateau Laurier hotel when I was down on some case or other. And he said, "Have you got any suggestions to make as to who I should appoint to hold an inquiry?"

I said to him, "Very recently Mr. Justice Rand had retired from the Supreme Court of Canada. He's still vigorous and available." I may or may not have said, "but you didn't hear it from me." In any event, very shortly afterwards, Mr. Justice Rand was appointed the commissioner. The rest of the sad story is told by Mr. Kaplan in his book. Landreville got a very adverse report from Rand and then it got to the House of Commons who appointed a committee to hear evidence. Just before their committee was

going to start to hear evidence--in fact they had heard some evidence--Landreville resigned, and ended up practicing law in Ottawa on a sort of part time basis. It's all-told a very sad story, which in my account today, I've confined to my role.

Except that my role, to my astonishment, was the subject of comment in 1970, when the Minister of Justice, under urging from Gale and John Robinette, was about to appoint me to the Court of Appeal. I had been formally asked if I would take the job and I said I would. And then nothing happened. In the meantime I was turning down offers of work, and I couldn't tell anybody why I was turning them down.

AKM: That would be a horrible period.

JDA: It was a very difficult time for me. But eventually, I was appointed. And I learned very shortly afterwards that two members of Parliament who came from northern Ontario - one of them was NDP and the other, I think was Conservative, though I can't imagine a Conservative being appointed at that point from northern Ontario - but they had apparently said to the Minister, "Don't appoint that fellow. He's the one who persecuted Landreville and drove him off the bench."

The Minister of Justice was John Turner and these were two members of Parliament, so he held back while he made some enquiries. I don't know where he made the enquiries but obviously the answer was, "That's nonsense. Arnup was the Treasurer but not the leader in any way of the action of the benchers, apart from doing what he was told by Convocation." So I knew the counsel that was chosen by Rand to be his counsel on the inquiry. He was then in the Ontario Crown Office, but I knew him because he and I curled together.

AKM: Who was that?

JDA: I can't remember his name but it's in Kaplan's book.

And that's my end of the Landreville story.

AKM: You had a lot of things to deal with in your three years. What made that the most difficult?

JDA: Primarily because Convocation strongly wanted to do something that I thought they ought not to do. Then I was hounded by the press over who was going to release my letter.

AKM: More eight-in-the-morning calls?

JDA: Yes.

AKM: Did that have something to do with deciding you wouldn't run for Treasurer again?

JDA: No. My decision not to run for Treasurer again was based on a view which I expressed to Convocation in February of 1966, that three years was too long. The expression I used, and still cling to, was that in three years you tend to run out of steam.

AKM: Would the Landreville affair be the biggest surprise, shall we say, of your Treasurership?

JDA: I don't think surprise is the right noun—

AKM: Probably not, no.

JDA: --but biggest trouble of my Treasurership would be quite accurate.

AKM: Did your Treasurership go the way you had planned or hoped, put it that way?

JDA: Yes, I was satisfied with the direction that we were heading, and we were beginning to realize some of the things that I had said the day that I was elected, although

at least one of them took a decade or more to bring about, which was the number of benchers.

AKM: Why was that a key part of your agenda?

JDA: Because the workload was becoming quite severe, especially in the discipline committee, and I thought should be shared by a wider group. In that initial statement, I suggested that consideration should be given to a figure of forty instead of thirty. Not during my term but later, a committee whose report was debated in Convocation recommended that the number of benchers be increased to thirty-two, which was quite inadequate in my view but I was no longer around. It was a considerable period after that that eventually the number of benchers was increased to the forty that I had recommended in 1963.

AKM: That would have been satisfying.

JDA: Yes.

AKM: Well, I think we are almost out of time. Is there anything you would like to say in conclusion today, Mr. Arnup?

JDA: Well, I can in two or three minutes if I may have that long -

AKM: As long as you like -

JDA: --to deal with legal education, which was the least controversial of the things that I had to deal with until the end of my term. We had had an unfortunate experience with trying to replace Caesar Wright as dean, and had ended up hiring Smalley-Baker from one of the smaller universities in England, after we had sent two benchers over there to find somebody. Smalley-Baker did great things towards morale of the students in the law school; he invented the phrase, "the first legion, the second

legion,” and so on, and the deputation of the graduating class. But he was a poor teacher, and he was lecturing in two or three subjects. Long after my term was up, but I was still an active bencher, Mr. Carson was part of a small group who thought Smalley-Baker ought to be relieved. (That helps the time frame: this is before I was Treasurer.) Carson sent for Robinette and me, and all three of us agreed that the Dean ought to be replaced, at which point Carson said, "Fine. You two go and fire him." We objected, and said we thought it was a job for the Treasurer, but the Treasurer, who was Carson, said, "I want you to do it." So we did. We had actively offered him a package which he accepted. But the reason that legal education for many years was not a problem, because during all my term, and during the following term when Brendan O'Brien was Treasurer, the chair of legal education was Bill Howland, who was a very hard-working and able bencher. And his vice-chairman was Sydney Robins, who had been a part-time teacher at the law school, and a bencher for several years, and eventually, of course, a Treasurer too. Plus the fact that when we fired Smalley-Baker, I recommended, and there was unanimous agreement, that Allan Leal should be appointed Dean in his place (he was the Vice Dean). So legal education, which originally ran the law school, and then ran the law school and the bar admission course, was in good hands and it didn't bother the Treasurer very much at all. Until towards the end of my term, we had built a new education wing under Carson, but we had been receiving estimates of the future number of students in the bar admission course because the agreement of 1957 had led to the founding of law schools in Queens, Western, then Ottawa, and finally, Windsor, and of course, the University of Toronto, the very first one, plus the Osgoode Hall Law School. We decided that we couldn't handle the numbers even with our new building. In the

meantime there had been quiet representations that the rapidly growing York University would welcome a ready-made law school, and there had been hints that if the law school went there, they would build a brand new building for the law school itself alone.

Finally, I talked to my two trusted advisors, Robinette and Joe Sedgwick, and said, "I think the time has come when I should indicate willingness to talk about sending the law school to York and of course keeping the bar admission course." They agreed that that was the sensible thing to do. So on a Sunday night I phoned the chairman of the board of York, whom I had never met. He was a very prominent politician, and a very good one. He came originally from the Maritimes. I went to see him on a Sunday night and said, "We're willing to talk." He thought that was wonderful news. No doubt he made some phone calls before he headed for the airport.

Then, I had to break the news to the faculty. I called them together to a meeting in Convocation Room. There had been some rumours over the two or three years that York was very keen to have us. So I called this meeting together and in an attempt to be my most persuasive, I told them why we were doing this. The atmosphere in the room was absolutely electric. You could feel it in the air.

AKM: Were you surprised?

JDA: No. So the result was that the law school did go to York, where it has been very successful, and by far the biggest law school in Canada. But Allan Leal, the dean, decided he was not going to go, but he wasn't going to go anywhere else either, and he accepted a position as vice-chairman of the newly created Law Reform Commission. Three members of the Osgoode faculty, it may have been four, obviously had already been talking to Caesar Wright at the University of Toronto Law School, and they went

there, and the rest of the faculty went to York in their new building. But the short summary of my work with the legal education committee, apart from the fact that pre-Treasurer, I had been vice-chairman and then chairman of that committee, and very interested in what went on, the law school side of it was virtually running itself under the guidance of the Dean and Bill Howland, and any problems that I had to deal with were minor problems in the bar admission course. My role in solving the problems, which were problems in staffing, was to go to the senior partner of three or four Toronto law firms, sell them on the idea that the bar admission course was very important, and that I wanted "Mr. A" off their staff to be a part-time instructor or the head of a course. I never got one turn-down in six or seven visits of that kind. But, for an organization which was becoming increasingly large, namely the Law Society, legal education was one of the least of his [the Treasurer's] worries. That's all I need to say about legal education, subject to questions you may have at a later date.

AKM: Thank you, Mr. Arnup.

ADDENDUM

Notes from Meeting with J. D. Arnup, 28 June 2004

Mr. Arnup and I reviewed a number of the photographs he was giving to the Law Society of Upper Canada.⁴ About the *Oakwood Oracle* staff photograph, Figure 1 above, he commented that the subjects were “a pretty bright group, with lots of talent.” The *Oracle* women were also attractive - he dated three of the four in the photograph. Grace Cowan (second row, fourth from left) covered women’s sports for the yearbook and married Bruce Crocker. Peg Lipset (second row, second from left) married a university classmate. Helen Dingle (second row, third from left) invited Arnup to her sorority’s formal dance, for which he had to acquire white tie and tails.

Arnup made life-long friends of Gordon Davidson (back row, third from left), Hal Tidman (front row, last on right), and Donald Hutcheson (back row, third from right), all of whom went on to Victoria College at the University of Toronto, as did Arnup. He also knew something of the later lives of several of the others in the photograph. Thinking of what happened to his classmates in the photograph reminded Arnup that as the class valedictorian, besides telling “lies about how much we all enjoyed school,” he had spoken on “what a great future we all had.” He remembers that the first year after graduation, in 1928, prospects indeed looked rosy but the next year in October the stock market crashed.

⁴ See Appendix.

TRANSCRIPT – JOHN DOUGLAS ARNUP

Interviewee: JOHN DOUGLAS ARNUP

Interviewer: Allison Kirk-Montgomery,
for The Law Society of Upper Canada

Interview Date: 3 June 2004

Location: Don Mills, Ontario

Length and Media: Approximately 118 minutes in one minidisc recording.

Transcribed by Allison Kirk-Montgomery, 29 July 2004.

[Start of recording]

AKM: Well, Mr. Arnup, perhaps we could begin by discussing legal aid in your term as Treasurer, or would you like to start before that?

JDA: I would like to add a few things to what I have already said about legal aid. There was what one might call a form of legal aid before World War II, but it was an activity of the then-sheriff, whose name was Lieutenant Colonel Conover. Because there was a good deal of eviction work going on carried out by his men, he became aware of the substantial number of poor people who needed legal advice but had no way of getting it. So he asked four or five young lawyers, of whom I was one, to come to his offices on Monday nights, and in effect, conduct a legal aid clinic, but on an individual basis. I use the word "offices" because the sheriff at that point had a suite of four or five offices so

there was space for four or five lawyers to conduct, simultaneously, meetings with people who turned up.

It was, of course, completely voluntary on our part and it was not called legal aid. The expression "legal aid" only became in common usage after the war.

