Oral History of Henry F. Schuelke, III
Fourth Interview
March 8, 2012

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Henry F. Schuelke, III, Esquire, and the interviewer is Louis R. Cohen, Esquire. The interview took place on March 8, 2012. This is the fourth interview.

MR. COHEN: This is the fourth session in the oral history of Hank Schuelke and we're in the middle of discussing the Antonelli & Yeldell prosecution when you were at the U.S. Attorney's Office. We had covered the background up to the indictment, why don't you start with the first trial and your work with Rick Beizer and describe how that trial went and we'll go on from there.

MR. SCHUELKE: All right, the first trial was in the fall of 1978 before Judge Gerhard Gesell in the District Court here in Washington. Messrs. Yeldell and Antonelli were charged with multiple counts, essentially involving a bribery scheme. Antonelli, who was a prominent local real estate developer, owned, or actually was in the process of purchasing a building on Florida Avenue Northeast, just off of New York Avenue. And as was his practice, in many cases, he sought to line up a government tenant so that the income stream from the lease would basically finance his purchase of the building. And he ultimately succeeded in leasing this building to the District of Columbia Department of Human Services, which at the time was headed by Joseph Yeldell who was, and remains, a longtime local D.C. politician. The allegation essentially was that in a tight timeframe there were reciprocal acts. Yeldell, who had serious financial – personal financial difficulties, arranged through the good offices of Antonelli, who served on

the board of the Madison National Bank, a loan and as the steps in that process application through presentation to the bank's lending committee and presentation to the bank's board there were contemporaneous acts on the leasing side which benefited Antonelli. And in the course of that process Yeldell –

MR. SCHUELKE: From the government's perspective – from my own perspective, to put it in simpler terms, this was not an easy case. It was a case that I was satisfied was properly and appropriately brought, and a conviction of each of them would have been altogether appropriate, but it was a difficult case. Ed Williams, who represented Antonelli through both of the trials, was fond of saying at every conceivable opportunity, "This is a bribe? What kind of a bribe is this? It was a loan, that he repaid. What kind of a bribe is that?" And that was essentially true, he was making payments on the loan. It was also potentially difficult, although it certainly didn't prove to be the case, because of the somewhat charged racial environment in the city in those days. And indeed Yeldell, and to some degree Antonelli, did what is more lately come to be known as "play the race card" through the course of the trial.

MR. COHEN: Yeldell was African American.

MR. SCHUELKE: Yeldell was African American, right. Now, Rick Beizer, who at the time was in the Fraud Division of the U.S. Attorney's Office, had investigated this matter for a couple of years and presented it to the grand jury, which returned the indictment, but before I was ever assigned to participate.

Shortly, or perhaps immediately after the indictment I was asked by the U.S. Attorney, Earl Silbert to try the case along with Rick. I was, at the time, the Executive Assistant U.S. Attorney so I was in the so-called front office and I had broad supervisory responsibility for the office which was largely the Superior Court Division. Which is where much of my experience had been in the office up until that point, but it did include as well the Fraud Division so I had general familiarity with the case from that perch. But it was a pretty steep learning curve for me because the – I don't remember exactly, but I would say the case was indicted early in 1978 and it went to trial in September. So, Rick and I tried the case, we were joined by a young very very bright and talented Assistant U.S. Attorney whose name was Michael Lehr, Lehr, whom we enlisted to serve as the brains of the operation in terms of, in terms of drafting pleadings and so on. Although he had, as it progressed, a somewhat more significant role, although to this day, I had dinner with him the other night, to this day he refers to himself as "no chair Lehr" as a result of his relative position on the trial team in that case. The trial of the case the first time took about six weeks. It was a hotly contested trial although at least from my perspective and Rick's as well, I think, it was most enjoyable. We enjoyed the opportunity to try a case against Ed Williams. We were relatively young and were, each of us, for somewhat different reasons, not the sorts of personalities to be much intimidated by Edward Bennett Williams and so we rather enjoyed it.

MR. COHEN: Who were the prosecution witnesses?

MR. SCHUELKE: Well there was a collection of DHS, Department of Human Services employees who were involved in the mechanics of the leasing process who were in a position to, and did, testify about Yeldell's role in directing their decisions in the matter. There were the bankers on the loan side and that was essentially it. There were no eye witnesses as it were. There were no insiders and so this was largely a circumstantial case.

MR. COHEN: Were they friendly witnesses? I mean to the Government –

MR. SCHUELKE: I would say on the DHS side they were altogether cooperative if not actually friendly. Not so much on the bank side. And we had fights with the banks and their lawyers about various issues, but there wasn't a great deal of difficulty in that respect. Rather, the case boiled down to our ability to demonstrate that on a given Monday, X event transpired with respect to the loan. On the next day, Tuesday, Y event transpired with respect to the lease and so on. And it painted a vivid picture of the *quid pro quo* relationship. Yeldell, because he was a public figure, and because the subject of this lease had been the subject of some press, had on a number of occasions spoken publicly about it. Press conferences, for example, and it was not terribly difficult for us to demonstrate that in the course of those public statements he lied about the facts. Which constituted a significant consciousness of guilt kind of argument that the Government had going to the issues of specific intent.

MR. COHEN: Did Yeldell take the stand?

MR. SCHUELKE: He did. Which is an interesting story. But before I get to that, there was another player in these events who was not a witness. He was one of these classic players in some criminal trials which neither side wants to have to call and neither did in this case. He was a local African-American entrepreneur inventor who had a prolific genius for inventing various devices or technologies that he managed to sell to various government agencies, both federal and local. School exit automatic locking systems, school door locking systems. He was one of the pioneers in the development of LEDs, light emitting diodes and so he had a brilliant idea that every over-the-road semi-truck, and a lot of other trucks are required by law to have marker lights across the roof from the top of the windshield. The tractor trailers down the sides of the trailer and so on. And until that point, the late 1970s, these were all incandescent bulbs and so at whatever interval, somebody had to be climbing up on a ladder and replacing the bulbs on these trucks and that was sort of labor intensive and quite expensive whereas these LEDs last forever. Now, he wasn't much of a business man so typically he would give away controlling interest in a number of these deals because he needed some seed money and so people would invest and years afterward, after I was in private practice, he would come to me repeatedly with some of these new concepts. Some of which were very good but by the time he came to me he'd already given away most of the equity in the deals and so on. Anyway, he was also a small time real estate entrepreneur and he had a proposal to lease this selfsame

building and his proposal was quite competitive. And while he certainly didn't have the kind of financial resources that Antonelli had, he had, the income stream from leases and he could have financed the building as well. Yeldell directed the leasing department folks not to deal with him, claiming that he knew him and knew him to be a man of less than stellar character when in truth and in fact he did not know him from Adam. And that was a significant kind of consciousness of guilt. In other words he basically directed them to eliminate the competition on the basis of a bogus story. Yeldell was represented in both trials by John Shorter an African-American lawyer, since deceased. A very good lawyer with a wealth of criminal trial experience and a perfect gentleman who had terrific rapport with juries. And he did indeed put Yeldell on the stand. Yeldell, as happens in a lot of criminal cases in which defendants testify, proved to be the best government witness. We had a field day cross examining Joe Yeldell. Much to the dismay of Ed Williams who told me some time later, after the trials had concluded, that the entire time Yeldell was on the stand he thought he was going to have a heart attack. The case went to the jury after six weeks of trial and the jury was out three hours which is quite remarkable since in many criminal trials it takes them an hour to figure out who the foreperson is. And they returned the guilty verdicts with respect to each defendant, each count in the indictment.

