

**Oral History of Henry F. Schuelke, III**  
**Eighth Interview**  
**March 21, 2013**

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 21, 2013. This is the eighth interview.

MR. COHEN: This is the eighth session in the oral history of Henry F. Schuelke, III. I'm Lou Cohen, and let's begin. This is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. We ended last time with some discussion of your work for the Board of Directors of Halliburton and I guess the first question; well actually let me ask this question. How, what was your arrangement with the Board? Can you sort of further describe your role in relation to the projects you undertook?

MR. SCHUELKE: Yes. As I think I indicated when last we met, when from time to time the company becomes the subject of an SEC or a Justice Department investigation, most often in the Foreign Corrupt Practices Act arena, the company, that is management, retains outside counsel whose initial charter is to conduct an internal investigation to ascertain the facts and, thereafter, either to negotiate with the Government a possible resolution short of litigation, or in theory at least, to litigate with the Government.

The independent directors of the Board, that is nonmanagement members of the Board, owing both to their fiduciary responsibilities to the shareholders and owing as well to the independent directors' desire to

have the Board comport itself in exercising its fiduciary responsibilities so as to eliminate or at least minimize the risk of potential shareholder derivative liability, thought it appropriate and prudent to have counsel separate from that which represented the management of the company. And so, both with respect to Boston Scientific, which we had discussed, and Halliburton, the independent directors of the Board engaged me to serve that role. And so I would, in cooperation with counsel for management keep myself informed of developments both throughout their internal investigation and then with respect to their negotiations with the Government so that the Board was kept informed by one who was independent of management. Because after all ultimately it's the Board that's got to make the decision whether to and on what terms to settle matters with the Government. And so that's essentially how that arrangement has worked.

MR. COHEN: Were there privilege issues in that relationship? I mean can the counsel for management who is conducting the matter directly communicate freely with you as a lawyer for the independent directors?

MR. SCHUELKE: Yes. It's the corporation which is the holder of the privilege, not management as independent of the Board nor the Board as independent of management, and so both outside counsel engaged by management and counsel engaged by the Board serve the same client ultimately. I have never seen this to occur but it's conceivable that you could have an interesting attorney-client privilege issue arise when you have a member

of senior management, or actually it wouldn't even have to be senior management, who engaged separate counsel with respect to the same matter and while that counsel and counsel for management would have a common interest or a joint defense relationship, which would preserve the privileged character, it's conceivable to me that you could have a situation in which the Board, while it might enjoy a common interest, would not be or want to be perceived to be in a joint defense in a situation with such an individual officer or employee. I have not seen that arise but it's conceivable to me that it could.

MR. COHEN: Because there might be counsel for individual managers or individual inside directors in some circumstances?

MR. SCHUELKE: Yes.

MR. COHEN: That would create further complications?

MR. SCHUELKE: It could. It could.

MR. COHEN: How many, roughly or exactly, of these Halliburton episodes have there been, I mean, occasions when you have been called in?

MR. SCHUELKE: I have served the Board in this capacity since 2006, and in the ensuing seven years I think there were four separate and distinct investigations, all of them into allegations about Foreign Corrupt Practice Act violations. I've also, on behalf of the Audit Committee of the Board, conducted an investigation and made findings and recommendations to the Board on the subject of internal finance and accounting issues that were raised by a whistleblower within the company; and once I had concluded that work

and the Board made the judgment to waive the privilege, I shared my findings and conclusions with the SEC, which was satisfied and closed the investigation. With that one exception, they were all FCPA cases.

MR. COHEN: And the whistleblower then proceeded independently or...

MR. SCHUELKE: Made a claim against the company for discriminatory treatment, constructive wrongful termination, because he was in fact not terminated. I did not represent the company or the Board with respect to that. That wasn't a Board issue that was a management issue, and that was resolved to the company's satisfaction. So that's essentially what the nature of that work has been.

And as I believe I said earlier, I have particularly enjoyed this work for two reasons: One, I have been very much impressed with the Boards of both Boston Scientific and Halliburton. All fascinating, highly experienced, insightful and serious-minded people to a person. A wide range of personalities, to be sure, but they all fit that description. And secondly, because as I think I may have observed earlier, I've had occasion in my work for both of those Boards to have the pleasure of collaborating, if you will, with three different law firms who served as outside counsel for management and we operated in a completely open and cooperative fashion and I was in the luxurious position in each of these situations of being able to tell the Board when asked that the company couldn't be in better hands with their outside counsel, which is a nice place to be.