AKM: What was it called, Mr. Arnup?

JDA: It didn't really have a name. It just had an enterprise. Then after the war, the Law Society did, in fact, have a legal aid programme. Most people don't know that, or those who did remember it have long since forgotten it. But we had a Legal Aid Committee, and Earl Smith was the provincial director. He of course was also the Secretary of the Law Society, which gives some indication of the amount of work the legal aid aspect of his work took, namely, not a lot. But he did organize a programme in almost every county, usually asking the local registrar of the court to act as county director, and virtually all of them agreed to do this. Everybody was surprised at the demand for this service once it was instituted. Although they should have not been surprised, because with this kind of enterprise, it's a known fact that you don't really know the demand for it until you set it up and make it available, and then clients sort of come out of the woodwork, and take advantage of the new system.

AKM: What kind of services did that system provide?

JDA: They gave advice. It was our own self-imposed rule before the war that we would not act for the people to whom we gave free advice. I don't remember whether there was any instruction on who would be eligible. I think it probably varied from county to county. Anyway, my role which I have already talked about, in going to the Attorney General and with him going to the Premier, was not as the founder of legal aid

in Ontario, which already existed, but to persuade the government of Ontario that the time had come when legal aid in Ontario should be funded by the government. And in essence, the proposal I made to the government was, “You pay for it and we'll run it.” And that was what was acceptable. I will mention a little later on the occasion on which I made public my assessment of the need for the situation, which was first made by me, publicly, at the opening of the courts in January 1964.

Finally, on legal aid, I want to specifically mention certain people who before the provincial plan were both very active in the voluntary plan. They were Isadore Levinter [and] Mr. W. B. Common, who was the Director of Public Prosecutions and later became Deputy Attorney General. And then Bob Reed who was the assistant secretary of the Law Society and invaluable to us. He was an excellent draftsman. When the government agreed to a joint committee, half appointed by the government and half appointed by the Law Society, I appointed Bob Reed as the secretary of the committee and he had a lot to do with the writing of the eventual report of the joint committee.

One of the earliest debates in Convocation on the subject of legal aid took place on my very first Convocation, namely, who should be eligible to receive legal aid, which, put another way, raised the question, “What should be the limits of the assets and income of the recipients?” As a small side note, the Committee already had decided in October 1963 to have a look at the English plan for legal aid which had been in existence for a number of years. Those are the additions I wanted to make to legal aid, and perhaps we could move now to the role of the Treasurer at the opening of the courts.

AKM: I have a couple of more questions about legal aid.

JDA: Yes.

AKM: The first is -- you mentioned the debate in Convocation about eligibility and limits. Can you tell me your opinions on that at that time and whether or not they have changed?

JDA: The rules for eligibility changed a number of times, the amount you were allowed to make or have, constantly increasing. It was the same kind of exercise that was going on with respect to the compensation fund: namely, experience had shown that the original limits were too low, and excluded too many people. And my views were the same as those of Convocation. And increases that were made were not tied to inflation; they were tied to our own best judgment of who was a poor person, in effect, or a person who, while perhaps owning a house, didn't have enough income to pay a lawyer, but could pay a modest amount. My views were the same as those of Convocation.

AKM: Thank you. Mr. Levinter you mentioned as being quite important in the early days of legal aid. In your opinion, why would he have got involved? Was it his background that made him aware of need?

JDA: I think strictly matters of conscience. He had been a very successful trial lawyer and decided that he wanted to pay back to the profession some of what in his view he owed it. But it was a question of character and belief, and he was dedicated.

AKM: These would be some of your reasons for being involved too, I am sure.

JDA: Well, I would like to think so.

AKM: Yes. All right. In fact, as you mentioned earlier, legal aid came into the court speeches that you made so shall we move on then to the opening of the court speeches?

JDA: Yes. Like so many other procedures and customs in Ontario, the creation of a formal opening for the courts really came from England, which had had it for almost a century and it was a very colourful proceeding in England. The judges in their dress robes paraded to Westminster Abbey on the first day of the Sessions, but in England the court year had three sessions and they did it at the beginning of each one. My recollection is that the one in October was the most colourful of them.

AKM: Did you see it?

JDA: I saw it myself in October 1954, when I was in England to appear before the Privy Council. But the individual who was most responsible for its inauguration in Ontario was Chief Justice J. C. McRuer, the Chief Justice of the High Court. The function was held in Courtroom Three, in the old City Hall, which was the largest courtroom in Toronto. This of course was long before the construction of the new courthouse. The role of the presiding judge was occupied by the Chief Justice of the High Court and not the Chief Justice of Ontario. That changed later on.

Chief Justice McRuer should get the bulk of the credit for inaugurating the ceremony and organizing it. I think he had some role, although others were also involved, in the holding of a church service on the same day at 11:30 in the morning. An anonymous donor gave to the society an amount of money which it was thought, the interest on the money would be sufficient to pay the modest expenses involved, which consisted primarily of the printing of the order of service. The order of service annually carries a note as to the source of the funds and describes the donor as "anonymous." I'm pretty sure I know who the donor was but I won't tell you. He's -- he or she -- is no longer with us, but the fund is of course still in the hands of the Law Society.

At the very first function, Chief Justice McRuer decided to treat it as his address to the grand jury. Grand juries, of course, have long since disappeared from the legal scene, but at this time they were very much in evidence. The Chief Justice made sure that the Sheriff rounded up the grand Jury and had them present to hear his address. He was the only person who spoke at the first few. Incidentally, I was at them all, for at least fifteen years, even when I was a member of the junior bar and had no thought of one day being a bencher. I was just a barrister who was interested in the Service.

Well, the attendance from members of the Bar was poor. One of the features of the opening of the courts, from day one, has been the small number of lawyers, mostly from downtown, who attend the church service. The Treasurer of the time thought that he should always be there and the Secretary with him, and he tried to get substantial number of benchers, without much success.

AKM: Do you remember which Treasurer that was?

JDA: Yes, Cyril Carson.

AKM: There is one amusing side note. Cyril Carson got the Secretary, Earl Smith, to send a notice out to all benchers, that the Treasurer thought that benchers should wear silk hats to the church service. When I got this, I phoned Earl Smith. The service was going to be at Metropolitan Church, which is on Queen Street at Church Street. I said to Earl, "There is no way I am going to, at noon, go through the streets of Toronto wearing a silk hat." So he chuckled and said, "Well, you'd be in a limousine." I said, "No, I won't. I'll be walking along Queen Street to the church and wearing my usual hat."

Well, McRuer made a decision in two matters with respect to the church service, with respect to the opening of the courts. The first was, that there still were not enough people attending. So he ordered the Sheriff to see that the entire jury panel, which did not include the Grand Jury, but was in size, perhaps, four times the size of the Grand Jury, should be ordered to turn up for the opening of the courts, to guarantee a respectable audience. I'm not sure of the year in which he also decided that he should invite the Treasurer and the Attorney General to come to the formal opening and to address the Court.

Mr. Carson was puzzled as to what the Treasurer was supposed to say at a public function like this. He didn't think it was appropriate to discuss the internal workings of the Law Society and what they were up to. So he decided that the Treasurer's role should be primarily to thank the judges for their hard work and praise them. With respect to his successors as Treasurer, he passed along that advice, including passing it along to me. It was rather a meaningless function on the part of the Treasurer. If the Treasurer had recently had occasion to have a trial before a judge who was somewhat below the standard of most of them, which was reasonably high, he made his little speech with tongue in cheek.

The Attorney General didn't turn up. And after a number of years, some Attorneys General sent their deputies to attend the opening. That was after the Chief Justice had decided that he would call on the Treasurer and the Attorney General. Of course, over the years, and particularly when Gale was the Chief Justice, the practice grew of inviting the head of all the legal organizations in Toronto: the Bar Association,

the Women's Law Association, the Criminal Lawyers' Law Association, and so on - invite them all to be present but not to have anything to say.

I'm not sure exactly when it started but the invitation goes to the Minister of Justice in Ottawa. He or she normally sends his or her deputy who is called upon to speak and virtually always does. Ian Scott, when he was Attorney General, used to turn up in person. Because part of the address at the opening by the Chief Justice was always a complaint that the courts were being treated badly financially, and the Attorney General Scott turned up to say, "We're actually doing pretty well by you!"

The function has changed somewhat because of the dramatic increase in the number of judges. Under McRuer, I think there were twelve judges of the High Court for the whole of the province. Originally, the Court of Appeal was not invited but, by the 1950s, the latter part of the 1950s, two things happened: the Court of Appeal judges were invited to join the High Court judges.

AKM: Who would have invited them?

JDA: The two Chief Judges undoubtedly consulted with each other, because the second thing that happened was that the Chief Justice of Ontario, at some stage that I can't pinpoint as to time, took over the chairmanship of the affair. But the first and primary speech was made by the Chief Justice of the High Court, although increasingly the Chief Justice of Ontario has also made a speech. One thing that is fairly new was inaugurated by Chief Justice Howland, which has become a part of the day's ceremony. And that is that the Chief Justice holds a press conference in the morning of the day of the court opening, before he heads off to church, and I believe that that has continued under subsequent Chief Justices of Ontario.

AKM: So the order of events is, the opening of, and then the press conference, and then the church service, or have I got that reversed?

JDA: No, the press conference is in the morning, the formal opening is at 3 o'clock in the afternoon.

AKM: And the church service in between.

JDA: Yes. The judges wear their gowns to the church service, which is an impressive part of the day's ceremony, and of course, in today's world, there are six or seven clergy of whom three or four take part in the church service. The practice has grown of the church service being in a different place each year, all but one in one of the downtown churches. The one exception was Yorkminster Park Baptist Church at Yonge and Heath Streets. But the speech at that affair of the Treasurer is an important function on his part or her part, because the Treasurer doesn't get too many chances to make a speech to a large collection of judges who are all there because it's part of the protocol that that's one place the judges have to go.

It was at a formal opening of the courts in the old City Hall that I ended up making my announcement with respect to legal aid.

AKM: You did not take Mr. Carson's advice.

JDA: No, well - I said my pretty things first of all, and then I went straight to legal aid. I remember one sentence in particular in describing the funding. I said, "We've gone as far as we can go." And then, there was a pitch that this should be a governmental organization as far as funding was concerned. This made all the Toronto newspapers the next day. Within a week, the Premier announced that the government was prepared to fund legal aid and that he recommended a joint committee with the Law

Society to formulate a mechanism for running legal aid. Of course, this was not a difficult thing for the Premier to do, because he'd already told me that he was prepared to do it! But I had not announced this anywhere, and neither had he.