MR. COHEN: Were there lots of counts? Three hours seem very short, it's like –

MR. SCHUELKE: You know, I honestly don't remember. It was essentially a bribery case which you probably could have prosecuted on a single count. As is typical we charged a conspiracy to commit bribery as well as a substantive count and I think we may have charged a false statement count or two which would have been exclusively Yeldell but it wasn't a terribly complicated case. And while there certainly were documents, you know the lease documents and the loan documents and so on, it wasn't like a terribly document intensive case. It just seemed clear to me that the jury had very little difficulty in concluding that this was a crooked deal and that Antonelli in effect bribed Yeldell.

MR. COHEN: Had Antonelli taken the stand?

MR. SCHUELKE: He did. Antonelli was a very interesting and odd personality whose demeanor on the stand was distant. He was somewhat peremptory in the way he would respond and he referred to himself in the third person throughout his testimony. No, Mr. Antonelli did not do that. No, Mr. Antonelli did so and so.

MR. COHEN: This was even when you asked him did you do X?

MR. SCHUELKE: Yes. So I would say, "So let me see, that's you you're talking about right? You're Mr. Antonelli?" And so he was not at all an attractive or persuasive witness. I mentioned earlier that there was bit of a race card played here and that was basically Williams. It fleshed out on examination of both Antonelli and Yeldell that here's this wealthy longtime civic minded resident, actually he wasn't a resident of the

District of Columbia, but a business man in the District of Columbia who properly, above board, used his good offices to come to the aid of a man who had become a friend of his and so he was the Good Samaritan in terms of assisting with the loans, and the notion that, in the cynical view of these prosecutors that's not so, bespeaks an attitude that an African American and a white man can't be or wouldn't be personal friends even though their relationship grew out of a business situation. And you know when you're confronted with that as a prosecutor or as a defense lawyer because it can come up in either way, you have to be very very careful. Lest you offend jurors and that was a predominant African American jury. But I made the judgment that this is something that we needed to take on and so my principal argument to them was look, as you and I know, there are thousands and thousands of African American citizens in this community who have and continue to suffer discrimination in many forms. That does not describe Joe Yeldell. Joe Yeldell, through the application of his own talents, was well educated, had the opportunity to serve a White House fellowship, succeeded both in business ventures and in his political career and so we're supposed to believe that he's some discriminated against person, I ain't buying it. And they did not either but you know, you recognize wading into that this is a high risk kind of venture but my judgment was you simply couldn't afford to ignore it. Closing arguments on, sort of on that subject were great fun because Williams, who is a terrific, was a terrific trial lawyer, no two ways about it

and a great showman and a smart tactician was also or could also muster the persona of a preacher and so we did indeed have a lengthy discourse on the Old Testament parable of the Good Samaritan which in my rebuttal argument prompted me to tell the jury that I don't profess to be an expert on the Old Testament or either of them for that matter but I do have a recollection of the parable of the Good Samaritan. The only part of that that I don't remember is when after the Good Samaritan aided the traveler on the road whom he found in distress he came back two days later and said [knocking sound] now it's my turn.

So that was essentially the first trial. I think the trial concluded a day or two before Thanksgiving because over the Thanksgiving weekend, I remember, the defense filed a motion for a new trial claiming to have just then recently discovered that a juror had failed to answer truthfully during the course of *voir dire*. During the course of *voir dire* you identified the witnesses and identified the relevant institutions like the Madison National Bank, about whom you'll hear testimony and does any of you have any relationship with the bank, maintain an account there and so on; and this young woman juror who was in her mid20's as I recall, did not respond in the affirmative. They discovered at some point, Williams always maintained to me that they discovered this after the verdict, that indeed at some point, seven or eight years earlier when she was in high school, had had a checking account at the Madison National Bank that never had a balance greater than about $87.00 and the account had been

closed for now five or six years or something like that. Which seemed to me and apparently to Judge Gesell initially to be immaterial and of no great moment and somebody reported to me some fellow judge reported to me at some point over that Thanksgiving weekend that he had spoken to Gesell who had said yeah, well Williams ain't gonna win this one. Something like that. And so he denied the motion for a new trial. Whereupon, like a day later, we have another motion for a new trial predicated on the claim that that self-same juror had failed to disclose that her father had years earlier worked as a parking attendant at one of Antonelli's PMI parking garages. A big part of Antonelli's empire was the PMI parking. And that he'd been fired and that therefore this young woman might well have harbored some resentment toward Antonelli. So we had a hearing on the subject. The father was an alcoholic who was barely literate but who had executed an affidavit which was obviously drafted by some lawyer and if you ask the witness, this is your affidavit, paragraph three says blah blah blah blah blah what does that mean? I don't know. And that's the way that examination went. So Williams got all indignant about the fact that I had somehow impugned his integrity by suggesting that he had invented this affidavit and shoved it down the guy's throat or something so he demanded to testify, which he did. The net result of which as I remember was basically, no he didn't do that, he had David Kendall draft the affidavit. But what everyone thought of the merits of this, which weren't great because the woman, the juror, testified

that her father had left their home when she was about six years old, I don't remember, she either had never seen him since or saw him you know sporadically, had no idea that he ever worked for PMI and couldn't possibly therefore have been upset about the fact that he got fired. And had that been the only basis for a motion for a new trial, I think Gesell would've come to the same conclusion as the first time. What he did however was say that's it, same juror, two issues, that's it. Not in Courtroom Six, new trial. And we *mandamused* him, unsuccessfully as it turned it out. And I'll never forget the day Beizer and I walked into his chambers to serve him with a courtesy copy of the *mandamus* petition and I thought his head was going to explode. He was absolutely livid about this. So, new trial.

MR. COHEN: I thought there was some Redskins-Dallas event in there between those two things?

MR. SCHUELKE: Well, no.

MR. COHEN: No?

MR. SCHUELKE: No. I think what you, I may have described this the last time we met. I told you a few moments ago that Rick and I kind of enjoyed this opportunity to mix it up with Ed Williams and he was then the President of the Washington Redskins. I think he had a twenty percent interest in the team. Jack Kent Cooke was still in Los Angeles so Williams basically ran the team and first thing that happened was the trial began on a Monday. On the previous day, the President, Jimmy Carter, was in

Williams's owner's box at RFK Stadium for the game and so Monday morning's Washington Post, the day that we're going to start picking a jury, we have on the front page of the Post the picture of the President and Ed Williams at the Redskins game. And I remember saying to him that morning that was a very nice touch Ed, maybe you can get the Pope next Sunday. Then as it happened that year the Redskins lost the first four games of the season which were played during the course of the trial. So every Monday morning just in an effort to sort of get under his skin, we'd come into the courtroom, I'd walk over to defense table and I'd say Ed you know I've been working my ass off all weekend and I'm sure you too were preparing for this trial, so did the Redskins win or what? He'd say fuck you. So there was that kind of interplay. And that's the only Redskin thing that I recall.

MR. COHEN: Ok. Maybe I'm mixing it up with something. I thought there was some moment when Gesell put off ruling until after a weekend and there was development over the weekend but that's not right.