Let me wrap this subject up with some general observations about the Justice Department's and the SEC's emphasis on enforcement of the Foreign Corrupt Practices Act which has been a priority for each of them for at least the last ten years. To be sure, where that statute has been violated by assorted companies and individuals over the years, putting aside for the moment what one might think about the social utility of that statute and its enforcement, about which I have some reservations, and so sure, there have been cases that were appropriately pursued and prosecuted. There are many of them, most of them at least in my experience, which provide the Government with an opportunity, in the form of fines, to reap an enormous financial return far out of proportion to the seriousness of the conduct involved. Company A gets a subpoena from the Justice Department, the company engages outside counsel to conduct an internal investigation as well as to obviously respond to the demand in the subpoena. Because the operations of many of these companies are far flung, I mean after all we're talking about foreign, alleged foreign corrupt practices, undertaking such an investigation is time and labor intensive and it has been commonplace for a company to incur tens of millions of dollars in legal fees to investigate such a matter. Fifty million has not been unusual. Ultimately, when the Government comes to the conclusion that it's prepared to settle the case on some basis, the companies more often than not, far more often than not, agree to negotiate a resolution, which has resulted in the Department by its own account,

independent of the SEC, receiving on average several billions of dollars a year in fines and penalties, and in the SEC receiving comparable numbers.

MR. COHEN: Really? It's that high?

MR. SCHUELKE: Most of these corporations, even if in their judgment they had a triable case are, for assorted economic reasons, not in the position to litigate with the Government; most often that's because of the draconian collateral consequence of suspension and debarment from Government business simply upon the return of an indictment. And so as a business proposition it makes sense in most of these cases for the company to put the matter behind it even though it costs them in addition to the fifty million dollars or so they spent in legal fees another several hundred millions of dollars. My view of this, as I step back from an advocate's position on behalf of any client; it just seems to me to be extortionate, and I don't see that changing any time soon. It's been a huge boon for the Justice Department and the SEC but it...both as a lawyer and as a citizen I find it distasteful.

MR. COHEN: I've heard it said that it has also been a boon for foreign multinational corporations from countries that do not impose such restrictions. One such country for many years was Germany which of course has companies competing with U.S. companies in everything U.S. companies do everywhere. Thoughts about that?

MR. SCHUELKE: Yes, I do. I share that view which is why I expressed reservations about the social utility of the FCPA in the first place. You know, the Justice Department has long taken the position, which I find to be patronizing,

that the real interest in the enforcement of that act is the financial wellbeing of the citizens of a number of countries around the world whose economies are suffering and you've got despots, dictators or otherwise corrupt governments at the top of some of these countries. And according to the Justice Department, if some American company pays a ten million dollar bribe to a senior government official that somehow deprives the people of that country of funds that would support government social programs. Well, that's never made any sense to me because whether the minister of petroleum of Country A receives a ten million dollar bribe that he deposits in a Swiss bank account or not, I don't see what impact one way or the other that has on the local economy and the working class of the country. But that's how the Justice Department proselytizes.

MR. COHEN: I would suppose that the issue was depriving the citizens of the foreign country of the honest services of their leaders and governmental personnel and that that could hurt them if, you know, some minister or general awards a contract to one company rather than another based not on the merits but on who's paying him.

MR. SCHUELKE: No, I agree, and that's a more sensible analysis in my view although I find that sort of patronizing as well. You know, if an American corporation pays such a bribe in order to compete on a level playing field with foreign corporations who labor under no such constraints as the Foreign Corrupt Practices Act, it seems to me that the onus is not on the American law enforcement authorities to police whether or not there are losses of honest

services in some foreign country. Now, for many years the United States was the only major commercial power which imposed any such prohibitions on business practices. And so during that time the U.S. business operated at a distinct competitive disadvantage. The Justice Department has labored mightily over the last 15 years or so to encourage other countries, Europe in particular, to (a) adopt and (b) enforce a similar regime, and the OECD has indeed adopted comparable legislation. But its enforcement is lax, and so U.S. corporations still operate at a significant competitive disadvantage as a result. So that's sort of my philosophical take on...