AKM: Did the Premier know you were going to make the speech to that effect?

JDA: I don't know but I would think that he was not a bit surprised that I did make it. I don't think I told him that I was going to make it.

AKM: So that was a very important speech then.

JDA: Yes.

AKM: You mentioned that you were speaking to the judges. Was their interest in legal aid affected by the speech? Did they know what was going on?

JDA: I have no basis to know the answer to that question.

AKM: Were you the first Treasurer to use the opportunity in that way? the opportunity to make a public statement about Law Society goals and achievements?

JDA: To be perfectly frank, I have no memory of what my predecessors had to say on that occasion, apart from what I call the pretty little things in praise of the judges.

AKM: I am going to try to find in the newspapers if there is any coverage, but I am sure there won't be much if that was so. What did you wear, during the fifteen times that you went? What did you wear and the other members of the bar wear?

JDA: All the usual court regalia.

AKM: Did anyone wear a silk hat that day?

JDA: I doubt it.

AKM: And what about the attendance? Did attendance by the members of the bar grow?

JDA: No. If anything it is worse than what it was ten years ago.

AKM: Do you think it is an important function other than the function for the Treasurer? Do you think it is a useful function?

JDA: Well, I think so. On the other hand, I have a certain bias in the matter because I am a faithful church-goer and regard this as a valuable adjunct to the overall work of the church. It is completely ecumenical. The function has been held in Jewish tabernacles, with Jewish preachers. It's participated in by a representative of the Catholic Church, but to the best of my memory, the service has never been held in St. Michael's Cathedral. I don't recall the Archbishop ever being there but he usually sends a monsignor to join the clergy.

AKM: What church do you attend, Mr. Arnup?

JDA: I attend Lawrence Park Community Church, which is the United Church of Canada, which is not surprising since my father was a moderator of the United Church.

AKM: Do you have anything else to say about the opening of the court speeches?

JDA: No.

AKM: I think the Treasurer will be delighted with that information. Thank you.

Now, I have lost my list. Legal education, I believe, is that correct?

JDA: Yes. [pause] I have already said that in my three-year tenure of the office, apart from a couple of matters, legal education ran pretty smoothly, especially after we fired Smalley-Baker and appointed Allan Leal as the Dean. From the benchers' point of view, for a substantial number of years, the chair was Bill Howland and his vice-chair was Sydney Robins, and each of them became a valued Treasurer in his own right. So,

while they of course reported monthly to Convocation, crises were virtually unknown in that era.

The relations with the universities had uniformly been good, which was not surprising since I was one of the three members of the little group who put down on paper the agreement that enabled universities who wished to do so, to create a law school. The University of Toronto, of course, already had one, not called by that name. It was called the Faculty of Law, and the dean during my term was Caesar Wright. After the agreement of 1957, Queen's established within a year their law school. And they were followed in turn by Western. The University of Ottawa already had a civil law school, in effect teaching the combination of English and French law. Windsor was last in line. A couple of other universities had been great supporters of the idea and considered establishing law schools, until the monied people sharpened their pencils and figured out what was involved money-wise, so there have been no new law schools since Windsor was established.

[pause]

We used the provision in the Law Society Act that came into force as a result of the 1957 agreement, which in discussing the powers of the Law Society, used the expression, "and to grant degrees in law." We still operated a law school as well as the Bar Admission Course, and its graduates were given the degree of LLB, which was the common undergraduate degree in other law schools. But we also decided, during my time, that the expression "grant degrees in law" enabled us to grant honorary degrees, as well as the degree of LLM, or master of laws. At that time, we didn't have many candidates for the LLM. It has since become quite a big deal at the Osgoode Hall Law

School of York University. In my time, we gave LLDs, the first one being to Mr. Justice John Cartwright who had been appointed to the Supreme Court of Canada. We granted that one in June of 1963.

AKM: And he was a matriculant if I remember?

JDA: Yes, he was one of the soldiers who came back and took a specially organized course shorter course than the regular course, and a lot of the returning soldiers took that course. Some of them had one year under their belt already. Others took the course from scratch. Then, I as Treasurer conferred the degree on Chief Justice McRuer, and on Parke Jamieson, long-time bencher and former President of the Canadian Bar association, and with me one of the three negotiators. In 1965, we gave an LLD to an American professor Scott, world-renowned expert in the law of trusts and author of the textbook on the subject.

AKM: Was he teaching in Canada at that point?

JDA: No, but his book was recognized and widely used in Canada.

The biggest event in legal education in my time I've already said something about, and that was the move of the entire law school to York University. I believe I have already dealt with the fact that the faculty was split. Some very good teachers went to the University of Toronto. A number of other very good teachers followed the law school to the campus at York University, who had carried out their part of the undertaking by building a complete new building housing only the law school and its library and offices and so on, which is still the home of what is called the Osgoode Hall Law School of York University.

Bill Howland and I were responsible for a clause in the agreement with York that at any time for any reason, we could withdraw the name Osgoode Hall Law School and that provision is still in force. But as the law school part of York University, its reputation is good and there has never been any idea of withdrawing the name that we gave them to use.

AKM: During the early years of the law school at York, the Parkdale legal aid clinic and so forth, was there some feeling among Convocation that the name should be returned?

JDA: No, I don't think that anybody has ever seriously considered withdrawing the name.

AKM: You must have been rightfully, very delighted at how your legal education contribution developed.

JDA: Yes, I'm quite happy about it, still.

AKM: Have there been unintended consequences, developments that you had not foreseen in the change to university education?

JDA: I don't think there is anything that was a surprise to us. The Osgoode Hall Law School under our jurisdiction was much the largest law school in Ontario, and indeed for many years the largest law school in Canada, and the quality of its teaching has been excellent, almost from the beginning.

[pause]

Are you ready for my few notes on miscellaneous?

AKM: I can't wait. I've been in suspense on those [laughs].

JDA: These are not related one to another, but they are not without interest as I said earlier.

AKM: I am sure not.

JDA: In September 1963, which is in my regime, the question was raised about the Law Society creating its own standard, namely a flag, and its own coat of arms, which we didn't have. One of the big proponents of the flag was Smalley-Baker who was still with us. The coat of arms, which was approved in September of 1963, was originally drafted by Kenneth Jarvis, who was still a deputy secretary, but a talented artist in his own right. And the standard flies whenever Convocation is sitting, on a flagpole in front of the benchers' entrance.

AKM: Who designed the standard?

JDA: I think there were three or four people had a hand in that. Who the outsiders were I don't recall. Oddly enough, one of the people who was very interested in the subject and made a useful contribution was Smalley-Baker who of course had been born and raised in England where even secondary schools had their own standard.

One thing that I found interesting in the light of subsequent events: in April of 1966 a motion was passed that there be a review of the "business of Convocation."

AKM: What does that mean?

JDA: It meant the procedure at meetings, the appointment and scope of the work of committees. It seems that about every ten years, some bencher looks at how things are being done and suggests a review and there was an intensive review three or four years ago. This invoked the advice of an American expert on the subject. One of the things that constantly comes up is, "We've got too many committees," and the first thing you

know, the committees have been reduced to maybe half a dozen. We have about seven or eight organizations that we now call task forces - and I think that it is as complicated as it ever was! It may be that there is no answer to the question.

AKM: I think committee structure was one of the items on your agenda when you became Treasurer, was it not?

JDA: Yes, and as I say, it seems to rise about every ten years, and it has recently risen again.

Then, going back to the nineteenth century, the practice of law in Ontario was carried out by solicitors and separately by barristers, and some people were both, but there continued to be, right up until the 1960s, a category on the books of the law society called "barristers only." During my term of office, it was decided that there should be no more category called "barristers only," who incidentally paid a smaller fee than "barristers and solicitors," which practically everybody else was. Some of the "barristers only" had actually been called to the bar in England and then came to the Bar in Ontario.

One subject which keeps cropping up, or did keep cropping up, was the number of benchers. I raised it in my opening remarks in May 1964. In January of 1964, the subject was raised by other people. I had recommended that the number be increased from 30 to 40.

AKM: You were concerned about the workload?

JDA: Yes, right, especially on the discipline committee. It took another forty years to get the number increased to 40, because when action was finally taken back in the earlier days, the number was increased from 30 to 32!

Then, Convocation struggled with the question of who could appear in the Divisional Court, now known as the Small Claims Court. An attempt was made that only lawyers and law students could appear there. But that did not pass, because in summary prosecutions, agents had been allowed to appear for half a century, and they were also allowed to appear in Divisional Court, in cases in which were not appealable because they were, at that stage, less than a hundred dollars involved. That limitation, of course, long since disappeared.

Then the proposition that the Law Society should give an LLB -- this was post-1957 -- should give an LLB, to those whose only degree so-called, was Barrister-at-Law. This was raised in April 1964. It did not pass, but many years later, York University offered to all of the graduates of the Osgoode Hall Law School who had not received an LLB the opportunity for what I call a free LLB, and the number who accepted was more than a thousand.

AKM: A high proportion?

JDA: A high proportion. I declined the honour. Personally, because when I was in law school, a small number, three, four, six, graduates of the University of Toronto Faculty of Law had received an LLB as a post-graduate degree, and they worked for it as a result. I didn't think it was right that contemporaries of mine who had earned an LLB should now be joined by several hundred who had not taken any special courses to take an LLB. In addition to that, at the time that this was offered, I already had from York an LLD! So I wrote the Dean and said thanks but no thanks and told him why.

AKM: Were there many like-minded with you?

JDA: I doubt it.

AKM: I doubt it too.

JDA: Then as a matter of interest, the creation of trusteeships for lawyers who became ill and virtually abandoned their practice was inaugurated in November 1964, and still exists and has become quite a department in the Law Society.

AKM: Can you describe that programme for me?

JDA: No, it's set out in the statute, the most recent revision of the statute. It is intended to look after a practice where the lawyer becomes ill or just simply disappears, leaving a bunch of clients stranded. It's primarily a winding-up operation. But it has several people working on it in the Law Society in present times.

AKM: Did you say you instigated it?

JDA: No. I don't know who did, but undoubtedly it arose through a committee, and it passed in November 1964.