MR. SCHUELKE: It was Thanksgiving weekend which intervened as I remember between the first new trial motion and his ruling. But I don't remember any Redskin game connection in that. You know there was an interesting, this is sort of inside baseball, but interesting dynamic in the courtroom. Gerhard Gesell was a very bright man who had a very robust opinion of his, himself, who was a very controlling judge who brooked no nonsense in his courtroom and was, in his view, the most important figure in this

courtroom in the eyes of the public, the jury, or whatever. So, he took pains throughout this trial not to be seen to be a fan of Ed Williams. Now, as you know, Ed Williams was a larger than life personality and probably at the time the most prominent trial lawyer in the country. So Gesell would refer to him as "Williams" and I can remember we're having chambers conferences during the course of the trial about some issue or other. And we walk out back to the courtroom and Williams would say to me "I don't know what it is with him you know. I don't care if calls me Ed, I don't care if he calls me Mr. Williams, but what is this Williams shit?" And Gesell would always refer to Beizer and me as "lads." "Well lads I think you'd better do this or that" and "Williams"! Just rankled Williams to no end. So, you know, every trial, particularly one that is sort of high visibility, is an anxiety-producing experience for trial lawyers. And this was no exception you know. High stakes, great visibility, packed courtroom every day in large part because every young lawyer in town wanted to see Ed Williams at work. But notwithstanding those typical sorts of anxieties, Rick and I had a great time trying this case for reasons I've tried to describe. The second trial venue is transferred to Philadelphia because of the publicity in Washington attending the guilty verdicts, which is probably the right call. Gerhard Gesell went with it so we moved the operation almost a year later, almost exactly a year later, to Philadelphia for the retrial.

MR. COHEN: He tried the second?

MR. SCHUELKE: Yes. Trying a case the second time with which I have all too much experience is a difficult proposition because even if you practice pretty liberal discovery as a prosecutor every trial has got unanticipated twists and turns. Not so the second time around. And try as one might to alter the approach so that you can maintain a certain amount of spontaneity which was always important to me, it's very difficult to do that. So, you go into it but the entire case has been tried. Now you have not only whatever grand jury testimony had been produced as Jencks material, you got the entire trial record, and it's a much easier exercise for the defense. Plus it seemed to me that while a bribe premised upon a loan or a couple of loans that had been repaid with interest is a tough sell in Washington, it's a real tough sell in Philadelphia where there are all kinds of corruption cases. So, we tried the case again and they were acquitted. The change in the dynamic was kind of interesting because whereas John Shorter tried the case for Yeldell, the first time, pretty much near as I could tell independent of Williams, it was clear from the beginning of the second trial that Williams had managed to take this over and he was damned if he was going to sit there and have Yeldell be eviscerated again on the witness stand, so Yeldell did not testify. Shorter played a very sort of backseat role as it were in the trial the second time around and that was obviously the right tactical judgment because you know if Yeldell had testified again, we would probably have another 15 or 20 false statements out of him. So that was that.

MR. COHEN: So Yeldell didn't take the stand the second time.

MR. SCHUELKE: Did not. I always got a kick out of the fact that – well first I should tell you that Ed Williams, I knew before we tried the case the first time, in addition to being a very talented trial lawyer and a great showman was a very very hardworking lawyer whose preparation was prodigious and who typically moved out of his home and closed himself in some hotel for like two months before the trial. And I learned from friends of mine at Williams & Connolly that after the guilty verdicts here in Washington, for months he was unapproachable. He was so distraught about the fact that his client had been convicted in this trial. Nevertheless, some time after the second trial, not too much after, six months maybe, my youngest sister happened to be at some event at the White House – I couldn't tell you what it was, and so was Ed Williams, and she, brash thing that she was, went up to him, introduced herself, told her that she was my sister and that she had followed the trial and wanted to congratulate him for ultimately winning. And he said "No no no no we just split a doubleheader that's all," which I thought was quite charitable. Because there is no question that ultimately he won.

MR. COHEN: Remind me of the name of your younger sister.

MR. SCHUELKE: Marybeth. So that's the sum and substance of the Yeldell Antonelli trial.

MR. COHEN: Kendall was assisting –

MR. SCHUELKE: And Greg Craig.

MR. COHEN: And Greg Craig. And had you worked opposite them or with them.

MR. SCHUELKE: No I don't believe I had ever met either of them before. And they were, you know, pretty young. I think they were probably both associates in the firm at the time. And I don't believe that either of them had a speaking role in the trial. I think that's, I don't know, they may have examined some witness but they were, Ed's associate support team. Both of them became good friends of mine in subsequent years and we have had matters in common a number of times. And Greg more so than David, although David and I had a matter in common in the course of the Whitewater investigations of the Clintons in the Clinton White House and so we had occasion over a long period of time to kind of collaborate on that. So it's kind of interesting you know, you start out and you meet someone, you start out as adversaries across the courtroom and then over the next 20 years or 25 years you develop a friendship and a mutually satisfactory business practice relationship.

MR. COHEN: And they both remained at Williams & Connolly becoming partners and so on for a long time.

MR. SCHUELKE: Yes, Kendall is there still. Greg left. He is now at Skadden Arps. Oh, he left at the beginning of the Obama Administration to become the White House counsel. A thankless task as it turned out, and he went to Skadden rather than returning to Williams & Connolly. He had a number of periods of government service during his ten years at Williams & Connolly. He was at the State Department during the Clinton White House and then went back to the firm. I think he had another stint I don't

remember exactly where but he had a couple of stints for the federal government for, you know, a period of a couple of years. And I think he chose not to go back to Williams & Connolly because at this stage he really wasn't interested in being a fulltime litigator. He's got a pretty substantial kind of political portfolio and he'd like to be the in-house counsel who advises foreign governments] and what have you and I think he's successfully doing that. Terrific guy by the way.

MR. COHEN: Yeah I've met him. I agree with you.

MR. COHEN: Okay we're about to leave your years at the U.S. Attorney's Office; we've talked about the Hanafi cases as well as this – are there any other cases from that period that ought to talk about?

MR. SCHUELKE: I think there is one that's always been kind of a favorite of mine and so I'll try to briefly describe that one. After I finished the last of the Hanafi trials and before my assignment for the Yeldell Antonelli case, I was kind of tired and I was interested in having some latitude to do other things than manage a trial calendar. This was before I went to the front office. And so the commander of the homicide unit at the time was Captain Joe O'Brien whom I had come to know quite well through the Hanafi cases and he asked Earl [Silbert] if he could make me available to work with homicide on one particular case and maybe a couple of other open unsolved homicide cases, because if you have a prosecutor who has the time and the interest, you can bring to bear compulsory processes through the grand jury, which the homicide detectives can't do alone. The one that

drove that request was a murder that occurred in the Holiday Inn at 14th and Rhode Island Avenues in – late in 1974. The United Mineworkers whose headquarters were at MacPherson Square, were all in the city for their contract negotiations and a number of them were staying at this Holiday Inn and one evening as they came back from UMW headquarters after their meetings and were changing clothes to go out to dinner, a couple of them had congregated in the room of one of them. Another one came from his room across the hall and joined them, left the door ajar, there in the room shooting the breeze, and some bandit walks into the room armed with a handgun. Orders them all to lie on the floor, produce their wallets and whatever cash they had and wristwatches and so on and so forth. Seemed to be a simple armed robbery. Another one of the UMW guys came from his room and approached the door to this room, saw what was going on, turned and bolted down the hall. Well the bandit saw him, ran after him and shot him. Shot him in the back and then delivered a coup de grace in the back of his head. The bandit then disappeared. The cops are on the scene and then not much after that they got some brief description from a desk clerk who saw this fellow sort of hurriedly going through the lobby and out the front door. Went out after him, looked up and down the street, he disappeared. It was only like a matter of seconds, he just disappeared. So, the UMW folks all believed that this was a hit because this is only a couple years after the Yablonski murders in Philadelphia. And there's no convincing them that this wasn't

some kind of a mob inspired hit. And the case is open and it's open and it's open and they're right in the White House and the White House is putting the heat on the Metropolitan Police Department. So, Joe O'Brien assigns his deputy Lieutenant Dick Thornton. First I'd met him, who became a very very dear friend of mine over the years thereafter, who passed away unfortunately about five or six years ago. So we start looking into this case and the first thing I learn is that shortly after the murder like half an hour maybe, two guys had been arrested outside the Whitelaw Hotel which is at 14th and T maybe?