MR. COHEN: Halliburton is of course a well-known and over the years has been a controversial company in part because former Vice President Cheney, who is associated with them, was a controversial guy. And I'm just wondering whether there's anything more you feel you can say about Halliburton and its activities in particular, recognizing that we are making a public record here?

MR. SCHUELKE: Well, let me say only the following: It's true that while Dick Cheney served as the chairman of the company for a brief period of time, Cheney's subsequent unpopularity as a political figure proved to be a problem for the company. Not in a substantive way because in fact, certainly after he had left the company, Cheney had nothing whatever to do with the business of the company. But you know one would read every time there was some claim brought against the company, "Oh, this is Dick

Cheney's company," which got a lot of folks exercised. So I think the company suffered ultimately from that relationship. It's interesting to note that one of the most publicly visible chapters in the Halliburton story involving the Foreign Corrupt Practices Act involved the conduct of the now former chairman of Halliburton what was then a Halliburton wholly-owned subsidiary, KBR, Kellogg Brown and Root, and that one figured prominently in the press because KBR had a series of very large contracts to support and supply the troops in Iraq. And there were allegations, much of them overblown and on which Halliburton eventually prevailed, that KBR had bilked the Government in some of these contracts in Iraq. There was also a substantial FCPA case involving oil services operations in Nigeria. KBR prior to the resolution of that latter case was spun off and is now a wholly independent corporation. But Halliburton the brand suffered from that association as well. And the work of KBR at the time of the allegations about the Government contracts in Iraq represented about 1% of the annual revenues of the Halliburton Corporation. So given the publicity attendant to that investigation and its resolution, it was always portrayed as Halliburton is making all this money through its fraudulent contracting practices with the U.S. Government. Simply not so.

MR. COHEN: Halliburton was also involved in the Macondo well, the Gulf oil spill.

MR. SCHUELKE: Yes.

MR. COHEN: I guess that remains unresolved?

MR. SCHUELKE: That's correct. Halliburton was a subcontractor through BP and provided the concrete slurry mix which was designed to seal off the well bore.

You're right, that has not been resolved and they have unfortunately been finger pointing at one another which I think is unfortunate because in truth I think the two of them really have and ought to have a common adversary and shouldn't be pointing fingers at one another. I mean, my view of that, and I'm not any longer involved in that, I did early on in the BP investigation represent a senior BP executive whose involvement in that matter has been resolved and that's a closed matter. But I was close enough to it to have formed a pretty strongly held opinion about the merits of the Government's claim that BP and/or Halliburton and/or Transocean which owned the rig were criminally negligent. I think this is one of those terribly unfortunate accidents that cost the lives of I think it was nine individuals who had been on the rig and of course an enormous amount of ecological damage to the Gulf Coast. But accidents do happen, and I think that this is an example of the Government, the Justice Department getting way out ahead of itself in publicly stating that there would be criminal charges brought in this case before anybody knew what had happened, and that wish has been father to the thought. For example, a dear friend of mine, a lawyer in Houston, represents one of three individuals who've been criminally charged in that case. His client and one other were both on the rig at the time of the explosion. The third has been charged with making false statements before the Congress about what the actual flow

rate of the spill was between the time of the explosion and the time that the well was finally capped. But these two fellows who were on the rig were sort of midlevel engineers; one of them who is represented by my friend in Houston, was on that rig for the first time starting several days before the explosion occurred. He himself, of course like everyone else on the rig, was at personal lethal risk if indeed they were engaging in negligent conduct. The issue was what's been called a negative pressure test and there were what the crew on the rig thought to be anomalous results of this negative pressure test, and they couldn't quite figure out what it meant and they debated it among themselves for several hours. They consulted with more senior engineers at BP back in Houston, and they finally came to the conclusion that it did not pose a significant risk. Well, in retrospect they were wrong. But analyzing such test results and debating about its significance and consulting with senior engineers seems to be the prudent thing to do, kind of the antithesis of negligence because the negligence standard is not whether or not you proved to be right in the last analysis, it's whether or not you exercised ordinary care in the process, which it seems to me they did. But, you know, the Government wants a couple heads.

MR. COHEN: It occurs to me that there may be lots of people including perhaps even some other oil companies that would rather have history's resolution of this be to blame the negligence or worse of individuals associated with BP and the other companies, rather than, as you said, "accidents do happen,"

because if you start with accidents do happen you might say well that's why we shouldn't be drilling in such sensitive areas in the first place.