As a matter of interest, in October 1964, the fee to be a member of the Law Society was increased from \$50 to \$75! [laughs] In addition, there was a separate fee for the compensation fund, which was a hundred dollars, more than the fee to be a lawyer. And on the statistics side, in I think it was June of 1964, I called to the bar as Treasurer, lawyer number 6000. Now, of course, we are knocking on the door of 32,000.

AKM: Do you think that's too many?

JDA: I don't have enough time or live long enough to get involved in that argument. It keeps cropping up in Convocation but never gets much support.

Then one thing that seems to happen every so often in the affairs of the Great Library is that some of the older textbooks, long since out of print, but still from time to time referred to go, go missing. Somebody takes it out, and of course, while they have

several times as much security as they used to have, even now, books, to use a blunt term, get stolen.

Then one thing ---

AKM: I thought you were going to confess! [laughs]

JDA: ---one thing that is interesting to me, at least: in January of 1964, the Professional Conduct Committee, with the subsequent approval of Convocation, gave an opinion that it was appropriate for a county law association to have a county tariff of fees. In the 1990s, the appropriate senior official of the government of Ottawa ruled that it was illegal. Those various counties which had a tariff of fees, and a great many counties did, [had to change].

When I used to go out to speak at a county meeting, even before I was Treasurer, one of the things that was always happening at meetings was a complaint that a certain lawyer, name hardly ever given, was breaching the tariff. The tariff was imposed for the county itself and was not the same in all counties. Its primary function was a real estate tariff, which is the easiest thing to cut. The Law Society then accepted the opinion of the Director of Competition in Ottawa and notified all counties, "You can't do this anymore."

AKM: What is your opinion on tariffs, their appropriateness and workability?

JDA: I always thought it had a huge question mark over it. One of my specialties was competition law, and I never got involved within a county, in a debate over the subject, which was just as well, as it was sure to antagonize some people.

[Telephone call interruption. Recorder turned off and then on]

JDA: One subject that I have not touched on was a proposal by the Ontario government which originated with some fairly senior people in the Department of Public

Works, and involved the construction on the west lawn of the Osgoode Hall property of a nine storey building. As you undoubtedly know, the Law Society owns the driveway and the lawn to the south or in front of the driveway, but the government of Ontario owns the west lawn and the fence on the University Avenue side. Without going into detail, they own half of Osgoode Hall. Space was getting very tight, and even with a new courthouse, the powers that be at Queen's Park decided there should be a new building.

To the surprise of the benchers, Chief Justice Dana Porter, who of course had been a former politician, both Attorney General and Minister of Education, was a supporter of this project. Well, it was a joint committee with respect to the new courthouse, about which there was no objection, and members of that were Cyril Carson and myself, and Brendan O'Brien, and I can't remember who else. We were very upset by this idea of our beautiful long-standing building, regarded by many as the most beautiful building in downtown Toronto, going to be overshadowed by a nine-storey building on the west lawn. Carson in particular was furious! He had been the chair of the new courthouse committee, which had been a complete success. There is no other way to put this, except to say we raised hell! [laughter] We didn't stop raising hell, and eventually we succeeded and I may be wrong about this, but I think we succeeded because we went back to the people in Public Works who were keen about this, and persuaded them it was a mistake. And since the government had acted on their recommendation, and they had changed their mind, we eventually persuaded the government to change their mind. The Minister of Public Works was not a lawyer and didn't really understand the courts or lawyers, and was the most difficult person to change as far as opinion was concerned. Eventually the project was killed.

In 1970 to 1973, we all cleared out of the government side of Osgoode Hall, for a complete renovation, including air conditioning the whole half of the building for the first time. I had been appointed in 1970, occupied an office in Osgoode Hall for one month, and then moved across the street to 145 Richmond Street, where I spent the next three years. But we came back to a highly satisfactory and in many ways beautiful building. It is a part of our history that I'm pretty proud of. No doubt you will hear more about this from Brendan O'Brien.

AKM: And what about Chief Justice Porter? What did he have to say in the end about that?

JDA: He reluctantly changed his mind. I think the biggest influence was Cyril Carson who had been Treasurer for seven years, and subsequently chairman of the new courthouse committee. Porter didn't find it difficult to agree with Cyril Carson who was a hard man to disagree with. And that concludes my miscellaneous list and we are now up to your miscellaneous list!

AKM: All right. I have a couple of legal aid questions. Do you know what has happened to legal aid, in that its management has been removed from the Law Society -- do you think that was an inevitable development?

JDA: When the Society had an open meeting of Convocation to which we invited representatives of the various legal organizations, I made a speech in favour of the latest proposition. The reason that I did so was because if we didn't accept the latest proposition, which did give us some limited power of appointment of the people in control, I was satisfied that government was going to say, "We're through trying to make a deal with the Law Society." The discussions had been going on about two years.

“We’re just going to take it over. We’re tired of talking.” And I think it was a real possibility and a fearful one, and I was in favour of the present system, as much the lesser of two evils.

I would have preferred the old system, with some modifications. The time that these discussions were going on, I was a back row bencher and did not speak very often, but I did speak on this. On the general subject of legal aid, I had spoken twice. I made the speech that seems to have had a wide circulation -- a speech in Convocation, about legal aid. Then, I guess it was two years later, I made a speech at the open session supporting the proposition for the reasons I mentioned.

AKM: You mentioned agents working in the divisional courts and small claims courts and the issue of tariffs. What do you think about the Law Society and paralegals, now that the Law Society is probably going to be responsible for regulating them?

JDA: The whole subject of paralegals is a difficult one and I have not studied it intensely. It is of course a fairly recent solution. My first reaction, not expressed in Convocation, with respect to the Law Society being put in charge of drafting and enforcing regulations affecting paralegals was, “They want to appoint a fox to look after the chickens!” [laughter] Because complaints about activities of paralegals comes almost a hundred percent from lawyers. I personally would have preferred an independent board with the Law Society having the power to appoint at least half of them, and maybe even a majority of them. An independent board – that did not happen, and I will await the result with great interest. It is a very difficult assignment, I think, because there are good paralegals and there are poor paralegals, and they are all wearing the same hat.

AKM: Regulation is a tough job anyway, isn’t it?

JDA: Yes.

AKM: You left Convocation when you became a Court of Appeal judge and you came back in 1985.

JDA: Yes, although I wasn't active in Convocation when I first came back, because I was busy writing a book.

AKM: About Middleton.

JDA: About Middleton.

AKM: Did you enjoy that process?

JDA: Yes, very much so. I've always enjoyed writing and I've always enjoyed research. I became embroiled in some very interesting research in quite unexpected places.

AKM: In the writing of the book?

JDA: In writing the book. I discovered, for example, that in the basement of the City Hall, there is a collection of, if not all, a great many Mite directories, which all downtown law offices have always bought as a source of information. I wanted to find out things like where the Middletons lived, and so on, prior to 1900. Mr. Justice Middleton's family, for example. Eventually I learned that in the basement of the City Hall, there was an untapped source of information. I did the usual sources. I did some work in the Ontario government archives on Grenville Street, where, as a result of five or six hours work, I may have picked up as much as a whole page for the book!

AKM: You don't need to tell me that!

JDA: Yes.

AKM: Speaking of sources, when I read your earlier transcripts, and I think in Middleton, I read about your notebooks of cases, in numbers of volumes, that you used to keep. Do you still have those?

JDA: No.

AKM: What did you do with them?

JDA: I had it in my house for a number of years and found that I had never looked at it. I think, underline think, that I gave it to somebody, but I can't remember who.

AKM: That would be a fascinating source for anyone. Did you ever keep a scrapbook of your press reports or of anything of interest?

JDA: No. The notebook was based strictly on law reports.

AKM: I bet you used them very much at the time.

JDA: Yes, I found it very useful and it is interesting: two or three judges of the Court of Appeal, who were judges at the same time I was, used to drop in and say, "Have you got anything in your notebook about so-and-so?" I would get the notebook off the shelf and we would work together in seeing if there was anything useful that he could use.

AKM: When you came back to Convocation more regularly after you finished Middleton, did you find a great change?

JDA: Well, it was partly facetious, but I got asked that question a lot. My answer was, "The faces are different but the speeches sound the same."

AKM: Do you think that is still true twenty years later?

JDA: No. And since I put no restrictions on the work that you are doing, I'd just as leave not comment on the present Convocation, which, from my point of view, involves the necessity of commenting on certain individuals, and I don't want to do that.

AKM: If you ever did want to have a closed session, we could do that.

JDA: Well, yes, I'd be prepared to talk in a closed session.

AKM: We could arrange that for next week, if you like. You can think about it and I will phone you.

Well, legal aid – so many changes have arisen in the profession and the court system as a result of legal aid. Would you like to comment a little bit further on that? The view from the bench, too, on that?

JDA: Well, I've been completely away from the practice of law and while I still read the Ontario reports, I read as a matter of interest and not for the sake of educating myself as to what is going on. I find when I look at who the counsel were in a particular case, I don't know more than about five percent of the names. So I am really not close to the practice.

I was offered after I retired, indeed before I retired, the same kind of deal that a number of judges, the latest being John Morden, have accepted. That is, become father confessor and advisor in a big downtown law office. My old firm would have loved to have me back and offered me amenities that would have been very attractive if I were interested in the idea.

But while I never have had any close friends at the English bar, I have always had in my own mind feelings the same as the English bar – which is that when you retire you are finished. You can do anything you like but you better stay away from law. I still feel

that way. I don't want to do arbitrations. I don't want to have a nice plush law office, and give advice to their young counsel, lots of whom need advice, but they'll have to get it from someone else.

AKM: Was that not difficult, to give up law?

JDA: Well, I have other interests. I've had an active role in my church. I'm the longest server on a pastoral care team that calls on shut-ins, not so much on people who are ill (the ministers do that more than I do) but I've done some of it.

Of course, it was difficult. I am a dreamer, and I'm talking literally, about in bed. I dream almost every night. And I'm always the counsel, not the judge.

AKM: Not the judge? That is interesting.

JDA: I loved counsel work. I once said, and it was entirely true, that when you appear before all nine judges of the Supreme Court of Canada, it's like playing a pipe organ with three manuals. I loved the counsel work. It was very easy for me to move from counsel work to a seat on the Court of Appeal, because I had a big practice in the Court of Appeal as a lawyer, and I just moved from here to there. All the judges were friends of mine, had become friends of mine over the years. Some of them were friends when we were all at the bar. Two or three I had curled with at the Cricket Club. So it was an easy transition.