MR. COHEN: T or U.

MR. SCHUELKE: U – and recovered – and the reason that they were arrested was because the Whitelaw at that time was a principal drug dealing shooting gallery kind of place. And so the undercover cops are constantly driving around patrolling that. So they drive around the corner and they see these two guys who appear to be involved in a hand-to-hand transaction which they think is a drug deal. So they circle the block and come back and approach them, do a pat down, and they find a box of nine millimeter ammunition in the back pocket of one of the two of them. And so they search around a little bit and there's a little vacant lot behind the hotel which is where they had accosted the two of them. And behind the wall of shrubbery whatever they find the nine millimeter semiautomatic pistol. So they lock the two of them up for constructive possession of this unlicensed firearm. One of them is a local denizen of Washington, a two bit crook who's got a record

as long as your arm but never for anything terribly serious. Cyrus Levi was his name. So they're both presented in court the next morning. They're both charged with a misdemeanor because carrying a pistol without a license in those days was a felony only if you had a prior such conviction or some other felony conviction. By the time they present them in court, they hadn't run the prints through the FBI and they didn't know about priors. So they both get released on bond. Cyrus – he's not going anywhere. The other guy never appears again. So I want to know, you know it was a nine millimeter that was the murder weapon because we had recovered slugs from the body and this seems awfully coincidental to me so I want to talk to Cyrus Levi. Cyrus had a lawyer but Cyrus was experienced in the criminal justice system and he was outraged about the fact that he had this charge because of his gun, and because the ammo was found in the other guy's pocket. So to make a long story short, I eventually decided to bite the bullet and cut some kind of a deal with him. And this is, I don't know, several months after I got involved in this, and so I agreed to dismiss the charge against him, I guess, in exchange for his cooperation, or we took some – he took a plea to a misdemeanor with no jail time. Something like that. We come up with some satisfactory agreement. The day that we're going to actually take this plea, I was in my office, which at the time was in the Pension Building, now the Building Museum, because there was a period of time in the late 70s, mid 70s, where the U.S. Attorney's Office had offices in there. Which is,

across the street from the Superior Court Building A. So I'm in my office and I get a call from Cyrus Levi's lawyer who says to me, he's here. He's in the courthouse. Who's in the courthouse? The other dude, who had given a false name when he was, which I can't remember at the moment, he's here Cyrus just saw him. Because Cyrus was out in the corridor waiting to go in the courtroom where we're going to take his plea. So I have Dick Thornton and another young, semi-cowboy homicide detective with me and we walk across the street, we walk into Building A, and standing against the wall opposite the elevator that goes to the cell block is this man whom I immediately recognized because I'd been looking at his pictures for some time now and I knew fifteen of his different aliases and so on. And I say, that's him. And so the young homicide detective spins him around and slams him against the wall, handcuffs him, pulls out his wallet and yeah I see like five of the known alias I.D.'s he's got. So, he's arrested.

MR. COHEN: Was he armed?

MR. SCHUELKE: No, I think he had a knife, but otherwise no. He was, the short of this is that he was from New York. He shot and killed during a robbery some man in – on the street in midtown Manhattan. A couple months before the murder here in Washington. Was arrested, was awaiting trial, they had him in the Tombs, and one day as they do every day, some deputy jailor comes in there with a list of everybody that got to be released today by the court. Lou Cohen, our boy raises his hand, and out he goes. His girlfriend

was a professional shoplifter and booster, as they call them, here in Washington. She had been locked up. She was about to be released because I think he came to post bail for her, and he was waiting for her to come up from the cell block. And he figured he was fine in Washington. He was – he got it, he shot that guy and he was gone and nobody was the wiser. The interesting – the further interesting part of this –

MR. COHEN: So it's all just a coincidence.

MR. SCHUELKE: The gun. We have this, you know, this high pressure, you know, open homicide case and I want to know, I guess this is before I knew about the Cyrus Levi connection, I want to know what, if any, leads we have on the gun. You know, we've got a couple of spent rounds from which we can make a positive firearms ID if we had the gun. So I have them put out a bulletin to the New Jersey State Police looking for a nine millimeter semiautomatic because they stop probably ten cars a week on the Jersey Turnpike and recover lots of firearms, because given the law in Virginia where you can buy a half a dozen a week or whatever the hell it is, this is huge traffic to sell guns up the East Coast. And the guy who was the head of MPD Washington Firearms Identifications Branch called me because he saw this bulletin and he said, yeah I saw this bulletin, you know, you're looking for the gun from the UMW case right?

Right.

We saw that gun the night it happened.

Say what?

Yeah, the gun that they recovered outside the Whitelaw Hotel is, in my judgment, without a doubt, the murder weapon.

Well how come your technicians report says they examined that gun and were unable to determine?

He said, Oh, because you know the science of firearms identification is you have a rifled barrel, you have a soft lead projectile and as it's rifled down the barrel, the rifling in the barrel engraves the lead slug and each is unique. Like a fingerprint. So you know I can fire a suspect gun, recover the slug from a tank of water, I can put it in a stereo microscope and compare it to the questioned one. And yup, same number of striations, same direction, blah blah, I get like six different criteria and they can say positive ID or no. The undetermined one is a thing apart. What does that mean?

Well at some time in the life of this particular weapon, somebody had the barrel in a vise, or it otherwise somehow got distorted. So every time you fire a round through it you get no identifiable striations. Instead you get the same smudge.

I said, well isn't the fact that you get the same smudge without fail the functional equivalent of the same.

Well yeah in my judgment, you know yeah that's why I say we saw the gun that night. But our discipline is predicated exclusively on matching the striations.

So I went out and lined up an independent firearms outfit, I forget the name of it now, a very prominent one. They made a positive ID based on that sort of obvious repeatable phenomenon and identified the cartridge cases that were found on the scene as well from the markings of the breach face of the pistol to the base of the cartridge case. So that's one, you know, like major screw up to happen at the very beginning. The other one was they recovered some pretty good latent prints from the door of the hotel room. And similarly I go to, you know, look into the fingerprint analysis and they say, unable to make a determination, because the set of so-called known prints that they had was some kind of a photocopy that was insufficiently clear so that they could match them. So when we locked him up that day in the courthouse I personally went and supervised the fingerprinting of this guy to make sure we got a good set of prints and sure enough we had a positive ID on like four different fingerprints, or part of a palm print from the hotel room door.