MR. SCHUELKE: That's an excellent point and I can understand why other oil companies might have that view.

MR. COHEN: Did you get any sense; have you gotten any sense...

MR. SCHUELKE: No.

MR. COHEN: That that is what happened?

MR. SCHUELKE: No. No, and the Justice Department of course is not acting as a result of that sort of motivation. But no, I've not seen or heard any indication that competing oil companies would be happy to see the fault placed on a couple of negligent individuals. So that's a troubling one for me.

MR. COHEN: Let's move to a completely new subject.

MR. SCHUELKE: All right.

MR. COHEN: The, it came to be known as the Abramoff investigation, in which you were involved. Why don't you start by describing what it was all about, and then your role?

MR. SCHUELKE: Jack Abramoff was the senior Greenberg Traurig Washington lobbyist in the firm's lobbying practice. Greenberg Traurig is a Florida firm. It's headquartered in Miami. Its lobbying practice and the leadership of that practice were actually in Tallahassee because most of their lobbying work was with the Florida legislature. And as a result, because Abramoff developed a quite substantial practice here in Washington, he was like the 800pound gorilla, who was in a position to pretty much run his practice as

he saw fit, with little effective oversight by the senior people in the group who were in Florida. Abramoff had a significant number of clients who were Native American tribes who had casino interests around the country, and he lobbied on their behalf both with respect to federal legislation, with respect to Bureau of Indian Affairs executive branch issues and with respect to assorted state legislatures. The story broke with a series of newspaper articles in Louisiana which reported that one of the Louisiana tribes, the Coushatta tribe had spent tens of millions of dollars in fees with Greenberg's group; and a number of dissident internal tribe political figures came to the view that they had wasted most of this money and got very little as a result. That prompted both congressional and justice department investigations.

MR. COHEN: This is all about 2006?

MR. SCHUELKE: 2000....no, I think it was 2004. Yeah, early in 2004. Greenberg Traurig engaged me to conduct an internal investigation so that the firm would be informed as to what transpired and would therefore be in a position to make a judgment about whether or not the firm as a firm had appropriately represented these clients, and to the extent that the firm concluded that it had not, it would be in a position to negotiate such claims as the clients might have against the firm. A further charter of mine was to cooperate on the firm's behalf with the Justice Department in its ongoing investigation. It's a very interesting and somewhat convoluted story. So let me see if I can boil it down to its essentials. Abramoff approached a

number of the tribes, pitching them for business on the following terms. I will represent you before whatever cognizant agency, whether it's the Congress or the Executive Branch, and I will do it for a flat fee of X dollars per month (and the X dollars was fairly substantial). It was in the neighborhood of a couple of million dollars a month. But, he told them, you're going to be flat wasting your money unless you also engage a firm to do grassroots work and the best in the business whom I strongly recommend is a firm called I can't remember the name they used at the moment, but it was a firm if you can call it that which was really a sole proprietorship which was run by a guy who'd been a staffer for Tom Delay when he was in the House and his business was run out of a beachfront home in Rehoboth, Delaware. And so that, and so the tribes would say well okay if you say that's what we have to do, that's what we are going to do. And the grass roots guy would then make a proposal that he would, he would perform these services for, in one case \$2.75 million. In the event, he probably devoted maybe \$200,000 worth of effort to this project which the tribe was paying \$2.75 million for. And as ultimately became apparent, he and Abramoff had a 50/50 profit sharing relationship. So Abramoff, who had urged the tribe to hire this guy, got half of the \$2.75 million, and they repeated that gambit many times over with different tribes.

MR. COHEN: So this was outside of the Greenberg firm?

MR. SCHUELKE: Oh yeah. Well some of Greenberg Traurig's resources were devoted to some of this. But, yeah, this grassroots was an independent outside operation. We, after three maybe four months into our investigation, had developed access in a searchable fashion to all of the Abramoff group's email, where what I just described to you was made abundantly clear and expressed often times in some of the most insulting terms with respect to their clients a bunch of dumb Indians, they're not going to know any better and so on. I on behalf of the firm shared the results of our investigation with the Justice Department. The Justice Department of course conducted its own sort of parallel investigation. But I think it's fair to say that our initial investigation and our review of the email traffic was the principal source of evidence for the Justice Department, which ultimately brought a case against Abramoff who also had a separate totally unrelated criminal case in Florida, and he served I think what amounted to about four years. One of the cases that received a fair amount of press attention was that of one of his younger colleagues whose name is Kevin Ring, RING. There were six or eight young lobbyists working for Abramoff who resolved cases by disposition on fairly liberal terms probation, six months of home confinement or three months of confinement. Ring went to trial twice. The first trial ended in a mistrial owing to a deadlocked jury, and he was found guilty in the second trial and was sentenced, by Ellen Huvelle actually, to some... I think it...