But I retired a little bit early, about six months earlier than I would have had to. One of my great friends, much younger than me, on the Court of Appeal, was Mr. Justice Tom Zuber, who eventually left the Court of Appeal and went back to being a trial judge, which was highly unusual. Some judges, including McRuer, left the Court of Appeal to go back to be Chief Justice. Tom Zuber went back to being one more of the judges in

trial division. But before he did that and it became known that I was going to resign, he said to me, “You can’t quit! We need you.” And I said, “Tom, it isn’t fun anymore.” So he thought about that anymore and said, “I can’t fight that one.” A couple of years later, he quit! I don’t think my quitting had anything to do with it, maybe a small role, but not much.

But I remember, when I was appointed what was then a KC, in 1950, there was always a delay at Harcourt’s in new gowns for new QCS and occasional new judges. I had ordered a new gown but in the meantime I didn’t have a KC gown. The registrar of the Supreme Court of Ontario, Charlie Smythe, was a KC, and had a silk gown which he wore maybe twice a year, at the formal opening of the courts and so on. So he lent me his gown, so that within a week after my appointment, I was in the Court of Appeal, wearing a silk gown in the front row. There was a gruff old son of a gun named Henderson, who came from Brantford, and he was presiding in this first case that I was in. I barely got to my feet, and he said, in a very gruff voice, “We’re glad to see you in the front row where you should have been some time ago.” I was so taken aback I lost my place for the time being. Coming from him, it was a great surprise.

AKM: A good beginning.

JDA: Oh, yes, I ended up on the right side of that one.

AKM: Mr. Arnup, it is ten past twelve. Do you have time for quick look at photographs?

JDA: Yes, sure, let’s do it. And then we are all through.

AKM: We are all through unless you want me to come back for a closed session.

[pause while package of photographs is opened]

JDA: This is a photograph taken by Ken Jarvis, on which you have written, on the back, “I hate it.” Now why have you written that, Mr. Arnup?



Figure 3 J. D. Arnup by Kenneth Jarvis⁵

JDA: I don't know. I just don't like it. My old firm moved into larger quarters and nowadays, law firms go in for small offices and conference rooms. They had a room they wanted to name the Mason Room, after the former partner of the firm, and another room on the main floor that they wanted to call the Arnup Room, and did. So they wanted a picture. They said, “We've commissioned Ken Jarvis, who's a talented photographer, to do the picture.” So I said, “All right.” Ken decided [the location] that's actually in the benchers' dining room, with the curtains drawn. He took that picture. He charged me

⁵ Photograph donated to LSUC by John D. Arnup.

\$75 for that picture, [laughter] and I didn't like it anyway! I have other pictures that aren't as dark as that in the context.

AKM: Yes, I understand that.

AKM: How do you like your portrait?

[shows a photograph of JDA's official Law Society portrait in oils]



Figure 4 Unveiling of Arnup and Gale Portraits, LSUC, 1966⁶

JDA: Well, I don't like it much either.

AKM: Why not?

JDA: That was done by an English artist, whom Joe Sedgwick had met when Joe was in England. His son was at Cambridge and he used to go over periodically. This man, whose name is John Gilchrist, had done a picture of one of the famous English

⁶ Photograph donated to LSUC by J. D. Arnup.

generals of World War Two, but he had also done a portrait of the Queen Mother. Both of them were very good. Joe Sedgwick, when he came back, recommended that we hire him to do Gale and me, because the Law Society, at its expense, has the pictures painted of all former Chief Justices [and Treasurers].

So we put this man up in Benvenuto Place, because he wanted a suite with northern exposure because of the light – good light but not too much. So Gale and I took turns going up there and having our portraits painted. At the formal unveiling – the two were unveiled on the same day – my wife thought the Gale portrait was very good, and didn't like mine. Mrs. Gale thought my portrait was pretty good and didn't like her husband's. [laughter]

AKM: But you don't care for it yourself that much?

JDA: Not that much. I look like a cherub. [laughter] There is one story about it. I guess it's in the public domain because I've told it often enough. Gilchrist was getting pretty well along in finishing the portrait and he had done from the waist up. I had been wearing my striped pants with my gown. That portrait was taken in my full court regalia. He said, "It's a chore for you to come all the way up here to almost St. Clair Avenue, and there's nothing left except from the waist down. Why don't you leave your striped pants and my wife will put them on?" So I said, "I'll be here tomorrow with an extra pair of pants and I'll leave my striped pants for you." So the portrait that's in Convocation Room has my striped pants being worn by the artist's wife.

AKM: I am going to be looking at it very soon to see if it looks like your legs. That's a good story, Mr. Arnup.

[shows another photograph to JDA]

This is the last one. Can you tell me who is in this wonderful photograph? And where is it taken?



Figure 5 John Cartwright and Benchers, 1970⁷

JDA: Well, I'm unable to put a date on it. But I can tell you who the people are. I think the one on the extreme left is Cartwright's sister. The next one is Kenneth Jarvis. That's Bill Howland as Treasurer. That's Chief Justice John Cartwright, and the occasion was after he'd been made Chief Justice of Canada. The next person is John Robinette, and then me and Joe Sedgwick, the triumvirate who were all such close friends. Now those are the interesting people but I can identify quite a number of the others...more than half of the people. Do you want to know names?

AKM: If you don't mind. That would be great.

JDA: All right, you do the writing. Second row, left to right: [pause]

⁷ Photograph donated by John D. Arnup to LSUC.

Cassels; question mark; Terrence Sheard; Isadore Levinter; Nathan Strauss; John Bowlby; Ron Cass. Third row, left to right: Sydney Robins; I can't place number two; number three is Barry Pepper; I can't place number four - it's a side view and I can't place that one; the next one is Gibson Gray.

AKM: Almost there.

JDA: And I can't place the next one. And the fourth row, Arthur Martin--

AKM: Left to right?

JDA: Left to right. The next person obviously moved.

AKM: At the wrong time.

JDA: Yes. Next is John O'Driscoll, and I can't place the next one.

AKM: That's a good help.

JDA: I was wrong about Kenneth Jarvis in the front row. That's not Kenneth Jarvis. Kenneth Jarvis is in the back row. And then the two men whose heads are cut off, I can't of course tell who they are.

AKM: Maybe that's the painter's wife? [laughs] That's very good, Mr. Arnup, thank you. Do you have anything else to finish up on today?

JDA: No.

AKM: Terrific. Thank you very much.

[end of interview]

TRANSCRIPT – JOHN DOUGLAS ARNUP INTERVIEWS

Interviewee: JOHN DOUGLAS ARNUP
Interviewer: Allison Kirk-Montgomery, for The Law Society of Upper Canada
Interview Date: 10 June 2004
Location: Don Mills, Ontario
Media, length: One Digital Video Recording, approximately 61 minutes; one Minidisc Recording, approximately 66 minutes.

Transcribed by Allison Kirk-Montgomery, 28 July 2004, from the minidisc recording of the interview. Transcription contains conversation of a few seconds at start of the interview and about two minutes at the end that is not filmed on the videorecording.

[Start of minidisc recording]

AKM: This is the 10th of June. My name is Allison Kirk-Montgomery, on behalf of the Law Society of Upper Canada, and I am interviewing Mr. John Arnup, at his home at the Don Mills Seniors Apartment, Don Mills Road, Toronto.

JDA: -----[I am not clear how the proposed topic] relates to the Treasurers' job.

AKM: It doesn't. It doesn't relate at all, but one of the aspects of the project is to make sure we get some idea of the social context of the Treasurer's job, and I know that the Heritage Committee is very interested in just the history of the practice of lawyers in

general, whether or not they ever achieved the Treasurership. So I am asking you not as a past Treasurer today, but as a lawyer from those decades.

And I am going to start. We should see a little red flash that will start.

[beep – start of videorecording]

AKM: Well, Mr. Arnup.

JDA: I see a red dot.

AKM: That's good. That's a good sign. That means we are videoing, and you are looking fine.

You were a lawyer for almost four decades, and I wonder if you remember the first day that you began articling. I am interested here in the physical context of being a lawyer. I am pretty sure you took the streetcar that first day to work, and I wonder if you can describe when you got off the streetcar, and tell me what your impressions were of your office, who was in the building, what you were thinking about, what you could see and hear.

JDA: My firm, where I became a student in 1932, occupied the tenth floor of the Sterling Tower, which was a fairly new building. The firm had been over on Toronto Street for some time, and there were a number of law firms in a building on Toronto Street. And two or three small firms, of two and three lawyers, occupied various floors of the Sterling Tower, although I think my firm was the first tenant there. J. C. McRuer's

firm was down on the fifth or sixth floors, and there were a number of lawyers on the third floor as well.

But one of the striking differences between law firms in 1935 when I was called to the bar, and subsequent years, was in the number of lawyers in individual firms. Our firm had nine lawyers and when I was called to the bar I became the tenth. For a number of years that's how many lawyers were in the firm, because that's how many rooms we had on the tenth floor. Eventually, we rented a two-room suite in the floor above us, and had two lawyers up there, who constantly had to climb the stairs or come down the stairs to see one of the more senior members of the firm.

[Telephone interruption. Video recording turned off and then on.]

JDA: Our firm was about the same size and similar in many ways to the Fasken firm which had been founded by Alec Fasken, and his brother David had been one of the early members of the firm as well. Both our firm and the Fasken firm had five names in the firm name, and this was common in 1935, and has now become quite uncommon, as firms one by one have changed their firm name to something shorter. Our firm was Mason Foulds Davidson Carter and Kellock. The Fasken firm was Fasken Robertson Aitchison Pickup and Calvin. It was a formidable group of lawyers and not infrequently, someone from their firm was on the other side of cases in which someone from our firm was to be found. Mason Foulds was known as primarily a litigation firm. The Fasken firm had some very good litigators as well, led by R. S. Robertson, whom I've mentioned earlier in other parts of my memoirs. J. W. Pickup was a good court lawyer. Like

Robertson, he later became Chief Justice of Ontario. Mr. Calvin was an excellent lawyer and on rare occasions, he appeared in court also.

The largest firm was the Blake firm and when I first became acquainted with Toronto firms, it was Blake Lash Anglin and Cassels. Mr. Lash left that firm when his two sons had been called to the bar, and formed a small firm in which his two sons were associated with him. The name of Anglin was highly respected in the legal profession in Toronto. He died, but one of his sons continued to practice in the firm, but he was not the Anglin whose name was there. The name Cassels is very well known in the lore of Toronto lawyers. Some of them were related; others had that name but the connection by way of family was very remote and went back to the nineteenth century.