MR. COHEN: As far as you know, do people squeeze guns in vises for the purpose of –

MR. SCHUELKE: No, I've never heard of that. People file serial numbers off them but no I've never heard of that. And I don't have any idea how that happened. I mean it's possible I suppose that, you know, at some point in its life somebody had fitted it with a silencer and couldn't get the damn thing off and put it in a vise to try to screw the silencer off the end of the barrel. I don't know. So, the case goes to trial, Tim Morrison, a now retired Senior Judge in the Superior Court and at the time was with the Public Defender

Service, represented him. Another situation in which I had this adversary who became a lifelong friend after that, and he and I are quite good friends. And, you know, by any rational measure, given the print evidence, and the firearms evidence, and I don't know a couple of other things which I don't really remember off the top of my head, this is like sort of a slam dunk case. So the defense was, you know they had no fingerprint evidence, they had no firearms evidence until the White House gets involved. You know, we're going to frame this guy. Well that didn't get very far, and I think he's still doing like 45 to life. It was interesting, he got another five years tacked on because he was at the D.C. jail before he was transferred to a Federal Bureau of Prisons and he and three other guys made an escape attempt. One of them, one of the guards fired a round of buckshot after they were climbing a fence and one of them got hit with the buckshot whereupon our boy said, oop, okay. Ran back in. So he got another five years for an attempted escape. An absolutely cold blooded killer.

MR. COHEN: Have you thought of his name?

MR. SCHUELKE: His real name is Ellsworth Smith. Whose brother, I learned at some point in this investigation, was a homicide detective in Jersey City, New Jersey. And who told me, don't let this asshole make this claim to you about he's from an impoverished background and blah de blah de blah. You know I grew up in that same household. He had a cousin who lived in suburban Maryland. Prince George's County. Whose name he used when he first

got locked up. That's the name I can't remember, but that was the name that was his MPD official name, since that's the name under which they first booked him, and so the indictment bore that name together with a bunch of aliases. But I don't think I ever knew his real name until much later in this process. And he – I used to have a practice which you could get away with with most judges. I would try to get most of my witnesses in the courtroom so when I'm asking the panel, on *voir dire*, you know, Lou Cohen is going to be a witness for the United States, does anybody know him? I'd have you there, I'd say Mr. Cohen would you kindly stand up? And I had like, I don't know, 15 of them sitting in the jury box, introducing them all. And I knew all these people by this time. So I didn't need to read a list or anything, I could look at you and I knew who you were.

MR. COHEN: Yeah.

MR. SCHUELKE: And Morrison later told me that as I was going through that drill, the defendant leaned over and said to him, "We're fucked. He could just look at somebody and call out his name." Okay. So, that one has always kind of fascinated me, it's a great little detective story, you know? And a great story about how things can get screwed up, you know? By, well meaning, otherwise perfectly competent people. The other interesting thing about that, at the risk of boring you with these details, is that the defense, of course, knew, because we disclosed the original firearms examination report: Cannot Determine. So they wanted to send the gun to their own

expert for analysis. So we made arrangements to ship this gun down to Dallas where they had hired a firearms expert, who had been the Dallas Police firearms guy, retired and had his own consulting business. So, I knew therefore who their expert was because I had to arrange to send the gun to him. So I called him up, because he produced a similar report: Can't Determine. So I called him up, introduced myself, said I got a couple of questions for you.

He said, well you what, I mean am I allowed to talk to you? They hired me as their expert and –

I said, well you have every right to decline to talk to me, but you have a right to talk to me as well if that's what you want to do. I suppose I should point out to you that if you decline to talk to me one of the first things I'm going to ask you on cross-examination is how come you refused to talk to me?

Okay okay. So, yeah undetermined. That's it, hard discipline, no striations. He said, but I'll tell you as a former Dallas PD Firearms examiner, if the chief of police came to me in Dallas and asked me, I'd say "you got the right man."

So, that was the cross-examination.

MR. COHEN: Do you watch CSI programs and –

MR. SCHUELKE: You know my wife is a big fan of the CSI programs. So I unavoidably, from time to time, but I'm not a fan of them, no.

MR. COHEN: I once served on a jury, a Superior Court jury in which there were jurors who didn't want to convict a guy of a drug offense because they said, if the policeman were telling the truth he'd have a video tape of the guy handing him –

MR. SCHUELKE: Right, right, right. And those programs are a big problem for prosecutors because jurors also want to know, no fingerprints? No hair? No fiber?

MR. COHEN: No DNA.

MR. SCHUELKE: No DNA? Right, right. I don't particularly care for those programs beca – well first of all, the original one, the CSI Miami, the red headed actor. I forget his name. Who was originally in –

MR. COHEN: I don't watch them, myself.

MR. SCHUELKE: The one from New York with Detective Sipowitz. *NYPD Blue* –

MR. COHEN: Oh yes, yes yes yes.

MR. SCHUELKE: – *NYPD Blue*, he played Sipowitz's original partner. Well I can't stand this guy, this actor. So, you turn that on – otherwise I don't particularly like him because –

MR. COHEN: Sort of short, mostly what I think of is bald.

MR. SCHUELKE: No, that was Sipowitz. His partner –

MR. COHEN: Oh, okay.

MR. SCHUELKE: – his partner was this tall fairly slender, big shock of red hair. And he's the principal CSI Miami actor. Lieutenant somebody or other. But I don't find those shows to be very realistic. So I'm not a big fan of them.

MR. COHEN: Have you in private practice had any violent crime cases?

MR. SCHUELKE: No. Well, no no no that's not entirely true. Depending on how you define violent crime. I tried a case in the Superior Court, it's probably ten years ago now in which four campus police officers at Gallaudet were charged with homicide, manslaughter in the death of a deaf student at Gallaudet. And another fascinating case. Do you want to talk about that?

MR. COHEN: Sure. We'll double back.

MR. SCHUELKE: The decedent in that case was not a kid, he was a man, I don't know, late thirties maybe, who'd been an on again, off again student at Gallaudet. He stood about five foot eight and weighed about 300 pounds. And he was on the campus one day, he was not a current student, he had been the previous semester. And he's on the campus to go visit with a couple of professors because he's got a gripe about the grades he had had the previous semester. And he is pretty belligerent and so one of them calls the campus police, they come, they escort him out of the faculty offices, they're sort of escorting him across the campus, they want to just get him off the campus. He decides he's going to go see somebody at the Student Union and they're not going to let him in there. So they get into a wrestling match. By the time it concludes there are four of these cops who have wrestled this guy to the ground. They got him face down and they're trying to hand cuff him when he appears to be suddenly in great respiratory distress. They roll him over, they start immediately to administer CPR, until they get the paramedics there to intubate the guy, but he dies. There are, I don't know, twenty students who witness this.

They're up there standing on the steps up in front of the Student Union. They're all deaf, okay? And so this entire trial is conducted through interpreters. Fascinating experience. Not using interpreters generally, interpreters interpreting language is pretty simple and straight forward. Interpreting sign language is very complicated because it's imprecise, the sign language itself, particularly if you're getting some kind of a narrative. You know, it's one thing to say yes or no, or blue or brown, but it's also complicated because the interpreters using this American Sign Language have an axe to grind and they basically refused to follow the court's instructions. So if I pose a question and you start to answer it through sign language and a woman is interpreting for her and then you continue into something extraneous and I say that's it, you've answered the question. The interpreter will just keep right on interpreting, the Judge can say, STOP, you know. So this was kind of an interesting phenomenon and you know, basically –

MR. COHEN: Does this have something to do with politics of deafness and sign language?