AKM: Was this the Hamilton Cassels that we've previously spoken of?

JDA: Hamilton Cassels was a member of the firm which originally was Cassels Brock and Kelly. The name Cassels is still the number one name in what has now become quite a large firm. The second name in the current firm, Cassels Blackwell, has acquired the name of Leslie Blackwell, who was a Conservative Attorney General under Leslie Frost's premiership.

One interesting thing about the way in which the profession developed in Ontario was that from quite early days, about half the lawyers in Ontario practiced in Toronto and about half out of Toronto. This continued for a very long time and I think, give or take a few hundred, exists today. That division made itself apparent in the election of benchers, because for many elections, almost half of the benchers which were originally thirty in number, came from metropolitan Toronto, and half from outside. This pattern was finally

broken in an election in which seventeen benchers were elected from the metropolitan area, which did not have that name in the period that I am thinking of.

That disparity resulted eventually in a fixed number equal to half of the benchers, including when the overall number rose to forty. But the pattern was broadened also to have benchers represent electoral districts, eight in all, the same division of districts as had been established for the courts of Ontario, when the merger between the county and district courts on the one hand, and the Supreme Court of Ontario on the other, took place, under Ian Scott as Attorney General.

AKM: When you were a young lawyer, I know that you travelled to a number of these districts, and I've read your article about the Walkerton court. I know you went up to Sudbury. Did you go to other county towns?

JDA: Yes. I had a number of cases in Hamilton, and much to the discontent of the Hamilton bar, Mason Foulds acted for the city of Hamilton, primarily because of a relationship between the city solicitor, whose name was A. J. Polson, P-O-L-S-O-N. That relationship continued for a long time through retainer of myself and Jack Weir, and in one case, the two of us were in the same case acting for the city.

AKM: Was that the one about the store closing bylaws in the nineteen-sixties? I know I read about that in the newspapers.

JDA: I don't remember much about the case except that the plaintiff operated one or more gas stations and had hired Mr. Arthur Slaght from Toronto. Slaght was a very prominent lawyer, partly in the civil side and partly in the criminal side. He was another of the Toronto lawyers who was not noted for the time he spent in preparation. He was noted for some of the company he kept...

AKM: Would you like to elaborate on that?

JDA: ...which, when he ran into Toronto lawyers, he introduced as being his niece. [laughter]

AKM: He had a large family? [laughs]

JDA: But, going back to the Arnup travels, I have done cases in London, quite a number in London; a few in Windsor. I've done cases in North Bay, but I used to say that I never got north of North Bay because that took you into Greg Evans' country, and Greg was always on one side or the other of litigation across the north country. He practiced out of Timmins. But I have been to Chatham. A number of cases in Belleville, one or two in Whitby. One in Kingston that I remember well, where I was hired in a federal prosecution to act as junior for a local lawyer, with John Robinette on the other side, The local lawyer botched the case, and I was retained - I had originally been the junior counsel, but I was re-hired to take the case on appeal - which I did, and won it on appeal.

AKM: Against Robinette?

JDA: Against Robinette, yes.

AKM: When was that?

JDA: This was a Wartime Prices and Trade Board case, when the board prosecuted the Black Diamond cheese company, who always maintained that theirs was a premium cheese for which they were entitled to charge a premium price. Cheese was one of the many products which had a fixed price under the Wartimes Prices and Trade Board regulations. The case has some interesting aspects but not in the subject that were dealing with today.

AKM: Cheese is always interesting! What was the federal government's position? That the product was not a premium cheese?

JDA: The federal government's position was that all cheese was the same.

Then I did a number of cases in Ottawa, not before the Supreme Court - I put those in a separate category. Out of sheer curiosity, I once added up the number of cases that I had done in the Supreme Court of Canada, and found that the number was fifty-three! Some of my bencher friends who have a practice in the Supreme Court of Canada find that an incredible number, until I remind them that during my early years at the bar, you could appeal to the Supreme Court of Canada in any case where there was two thousand dollars involved. That changed twice while I was still at the bar, and now, of course, you require leave of the Court to bring any appeal, civil or criminal.

There were some counties that I never got to, but I shouldn't leave out Milton. I did a number of cases in Milton. I did one or two in Brockville. I did one in Cornwall.

AKM: Were many of these because you were a special prosecutor after the War?

JDA: No.

AKM: How, for instance, did you get to Brockville?

JDA: Apart from a cheese company in Belleville, most of the prosecution work that I did was done in Toronto. The cases in these various other places were all civil cases. Mr. Mason had acted in a number of cases in which, what was then called the Workmen's Compensation Board, sued alleged wrongdoers under their subrogated rights. The Board was paying compensation but was subrogated to all the rights of the workmen. When Mr. Mason retired, I inherited that practice, and eventually, most of these cases were done by Mac Austen, in my office, but under my very loose supervision.

AKM: And these cases were heard at county courts?

JDA: I did a number of appeals in county court. But immediately after the war, and I've touched on this in an earlier episode, I became a popular counsel in landlord and tenant cases. Because of my wartime job, that led to familiarity with the law of landlord and tenant, and those cases were heard by county court judges.

I pause here to tell a little story as an aside. The senior judge in the county of York was a judge named James Parker, who had had a practice of people of some means, and I think there is no doubt that he had a bias in favour of landlords. But a number of cases were taken by myself and others where a landlord had been successful before him, and then there was an appeal.

So it came to my attention that Parker had developed a habit of saying to the court reporter, "Don't take this down," and he would then make some comment about the case. In that way, the comment never got to the Court of Appeal but was a revelation of some bias, in my opinion and that of others. So in one particular case, I spoke to the court reporter before court opened, and said, "The judge is going to say to you, 'Don't take this down.' You are sworn to take everything down and I want you to take it down -- including what he says about 'Don't take it down.'" [laughter] Sure enough, Parker, when we were well into the case, said to the reporter, "Don't take this down," and made a comment or two, and I subsequently appealed. The Court of Appeal didn't mention that particular episode, which, of course, I drew to their attention. But in that way, they became aware of the fact that Parker (I think unintentionally) had a bias in favour of landlords, because, during his practice before he became a judge, he would have ten cases

involving the landlord to every one that he had involving tenants. That was the nature of his practice.

AKM: You made things sticky for that court reporter, maybe, did you?

JDA: Well, experienced counsel with a big practice in the courts got pretty friendly with all court reporters, because they could do you favours, such as, at a recess, reading back to you some key parts of their evidence.

AKM: And that was a favour as opposed to their job?

JDA: Yes. I don't think anybody got around to deciding whether this was part of their job or not part of their job. They would do it at a recess for people that they respected and who had been nice to them.

AKM: Was there one court reporter for each court?

JDA: Not for each court: for each judge. And the reporter travelled with the judge, frequently by train, and stayed in the same hotel.

AKM: That was quite a close relationship then.

JDA: Yes, it was, and a number of those relationships were very close. They would involve cases where the judge was a likable person and so was the court reporter, and since they were thrown together anyway, being friendly was easy for them on either side.

AKM: Which court reporters do you remember most clearly?

JDA: Well, the one I remember best became eventually the senior reporter. They had a professional association of their own. His name was Noel N-O-E-L Dickson, D-I-C-K-S-O-N, and for a number of years, he travelled with Mr. Justice Barlow, which was not a particularly friendly relationship. But when McRuer became Chief Justice, he knew

about Noel Dickson, who was a very good reporter, and he lifted him off Barlow's list, and thereafter, Noel Dickson travelled with McRuer. Which I think posed a bit of a challenge to Dickson on a number of occasions.

AKM: Would you like to elaborate?

JDA: One reporter, whose name I can't now come up with, but he later left the Supreme Court and was working for the Ontario Municipal Board. He was a good friend of mine. He was travelling with one of the judges who was not a close friend, not a close friend with anybody that I knew about.

AKM: Who was that?

JDA: I won't tell you. [laughter]

But on one famous case, there was a bit of a row in open court, the nature of which has passed into history as far as I'm concerned. But the reporter got fed up, threw down his pen, and walked out! And of course the case immediately ground to a halt because you couldn't operate without a reporter. But they had a reconciliation later on. The word that this had happened passed into court lore fairly rapidly, and most of the lawyers and all of the reporters were on the side of the man who walked out!

AKM: When you went to these towns, would you go in and out of lawyers' offices? Would you be visiting lawyers in their offices or would you mostly see them in the courtrooms?

JDA: Oh, no, there was a good deal of visiting from one office to another, even on the litigation group.

AKM: Would their offices be very different in appearance or facilities to your office in Toronto?

JDA: No. In the 1940s, and well into the 1950s, the law offices in large part were still feeling the effects of the Depression, which not only in the legal business but in other businesses, did not end in 1935 as some people seem to think. Its effect was felt for years after the Depression technically was finished. One of the obvious proofs of that was that very few lawyers went in for elaborate furniture or waiting rooms with expensive rugs, the way they do nowadays.

AKM: Can you describe your office when you first got one of those ten offices?

JDA: The best short description is "bare bones." My first office had room for, I think, only one picture.

AKM: What was it?

JDA: It was an etching by a very well known artist in the field of etching, whose stuff later became quite sought-after, but who in 1935 or -6, actually went through the Sterling Tower from office to office, peddling his own etchings. For something like twenty-five dollars apiece.

AKM: Do you remember who that was?

JDA: No, but he was well known in the thirties and forties.

AKM: So you bought an etching, and you hung it on your wall; what else did you have in your office?

JDA: A desk, and two or three plain office-type chairs, including one, that was a little better, that I used for my own chair. But still, reasonably simple in design and construction.

AKM: And a telephone on your desk?

JDA: Yes. When the firm was on Toronto Street, there was only one telephone in the office, and it was on the counter at the front of the office. The reason that I learned that -- because of course I was never in the Toronto [street] office -- there was a picture of Mr. Mason sitting at a desk, with the upright rotary dial telephone sitting on a corner of his desk.

AKM: Did you have a switchboard operator on Bay Street?

JDA: Yes, a very valuable one -- if she liked you. She'd been there quite a long time.

AKM: What was her name, do you remember?

JDA: Wallace, Miss Wallace. An Irish Catholic, a very devout person. One feature of our day-to-day practice, which was also a feature in two or three other offices, was what was called a copybook, consisting of a hundred pages or so that were almost like tissue paper. The typewriters had indelible ink, and you made copies of letters by using first of all, the indelible ink type. Then it went in this book with a moist blotter and that produced a copy with the assistance of an iron plate that screwed down to bring pressure to bear on the book. Because my firm had been in existence for a long time, about which I'll make some comment in a moment, we had a couple of hundred of copy books in the storage room. One of the jobs of the switchboard operator, each day, was to index alphabetically by recipient the outgoing letters in an index at the front of the copybooks -- which were called, "copybooks."

AKM: Miss Wallace had several jobs then?

JDA: Yes. She also had an assistant, a young girl, whose job was to put stamps on outgoing letters, and from time to time, to be the girl who made copies of letters in the copybook.

AKM: You would write out something in longhand, such as a letter to a client? Then what would happen?

JDA: I don't understand the reference to longhand.

AKM: Did you use a typewriter?

JDA: I shared a secretary. We had a large room with the secretaries sitting one behind each other in a row. The junior members of the firm normally shared the services of a secretary. Mr. Mason had his own secretary, and one of the other senior partners had his own secretary. But they would all share this one room. All the secretaries were in this one room. When I left the Wartime prices and Trade Board to go back to practice, I had had at the Board a very efficient young woman. I persuaded her, because the Board was winding down, to become my secretary at Mason Foulds. Which she did. She regarded the secretary arrangements as pretty primitive, and after a year or so, despite the fact that she had great respect and indeed, affection, from me, she decided she wanted to work in a place where the amenities for secretaries were better, and she left.

AKM: Such as a separate office for her? Is that what she expected?

JDA: Well, I think she expected an office where there were fewer than ten secretaries.

AKM: It must have been a very noisy place, was it?

JDA: I would think so. In fact I know so, for we had occasion to walk back there from time to time.

AKM: So where did you see clients?

JDA: Well, that is one of the big changes that has taken place in the last fifteen years. We saw clients in our own office. The only shared office was the library, and when I say shared, all the lawyers went to the library, which was entirely in one room. But nowadays, the practice has developed of lawyers having relatively small rooms. There will be, depending on the size of the room, three or four conference rooms, ranging from those that would seat eight people, to a boardroom size, which might seat as many as twenty people around the table. When my firm moved from the Sterling Tower to the Bank of Canada building at the corner of Queen and University, one of the things that we acquired was a boardroom.

AKM: When was that?

JDA: About 1957 or 1958, somewhere in there. My name wasn't in the firm at the time of the move but I was very senior, so I did a minimum of work in connection with the move. The move was over a weekend, and on Monday morning I went into my new office.

AKM: What did it look like?

JDA: Yes.

Nowadays, firms of any size have relatively small offices for individual lawyers, with maybe three chairs, maybe a small table in the corner, but board rooms. The current Weir Foulds firm, the successor to my old firm, has four boardrooms named after former partners, including me. Those four would probably seat eight people, but then they have a large boardroom at which, for example, they can have a partnership meeting with thirty-

eight or forty lawyers sitting around one table. Virtually all firms of any size have a boardroom large enough to accommodate a lot of people.

AKM: In your firm, in the fifties, or in the old building on Bay Street, where would you have partnership meetings?

JDA: In the Sterling Tower, we had them in the office of the man who really was the office manager, though nowadays we would call him the managing partner

AKM: Mr. Davidson?

JDA: Mr. Davidson.

AKM: So he had the biggest office in the firm, did he?

JDA: No, Mr. Mason had the biggest office, which was in the corner overlooking both the City Hall and Bay Street.

AKM: Was Mr. Mason's office more luxurious than yours?

JDA: It was very plainly furnished. When he was getting on in years, he had a couch installed where he could take a noon-hour nap. But apart from that, his office was no different than the rest of us, with a desk and chair for the lawyers chosen by him, a little special, and three and four other chairs.

AKM: What about your office, then, in 1958. How had it changed?

JDA: Well, from my point of view, it changed because I had a considerably larger office. Jack Weir and I had the two corner offices. Mine was in the northeast corner, looking towards the City Hall.

AKM: What floor were you on?

JDA: The fourth floor there. The building only had seven floors, and the Borden firm, then having four or five names led by Borden Elliott, were on the top floor, and the

Day Wilson firm were on the sixth floor as I recall it. The first three floors were occupied by government organizations, the Bank of Canada on the first and second floors, and the Development Bank was on the third floor, and some other governmental organization.

AKM: So you had a nice view from your office. Did you still have the etching from your original office, your first office decoration?

JDA: Oh, I think I was up to three or four pictures by that time. I didn't go in for photographs, and I didn't go in for large pictures, but mostly pretty routine stuff.

AKM: Did you have a little bar for clients?

JDA: Ah, no.

But we still had a large room for secretaries. Whereas nowadays, a lot of secretaries have an interior office close to the lawyer that they work for.

AKM: Who was your secretary in that period?

Well, my first secretary I shared with Archie Foulds. Her name was Kay Fox, and she stayed with the firm until she reached retirement age. A very fine person. She was about five foot ten in height. Then, when I got my own unshared secretary, she was about five foot one [laughter] but a nice young woman.

AKM: Did she stay with you a long time?

JDA: Yes.

AKM: What was her name?

JDA: I don't recall now what she eventually did. I think she got married and started to raise a family. But she was succeeded by a woman named Elsie Schwartz who was my secretary for at least ten years in the Bank of Canada building, and a very

talented woman, unmarried. And on a number of occasions, when I was seeing a new client on a fairly complicated matter, I would have her come in and sit in the corner and take notes, which eased my note-taking. I was free to sit there and ask questions. When I left to go to the Court of Appeal, she worked about one more year at what had become Weir Foulds, Weir and Foulds at that time.

She became the first head of secretarial services at Humber College. She was the author of a couple of books used in the course, not only by her but by other people involved in their secretarial course, which was a very popular course and quite extensive. She held that job until she finally retired.

AKM: Did she take notes in shorthand?

JDA: Yes.

AKM: Could you read shorthand?

JDA: No.

AKM: So she would convert them for you. When did you first get a business card that you would hand out?

JDA: The question assumes something to which the answer may surprise you. I never had a business card. I had what in those days was called a calling card, an engraved card with nothing on it but my name.

AKM: Not even a phone number?

JDA: No. If I was going to give a new client my card, I gave a calling card and wrote my phone number on the back.

AKM: I realize that this relates in some ways to the concerns and bans on advertising. How long did you keep a calling card with nothing on it except your name?

JDA: Apart from changing it when I became a judge, and then changing it again when I became the "honourable somebody" and the Order of Canada, I changed the card. But again, it is all on one line.

AKM: Was that common to have a calling card instead of a business card?

JDA: To tell you the truth, I don't know, and I didn't care.

AKM: That might be good note to end on, unless you would like to speak on something else, Mr. Arnup? We have about three minutes left on the tape.

JDA: Well, I think I may have told this story before --

AKM: Not on tape! --

JDA: True. In 1970, McCarthy and McCarthy decided to move to the Toronto Dominion Centre so they had three-quarters of a floor in the Canada Life building, who was their biggest client, certainly one of their biggest clients. We were expanding also. So we entered into negotiations to take over their space in the Canada Life building. I, as the senior partner by this time, went up to see the space to choose my own office. I chose the office which had been occupied by Senator Hayden, who was by that time the senior man at McCarthy's. It was in the northeast corner with a view straight up University Avenue like I had before, in the Bank of Canada building. So I chose that corner, and Jack Weir chose the northwest corner, which was very similar in size to the room I had picked out.

I never moved in to my chosen room, [laughter] because I got appointed to the Court of Appeal. And to tell you the truth, I don't remember if I ever knew who did move into the room I had chosen. It was certainly the prime room in the space. But the firm continued to grow and eventually moved out of the Canada Life accommodation

into the Exchange Tower, where they took three floors, and continued, of course, to expand, with numbers varying from sixty-five to eighty.

AKM: I think we have to stop there, Mr. Arnup.

JDA: That's fine.

AKM: Thank you very much.

[video recording is ended but minidisc recording continues]

AKM: That's very interesting. I remember you told me, you just became a Court of Appeal judge and you lost your office within a month, didn't you, because of renovations at Osgoode?

JDA: Yes. The room had interesting history as far as I was concerned. It had originally been the room of Mr. Justice Middleton, who had been a member of my firm in years past. When Middleton retired, eventually Kellock was appointed to the Court of Appeal, in 1942, and he took over that room. When he was appointed to the Supreme Court of Canada, the room was acquired by Bora Laskin, and then I occupied it for a month. But I had the good fortune when we moved back to Osgoode Hall after three years across the street, at 145 Richmond, to be chosen by Chief Justice Gale as the person in charge of assigning rooms, which required a good deal of tact - but by some strange reason, I ended up with my having the room I wanted in the first place!

AKM: That is strange! [laughter]

JDA: There continues to this day to be a debate about what's the oldest law firm in Toronto.

AKM: What's your opinion?

JDA: My side of the argument, I guess you'd call it, is that the firm [Weir Foulds] began with one man in 1859. Blake's insist that their firm, which was formed in the early 1860s, is the oldest Toronto firm, but there is no way of resolving that argument. The McCarthy firm is really not a competitor. They came from Barrie, and they are not in competition with either Weir Foulds or Blake's in terms of who was there first.

AKM: Imagine those founders looking at legal practice today, and at the size of their firms. It's a different world, isn't it?

JDA: It would be hard for them to understand, first, the necessity for it, and secondly, the lavishness of it.

[End of minidisc recording.]