MR. SCHUELKE: Yes, yes. Yes. Putting that aside a number of these witnesses, all women as I recall, testified in the grand jury, or in the course of interviews with the police said that the cops were choking him. And so the theory of the prosecution was that some one of them, and they never did identify which of them supposedly did this, had him in a choke hold of some kind. Which was not true, in fact, and the evidence didn't bear that out. But it

became clear during the course of the trial as we examined some of these kids what they were really saying was "he was choking." Not that he was being choked. And the sign language is pretty imprecise. So they had to sign "choking," and he clearly was choking. You know, he couldn't breathe, you know, he had advanced atherosclerosis. He was, on post mortem examination, he was about a nanosecond from a heart attack, no matter what. And there's no question he had a lot of weight on his back with these guys pinning him down which tends to compress the diaphragm, compresses the chest cavity to some extent, and so it's more difficult to breathe. And so there's no question that that contributed to the guys death. But this was not intentional conduct, nor was it, in the circumstances, negligent conduct let alone so reckless as to amount to an analogue for intent. And they were ultimately all acquitted.

MR. COHEN: It's interesting the sign language just doesn't adequately distinguish between active and passive, "choking" and "being choked."

MR. SCHUELKE: Well you know it may be that someone who is sufficiently proficient at it can do that, and it may be that the interpreter can as well, but that's not what happened here. It was quite a fascinating case. To give you an idea of how this developed, the prosecutor whose name was David Schertler. I don't know if you know, or know of Dave Schertler. He was, at the time, the head of a homicide unit in U.S. Attorneys' Office. He's a damn good lawyer and he's got, now he's got a very successful small firm of his own. And you know that in criminal trials the government, of course, has the

burden of proof and so the government makes an opening summation, the defense has an opportunity of summation and the government gets a rebuttal. And rebuttal argument for a prosecutor is probably the strongest tool in the tool cabinet in most cases. And he did his opening and we did our summation and he declined to do a rebuttal. I think he was personally convinced that we were right about this. So it's kind of interesting.

MR. COHEN: So they were acquitted.

MR. SCHUELKE: They were acquitted. And I remember arguing to the jury, and we had a, some pretty well educated jurors in that case, including a woman who was a psychologist who happened to end up being foreperson of the jury. And I remember saying to them, you know I've been trying criminal cases across this country, frankly, for forty years or whatever it was, thirty five years, and in virtually every trial in this court house and every other one in the country the jurors are going to be called upon to decide who is lying and who is telling the truth. Because somebody in 99.9 percent of criminal trials is lying. Oath, or no oath. You know you've got the cases in which you've got a murder case and the cops turn one guy who is testifying against the other one to minimize his own exposure to a sentencing and so on. Not this case. You could conclude that nobody lied in this case. Which I think was true. But it's a fascinating psychological study in perception and because of the medical examiner, for example, who did the autopsy. Came up with some perfectly bizarre conclusions. And who frankly admitted to me one time in an interview he was under a

lot pressure because all the publicity about this case and he did his initial autopsy report and then he knew there were these kinds of questions and so he went back and he did some studying on this subject and the other subject. And so, for example, he said he discovered that there were petekiae in the eyelids, the guy's eyelids, well that happens in most asphyxiation cases, but it can happen from lots of other things like exertion during a bowel movement. And, because there's a study, called the so and so study, where you take a section of the tender skin in the forearm which is somewhat similar in density to the cells in the eyelid and you put pressure on it and create these petekiae and then you count the number of petekiae in a square inch –

MR. COHEN: I don't know that word that you were using.

MR. SCHUELKE: Petekiae is a form of hemorrhage, little tiny, like a pinhead hemorrhages that appear in the whites of your eyelids.

MR. COHEN: Spell it?

MR. SCHUELKE: Pet, petaki, ekia, ae I guess in the plural. And you can calculate, you can count the number petekiae in this one square inch and if it's X number the compression had to last for five minutes or something like that. And so based on this he testified that they had been choking him for five minutes. Now, we need to think about that for a minute. That's a long damn time to be choking somebody, you know? So far I'm only up to twelve seconds.

MR. COHEN: Yeah.

MR. SCHUELKE: And I had a terrific former medical examiner who was our witness who took issue with much of the medical examiner's conclusions and then they put on in rebuttal another former medical examiner whom I knew very well, who had been the Chief Medical Examiner at the time of the Hanafi murders with whom I'd worked. And very smart guy. And a very straightforward guy. And I don't remember basically what they had called him to rebut, but it gave me the opportunity, "Dr. Luke, are you aware of the fact that Dr. Whatshisname here testified that he was able to conclude from the XYZ test that the decedent here had been choked for five minutes?"

He said, the XYZ test?

I said, yeah, you remember that from medical school?

I do. I mean that's been universally repudiated for at least twenty-five years. That is preposterous.

That was sort of like the end of that. I remember one of the jurors afterward telling me, yeah well you sure put the nail in the government's coffin on that one. So these trials are lots of fun.

MR. COHEN: Well let's go back. We're through with – okay to go on for a while?

MR. SCHUELKE: Yeah.

MR. COHEN: We're through, I guess, with your career at the U.S. Attorney's Office, unless you now or in a later session think of anything else you want to talk about.

MR. SCHUELKE: Okay.

MR. COHEN: So in 1979 you and Dick Janis and Larry Wechsler form your firm.

MR. SCHUELKE: Yes.

MR. COHEN: Were you all in the U.S. Attorney's Office at that point?

MR. SCHUELKE: No. Excuse me, Larry and I were, and Larry and I had left to join Dick Janis. Excuse me. And form the law firm. He had left the U.S. Attorney's Office several years earlier, had initially joined Jim Sharp, which was then Sharp Randolph and Janis, and that didn't last very long and Janis went out and hung up a shingle by his lonesome, and practiced as a solo practitioner for a year or two. And Larry and I left and joined him and we formed the firm in December of 1979.

MR. COHEN: Did you think about doing anything else?

MR. SCHUELKE: I did. I talked to several firms, had a couple of attractive offers, but I decided, or we decided, – I guess I should just speak for myself. I decided that the prospect of practicing with a couple of friends of mine in our own firm where we would have complete independence was attractive to me and that I was willing to assume the risk and it's sort of ever been thus. When we started this we had – we had a couple of matters immediately. Janis had, by that time, developed a relationship with the Cubic Corporation from San Diego, which is sort of a high-tech government contractor who made mine detectors that were capable of detecting plastic explosives, which they sold to the armed forces. They designed and sold a combat maneuvering system. Have you ever see the movie Top Gun?

MR. COHEN: Yeah.

MR. SCHUELKE: Where they have these fancy computer consoles that track the aircraft in the air and so that's Cubic's product. They're the ones who first came up with the farecard system which is used in the metro system here and elsewhere. And that proved to be a good client of his and therefore of the firm's for quite some time. As I left the U.S. Attorneys' Office, I had already been approached to join the Bert Lance defense team. Bert Lance had been indicted, a bank fraud case involving this small family bank that his family owned in northwest Georgia.

MR. COHEN: This is Calhoun?

MR. SCHUELKE: Yes. And he was indicted along with two codefendants. He was represented by an Atlanta lawyer whose name was Nick Chilovitz who at the time was with, – I'm drawing a blank on the firm, it will come to me. And Chilovitz was an experienced trial lawyer but he was a civil trial lawyer. He had no criminal trial experience. Lance had been represented by Clark Clifford and his then young protégé Bob Altman at Clifford & Warnke when prior to the indictment in the criminal case the Senate Committee which had confirmed him [Lance] to be the director of OMB for Jimmy Carter got wind of some of these allegations about the banking business in Calhoun and kind of reopened this confirmation process. I don't know quite how they do that but they revisited it in any case. And Clifford with great a deal of support –

MR. COHEN: Is this the thing that the New York Times columnist came up with, I mean, he certainly went after Lance. The guy who wrote the column about word usage on Sundays. I think he was also –

MR. SCHUELKE: Oh, oh, oh, oh. Recently passed away.

MR. COHEN: Yeah.

MR. SCHUELKE: It was –

MR. COHEN: I'll come up with his name.

MR. SCHUELKE: It was in the Nixon White House.

MR. COHEN: Yup.

MR. SCHUELKE: Oh shit. I can't think of his name. I don't know, I don't remember him. Because I – I was not involved in any of that other than as an observer, newspaper reader. But Clifford did a terrific job of basically embarrassing a number of these Senators for baseless allegations against this public servant. So when he gets indicted, Clifford and Altman were not happy about the selection of Chilovitz to represent him. Because they thought he ought to have a criminal lawyer. But Bert who's a very smart savvy guy did not want to retain one of the Atlanta prominent and capable criminal defense attorneys of which there are several, at least several. Because in his view they had been associated in the public mind with representing drug dealers and, you know, criminals. And so he didn't want that association. And, I don't know, for whatever reason he was happy with Chilovitz as an alternative. But Clifford and Altman persuaded him that

he needed to have an experienced criminal trial lawyer on the team and recommended me.

MR. COHEN: Although you're still at the U.S. Attorney's at that point? Maybe that's –

MR. SCHUELKE: I think, yeah, I think when the subject was first broached to me I was still in the U.S. Attorney's office planning to leave. I had nothing to do with the Lance case –

MR. COHEN: Oh sure.

MR. SCHUELKE: – on behalf of the justice department.

MR. COHEN: I understand.

MR. SCHUELKE: Nor – nor was it, you know, in any way under my supervision because this was Main Justice that was doing this not the U.S. Attorney's office. Yeah, because I went literally from the U.S. Attorney's office to Atlanta. And I lived, but for, occasional weekends back here, in Atlanta from virtually a day or two after I left the U.S. Attorneys' office until that trial was concluded which was six, seven months later, because the trial was about five months, four months. An interesting experience. I liked Bert a lot. The government's case was in large part incomprehensible and so they lost their broad conspiracy count through a Rule 29 motion at the close of the government's case. It was otherwise not a very attractive bank fraud case, actually it had some similarities to the Antonelli & Yeldell defense because while it was true that Lance used this bank like a personal piggy bank, they never lost a penny. He repaid all of the loans. And he, he was an old timey banker. So, some farmer in northwest Georgia whom he

knew needed $200,000 in order to buy some new combine for the next harvesting season and Bert would loan him the money. No collateral, no nothing. And virtually all those people repaid those loans.

MR. COHEN: And these are all to people he's doing kindnesses for not – not use of the money for interests of his own.

MR. SCHUELKE: No, no, no, no. No, no, no, no, no. There was no self-dealing in that. He did grant himself loans from the bank for some of this own ventures. He had loaned one of his kids like, I forget the sum but a substantial sum so he could start some little private equity business just so he got the experience with the bank's money. But it got repaid with interest. In addition to whatever the weaknesses of the government's case might have been, Bert Lance was a very popular figure in Georgia, particularly among the African American community. And so for example, among our character witnesses was Daddy King, Martin Luther King Jr.'s father who was the original minister of the Ebenezer Baptist Church in Atlanta. Another of our character witnesses was Jimmy Carter's mother.

MR. COHEN: I remember her quite vividly.

MR. SCHUELKE: Colorful character. Who – she testified, typical, you know, character witness direct testimony. The prosecutor, Ed Thompko was the lead prosecutor's name, stands up and says I have no questions for the witness your honor, she says "I come all this way and you're not even gonna ask me one question." The jurors loved her. They loved Daddy King. And there were jurors –it ended up he was acquitted with respect to, I don't

know, eighty percent of the counts in the indictment because it was this long – every loan transaction was another count in that –they were hung with respect to a couple of counts. And the government dismissed so there was no retrial. But there were jurors who told me after the trial they would not find him guilty if God came in and testified.

MR. COHEN: Yeah. He was out of office by then.

MR. SCHUELKE: He was. He was.

MR. COHEN: This did cause him to leave Washington and go back to Georgia?

MR. SCHUELKE: Yes. Yes. But he's done quite well. To this day he's doing fine. I hear from him every now and then. My son married a young woman from a prominent Atlanta family, now seven or eight years ago I guess, and so of course there are wedding announcements in the Atlanta Journal Constitution. He called me and he said it's a high time you got some real good Southern blood into that Yankee family of yours. So that was a fascinating trial. He was a delightful person whom I liked and respected. It was a very difficult personal experience for me because I basically left, you know, everything I knew and moved to Atlanta and I didn't know any of these people. Chilovitz viewed me, not unreasonably I guess, as some interloper that Clark Clifford sent to keep –

MR. COHEN: Watch over him.

MR. SCHUELKE: – watch over him. And as a consequence we had no social relationship whatsoever. I mean I'm there for five months trying this case with him, did I ever get invited out to dinner, nope. And so there were obvious sort

of tensions that went along with that. We divvied up the trial in a fashion that was sort of satisfactory to me.

MR. COHEN: There were just the two of you?

MR. SCHUELKE: He had an associate, his name is Gary Grindler who's now the Chief of Staff to the Attorney General. But he was not a fairly young associate so it was the three of us for all practical purposes. Bert had a magnificent home in Buckhead, the northwest suburb of Atlanta, the high rent district, some beautiful, beautiful mansion.

MR. COHEN: I've read the book.

MR. SCHUELKE: It had a name. I don't remember the name now. But they were living up in Calhoun. So in order to save on expenses I was invited to stay in that house during the trial. Which came with an old delightful African American couple who were the housekeeper and the groundskeeper. And here I am by my lonesome in this, it was probably 20,000 square foot house and Bert's wife, very interesting woman, Labelle, yeah, –

MR. COHEN: Labelle?

MR. SCHUELKE: Labelle. Out of the sense of southern hospitality, wanted to make sure that I was well cared for. So she would be there like every three days so it just wasn't a very comfortable arrangement so eventually I said mmm, this isn't working, so I got an apartment. But that was kind of interesting. She told me by the way, she's a one hundred percent believer. What we these days I guess call born again or a what's – what's the –

MR. COHEN: A believing Christian.

MR. SCHUELKE: Yeah. So while the jury was out, right after the jury went out, we were up at the house, that house in Atlanta the one evening and I was sort of trying to do my own little, you know we need to be prepared, do we think, you know, in good shape, but you know, and what a jury could do and so on and she said to me no He's already decided. I said I beg your pardon?

MR. COHEN: He with a capital H.

MR. SCHUELKE: And she was right. As it turned out. Labelle.

MR. COHEN: I don't want to leap forward but were you involved in the later BCCI stuff –

MR. SCHUELKE: Yes.

MR. COHEN: – that Lance was involved in?

MR. SCHUELKE: No. My firm principally through Larry Wechsler, although this is a big matter and so each of Janis and I sort of made cameo appearances in this case, represented the bank itself. In this criminal case that was brought in Florida against the bank for money laundering and I don't know what all else, Lance had no involvement in that whatsoever. The history –

MR. COHEN: The bank itself – do you mean BCCI.