APPENDIX

Materials Donated by John D. Arnup to the Law Society of Upper Canada

DATE	TYPE	DESCRIPTION/Caption
n.d	Photograph	"Madelyn Weir, Zeta Evans, Gregory Evans, JDA"
Fall 1988	Photograph, 2 sizes	JDA, by Peter Croydon, for Osgoode Law School
1963	Photograph	JDA in Banff
1963	Photograph	JDA, Q.C.
1995	Photograph, 3	For church directory, 1995
May 1992	Photograph, colour	JDA
	Photograph, colour, 2 sizes	JDA receiving Order of Canada from Jeanne Sauvé
n.d. [1950?]	Photograph	Portrait, JDA on being appointed KC?, by Douglas Paisley
May 1970	Photographs, 4	Portraits, JDA
7 May 1975	Photograph	"O.L.P.B." [Ontario ? Prayer Breakfast], JDA and unknown
7 May 1975	Photograph	"O.L.P.B." [Ontario ? Prayer Breakfast], unknown, JDA, and Betty Kennedy
1963	Photographs	Proofs, 5 poses, by Gilbert A. Milne, Toronto
1963?	Photograph	Reprinted in <i>VicReport</i> , Spring 1990
10 Jan 1952	Photograph	JDA, David J. Walker, K.C., and Cyril F. H. Carson, K.C., by portrait of Cyril Carson at LSUC
1966	Photograph	"Gale and Arnup unveiling" of portraits at LSUC
n.d.	Photograph, 2 prints	"The Honourable John D. Arnup by Ken Jarvis for hanging in the Arnup Room at Weir & Foulds
18 April 1970	Photograph	John Cartwright, Treasurer William Howland, and benchers including JDA, John Robinette, and Joseph Sedgwick
25 April 1923	Photograph	Oakwood Collegiate Institute Editorial Staff, including JDA
30 January 1953	Photograph	Edson Haines, John Robinette, JDA, George Mitchell, S. Springsteen, and G. Arthur Martin, at Canadian Bar Association Meeting, Windsor
1966	Photograph	Portrait of Treasurer JDA, LSUC
12 July 1997	Bound typed document	"A Celebration of the Life of Carol Arnup, "April 9, 1946-July 4, 1997"
October 1997	Journal article	"The Importance of Advocacy." <i>Le Journal The Advocates' Society</i> , 1 page
1998	Bound document, 18 pages	"Reminiscences of John D. Arnup, O.C., Q.C."
n.d. ?1966	Typewritten	Welcome to "Students, 1 st Year," Osgoode Hall

n.d.	speech Handwritten speech	To honour Chief Justice William Parker of the High Court on his retirement
13 Nov 1964	Typed speech	On the occasion of the retirement of Mr. Justice D. P. J. Kelly
15 June 1965	Typed speech	On the 750 th Anniversary of the Magna Charta
13 Sep 1965	Typed speech	To the Saint Thomas More Guild, Hamilton
16 Oct. 1965	Newspaper clipping	“UCLS Treasurer Warns ‘Beware the Easy Buck,’” <i>Can Register</i> .
14 September 1965	Newspaper Clipping	“Beware Fast Buck: Lawyer,” <i>Globe & Mail</i> .
10 June 1969	Typed speech	On opening of the new law school building, York University
7 February 1970	Typed speech	Introduction of Northrop Frye, Canadian Bar Association Midwinter Meeting
8 January 1971	Typed speech	To Toronto Cricket Skating and Curling Club Directors’ Dinner
n.d.	Handwritten document	List of speeches and articles written, mostly by JDA; captions for various photographs, not attached.
21 Nov 1974	Typed speech	“Behind Those Security Doors,” to Lawyers Club
20 Feb 1975	Typed speech	“Introduction of Chief Justice Laskin” to Lawyers Club
10 January 1983	Typed speech	“Be A Witness.” At luncheon for Court Opening, Hamilton.
31 May 1983	Typed remarks	Tribute to J. C. McRuer
24 October 1985	Typed remarks	“Retirement Ceremony [of JDA] – Courtroom #1”
27 November 1985	Typed remarks	On St. Andrew’s Day, at Men’s Venison Dinner, Orillia
29 November 1985	Typed remarks	Judges’ Retirement Dinner
23 October 1986	Typed remarks	Tribute to G. A. Gale, Lawyers’ Club.
1987	Typed compilation	Includes table of contents, speeches given, biographical notes, and remarks by JDA as part of “1987 Canadian American Legal Exchange; A Compilation of Remarks Made...”
4 Feb 1988	Handwritten speech with pasted excerpts	“Advocacy – Old and New,” to the Women’s Law Association
23 May 2001	Typed remarks	Tribute to Arthur Martin, Q.C.
18 April 1970	Newspaper clipping	“Arnup appointed to Ontario Appeal Court,” <i>Globe & Mail</i> , 30.
n.d.	Typed document, unpublished	Memoirs. 56 pages.

INDEX

Advocacy, styles of	24-6
Arnup, John D.	
at high school	52-4, 89
at university	56-8
as articling student	12, 123
and Mason Foulds	38, 72
at Wartime Price Control Board	25-6, 28-30, 127-8, 134
as advocate	25-9, 36, 47-8, 70-2, 89-90, 113, 115,
as advocate, Privy Council	34
as advocate, Supreme Court	115, 128
appointed KC	116
as bencher	3-4, 7, 8, 13-15, 17-8, 95, 103, 113-4
as law student	33-4
as Treasurer, LSUC	8-11, 13, 14-5, 20, 21, 29, 31-4, 37, 47-8, 51, 93, 96, 105
relationship with press	62-4, 84
LSUC portraits	118-20
on Court of Appeal, appointment	83
On Court of Appeal	14-5, 38, 116, 140
family and private life	35-6, 58-9, 65-9
religious affiliations	100, 115
as author	25, 112-3
retirement	114-6
Anderson, Robert	48, 50
Austen, Mac	128
Barlow, Justice	130
Blake Lash Anglin and Cassels	125
Borden Elliott	136
Bowlby, John	121
Canadian Bar Association	5, 7, 9, 59, 60, 65, 77, 79, 102
Carson, Cyril	2, 6, 7, 14-6, 19, 39, 44, 60, 69, 86, 95, 96, 109-10
Cartwright, Chief Justice John	19-20, 102, 120
Cass, Fred	61-2

Cass, Ron	121
Cassels	121
Cassels Brock and Kelly	125
Cassels, Hamilton	44, 125
Chitty, Michael	5
Common, W. B.	92
Conover, Lieutenant	90
Colonel	
Copybooks	133
County tariff of fees, ending of	108
Court reporters	36, 129-30
Courts, opening ceremonies	94-100
Davidson, W. W.	12, 30-1
Davidson, W. C.	136
Day Wilson	137
Denison, Shirley	4-5
Dickson, Noel	130-1
Evans, Greg	127
Fasken Robertson Aitchison Pickup and Calvin	3, 124
Favreau, Guy	83
Foster, Colonel	4, 27
Fox, Kay	137
Gale, Chief Justice G. A.	26, 29-30, 35, 70, 81, 82, 96, 118-9, 140
Gilchrist, John	118
Gordon, Donald	29
Gray, Gibson	121
Gregory, Wilfrid	13
Haines, Edson	79
Henderson, Jude	116
Horne, Cleeve	27
Howland, William, Chief Justice	7, 8, 86, 88, 97, 100, 103, 120
Jamieson, Parke	7, 102
Jarvis, Kenneth	15, 63, 104, 117, 120, 121
Juries	35
Kaplan, William	80
Kellock, Roy	26, 29, 126, 140
Landreville, Leo	80-4
Lang Michener	50
Laskin, Bora	140

Law clerks	38
Lawyers as story-tellers	31
Lawyers' Club	25
Leal, H. Allan	86-7, 100
Legal aid	39, 60-1, 90-3, 98-9, 111
Legal education	4, 7, 10, 15, 85-88, 100- 3, 76-7
Legal profession, alcohol, drugs, and professional misconduct	
Legal profession and smoking	80
Legal profession, changing	68, 125-6
Legal profession, misconduct	44-5, 72, 76-7
Legal profession, changes in	37, 51, 107
Legal profession, offices of 1940s and 1950s, furnishings and technology	131-3, 135-7, 141
Legal profession, role of juniors	36
Leslie Blackwell	125
Levinter, Isadore	92-3, 121
Law Society of Upper Canada	
categories of membership	105
compensation fund	10, 22, 45-7, 93, 107
convocation practices and procedures	12-3, 15-8, 47-8, 104-5, 125-6
courts, opening ceremony and Treasurer	94-100
discipline committee, cases, penalties, regulation, etc	18-20, 21-2, 39-49, 76- 7, 80-4
fees	107
finance committee	4, 10
honourary degrees	101-2
origin of the standard, coat of arms	104
public relations	63
Remembrance Day ceremonies	27-8
Traditions	8, 14

	Treasurer's role	45-6
	Treasurers' portraits	24-7, 118-23
	trusteeships for abandoned practices	107
	See also Legal education	
Maloney, Arthur		13
Martin, Arthur		13, 79, 118
Mason Foulds		3, 12, 29, 30, 72, 124, 126, 134-5, 137-8, 141,
Mason, G. W.		3-6, 72, 117, 128, 133-4, 136
McCarthy and McCarthy		51, 139
McCarthy, D. L.		20-1
McRuer, Chief Justice James		19, 41, 94-7, 102, 115, 123, 130-1
Mehr, Samuel		19-20, 41, 42
Millar, Jack		29
Mitchell, George		79
Morden, John		114
Morden, Kenneth		24
O'Brien, Brendan		86, 109-10
O'Driscoll, John		121
Osgoode Hall Great Library		107-8
Osgoode Hall, preserving west lawn		109
Paralegals		111-2
Parker, James		129
Patillo, Arthur		81
Pickup, John W.		2-3, 124-5
Polson, A. J.		126
Porter, Dana Chief Justice		109
Rand, Mr. Justice		82-3
Reed, Robert		92
Resnick, Samuel		22
Rigney, Tim		19
Roach, Justice		21
Robertson, R. S.		2, 124
Robinette, John		7, 8, 32, 34-5, 44, 46, 48, 69-70, 72, 78-9, 83, 86-7, 120, 127
Robins, Sydney		86, 100, 121
Rowell, N. W.		2, 11-2
Ruby, Clayton		45
Schwartz, Elsie		137-8
Scott, Ian		97

Scott, Professor	102
Secretaries, legal	134, 137-8
Sedgwick, Joseph	3,8-9, 18, 19, 40-1, 43, 47-, 64, 69, 87, 118-9, 120
Seymour, Martin	8
Sheard, Terrence	121
Slaght, Arthur	34, 126-7
Smalley-Baker, Charles	85-6, 100, 104
Smith, Earl	10, 11, 45, 59, 61, 96
Springsteen, S.	79
Strauss, Nathan	121
Texas Gulf case	35-7, 70-2
Tilley, W. J.	1-2, 4, 14, 24-5, 32-6, 77
Toronto, first legal firm in	141
Turner, John	83
Wallace, Miss (Mason Foulds switchboard operator)	133-4
War, lawyers in	27-8, 102
Weir, Jack	9, 12, 13, 30, 59-60, 126, 136, 139
Wells, Dalton	25
Williston, Walter	13
Wilson, Bertha	37-8
Wright, Cecil "Caesar"	5-6, 85, 101
York University	87-8
Zuber, Tom	115-6