MR. SCHUELKE: BCCI. Yeah, the Pakistani Bank. The real BCCI story was the one that resulted in the criminal indictments against Clifford and Altman in New York and a lengthy investigation by the Fed. BCCI was owned by a group of independent extremely wealthy Middle Easterners, Kuwaitis, Saudis who were worth, like a billion dollars apiece or more, who had all invested in this bank. The bank bought what became the First American Bank here

in Washington. Clifford became the chairman of the First American Bank and Altman was the President and CEO. The Fed later claimed that they had misrepresented, when the bank was chartered by the Fed, the ownership of the bank. The Fed's claim and ultimately the Justice Department's was then the investors in the bank were straw persons and this group of Pakistani bankers actually owned the bank and so on. So that's what that case was all about. At the same time they're investigating the operations of BCCI, having nothing to do with First American or Clifford or Altman. Because the bank ended up basically entirely illiquid and they had all these obligations all over the world which they couldn't meet. The only Lance connection, and I haven't thought about this in quite some time, early on Lance had an interest in one of the major Atlanta banks and one of these same Middle Eastern investors through Lance's introduction as I remember it bought a stake in that bank as well. But that never figured in any of the BCCI investigations.

MR. COHEN: Is that National Bank of Georgia?

MR. SCHUELKE: That's it, NBG.

MR. COHEN: Okay. Because my partner Art Mathews represented it I guess in connection with that matter and there was a guy named Pharaon –

MR. SCHUELKE: Pharaon.

MR. COHEN: Who I think was represented by Wachtell but I can't quite figure it out.

MR. SCHUELKE: Yeah, I can't either. I can't either.

MR. COHEN: So back to the start of your firm. Do you – may I ask you this, did you, the three of you see yourselves basically as bringing the same interests and the same skills or different interest and different skills?

MR. SCHUELKE: I would say more similar than not. I mean we all had the U.S. Attorney's office background. We all therefore when we went into practice advertised ourselves as white collar criminal defense lawyers. So we shared the same subject matter discipline. Each of us is a pretty different personality with different strengths and weaknesses I think and our practice has kind of evidenced that over the years. And so I may have been more likely to be engaged in a certain type of matter than Larry or Dick might have and the opposite was also true.

MR. COHEN: What sorts of matters were each of you concentrating on?

MR. SCHUELKE: I would say while very few of us in the white collar business try a hell of a lot of cases, I certainly among the three of us have been more the trial lawyer in the group. Larry is the world's most effective negotiator because nobody doesn't like Larry Wechsler, and it's amazing how that can be effective. I can get in a dispute with a prosecutor who is insisting that my client has to plead guilty to this or that or the other thing and I end up telling him to go pound sand, you know, whereas Larry would somehow convince him, you know. Dick is more of a – I'm not sure quite how to explain this, even though his practice, and indeed, over the years we have worked on some of the same matters so to that extent our practices are obviously the same but in his practice in terms, at least in

terms of the way he goes about the practice is more like he's a civil litigator. It's – there's a lot of disputatious motions or this and that, sort of more document intensive but our practice has been both fundamentally the same. I mean, for example, I was engaged by the Senate Ethics Committee, I guess we'll get to this, for the D'Amato investigation and I asked him to work with me on that. So he did. And he's, he's very good, provides very good support in that sense because he's very detail oriented, you can rely on him to turn over every stone if necessary. And we worked together on a number of other matters as well. But essentially I would say the practice has been all of a kind.

MR. COHEN: Did you from the beginning have conversations, agreements, understandings about what kinds of things you would take on or was that just a natural outgrowth of who you were. Did you agree on any kinds of things the firm wouldn't do?

MR. SCHUELKE: Well, yes. First of all, we agreed, I think it's fair to say we agreed, at least I told them that there are a couple of things that I will not do. And I don't remember if they agreed or we agreed that we would all adopt that but nobody disputed it. So I wasn't going to represent drug dealers. I wasn't going to represent – I wasn't going to get involved in street crime cases unless something was particularly interesting for me. I'll give you an example. Jim Sharp was a terrific lawyer, had a fairly substantial practice for a while representing some of these big time drug dealers in South Florida in addition to a very good white collar criminal defense practice

and, he found himself on a couple of occasions making all kinds of representations to the court about his client's commitment to do this and that and the other thing, you know, and of course didn't live up to them and found himself in the position in which he accepted some large upfront fee which made it look like he was just facilitating his client's flouting the law in some way or another and so I'm just not doing that anymore and I never want to be in that situation and so we never did. Neither of my partners did either and they certainly share that view. But the overarching principle upon which we agreed is that we're not going to – we're not going to do anything we don't want to do. So for example I can remember one of these organizations, these, antiabortion groups had been convicted in Maryland if memory serves me, of some, I don't remember if it was a bombing or, it was someone, some, violence against some abortion clinic and, came in and wanted me to represent them on the appeal. No thank you. Well why not? Because I don't represent terrorists that's why. I don't care if you like it or you don't, goodbye. So, you know, we had that kind of luxury which we all agreed that we're not doing something that we don't think we want to do.

MR. COHEN: What about sheer size, I mean, in those days I can remember even from Wilmer, Cutler & Pickering, which was much bigger, that we'd get asked to do something and there would be a real question whether we had the resources to take it on.

MR. SCHUELKE: Yeah and we've had that on any number of occasions. One solution to that which is what we employed in BCCI cases, we lined up a number of our friends in different law firms who would join this effort and so we put together a team. So the team had the resources. And, you know, there've been any number of times that we said we don't have the resources, we can't do this. Now, I will also say that it's long been my view that we could quite easily do some of these corporate internal investigations and representations of corporations particularly in the FCPA area these days and do it probably a lot more economically than the big firms do it. That doesn't happen.

MR. COHEN: It's got to be true.

MR. SCHUELKE: There's no question about it. And that doesn't happen because if you're the general counsel of, you know, Halliburton, for example, and you decide you're going to retain this eight person law firm in Washington to represent the company in what could be a bet the company kind of situation and you go to the senior management and they say what are you nuts?" No, get Paul Weiss and Skadden and that's just politically sort of an obvious, obviously comfortable situation for such a general counsel. But we can do it, and we might do it better and we certainly could do it less expensively.

MR. COHEN: What about structure, right, we're past two hours now, I think we probably ought to quit, but one – just one more question, when you're, the three of you planning to form the firm did you talk about how many people you

would try to hire right away, how much you'd grow or what kind of career you could you offer other people, younger lawyers who might join you?

MR. SCHUELKE: No, not really. We – it was just the three of us when we opened the doors. We leased office space at 1801 K Street or L Street whatever the address was. We set out to look for an associate at the beginning. We sort of made a commitment to ourselves that we're not gonna grow for the sake of growing and we're only gonna grow because the business requires it and we're not gonna borrow any money.

MR. COHEN: Not borrow any money?

MR. SCHUELKE: Right. Now there had been times when we had a line of credit available but we've never had any debt. We may have drawn because of a short term, 30day cash flow issue but, and we always wanted to keep the firm small. And so I never, I don't know that we ever were focused on a number, you know, like we're not going to be more than ten. That sort of came about as a result of having bought our building in 1985. So we had a physical limitation on the capacity for growth. And we didn't want to leave that building and therefore there it is.

MR. COHEN: Let's stop there.

MR. SCHUELKE: Okay.