MR. COHEN: ... of the U.S. District Court here...

MR. SCHUELKE: District of Columbia. It was either three years or three and a half years, and he is presently serving well, no wait a second. No, yeah he is. I think the Circuit affirmed his conviction. And it was very interesting to me, and I never quite understood this but the case against Ring was charged as a conspiracy to violate the federal gratuity statute because in addition to what I described about the methodology with respect to the tribal clients, it was the practice of Abramoff's group very aggressively to wine and dine members of Congress and their staff, and Abramoff owned a restaurant on Pennsylvania Avenue at the time.

MR. COHEN: What was it called?

MR. SCHUELKE: Signatures. Abramoff's group hosted fairly elaborate dinners most nights of the week, attended by members of Congress, senior members of congressional staff, and there were tickets to concerts and athletic events and so on. And so Ring was basically charged with this conspiracy to violate the gratuities statute and a series of substantive gratuities counts. What always mystified me was why they didn't charge him with garden variety fraud which seemed to me to be a far easier case for them to make and really addressed the most significant conduct; because Ring, through a contact he had, brought one of these tribal clients to Abramoff as a potential client and Abramoff did his typical pitch to that tribe hire me, pay me X but you have to hire the grassroots outfit and so on. And Ring for his efforts was paid by Abramoff and the guy who ran the grass roots operation several hundred thousand dollars as kind of a bonus for his

having brought this client in, and Ring knew very well where the money came from and he knew ultimately from his client and he knew that there were no meaningful services provided for that. But for whatever reason...

MR. COHEN: Was Ring an employee of Greenberg Traurig?

MR. SCHUELKE: He was a shareholder. That firm is a corporation and so the analog to the typical law firm partner is a shareholder in the corporation. So, yeah, he was a shareholder in the firm, and he was relatively young and aggressive and learned how to do business from Abramoff. But it's interesting that given their relative positions in the hierarchy of that operation, he ends up serving almost as much time as Abramoff did which makes very little sense to me. So that was the Abramoff affair.

MR. COHEN: Did, was the firm ever charged with misconduct?

MR. SCHUELKE: No.

MR. COHEN: Was it ever sued by the tribes in connection with all this?

MR. SCHUELKE: The firm settled claims of a number of these tribes to their satisfaction. I don't remember but I don't think that any of them actually filed suit against the firm. I think they were claims, were entertained on a formal basis and the firm settled. I may be mistaken. There may have been one or two that actually filed suit, but they were all resolved in that fashion because the firm from the very first took responsibility for Abramoff's actions.

MR. COHEN: Connecting this with our earlier discussion on the Foreign Corrupt Practices Act, I can remember Stanley Sporkin, who of course was the

almost legendary Director of the Enforcement Division of the SEC, saying “it sticks to the pipes” when you have corrupt practices. The people who are engaging in them take their cuts as well. This is sort of an example of that.

MR. SCHUELKE: It surely is. It sure is – it’s a very good example of that. It was a sad story for the firm to be sure. But I think the firm acquitted itself well and did the right thing. And while theoretically the firm had exposure on a *respondeat superior* basis, the Justice Department from the very beginning until the end was of the view that the firm effectively cooperated, mostly by making me available to the Justice Department, and had acted responsibly, and the Department never expressed any interest in pursuing the firm.

MR. COHEN: New subject?

MR. SCHUELKE: All right.

MR. COHEN: Stepping back, we had listed your representation of Carolyn Huber when she was in the Clinton White House as something we were going to talk about and I somehow let us pass that without our talking about it. But why don’t we go back to that and describe the situation and what you did.

MR. SCHUELKE: Carolyn Huber had worked for a long time for the Clintons starting when they were in the governor’s mansion in Arkansas, and served as a personal secretary and bookkeeper for both Hillary and Bill Clinton. When he was elected president, she came with them to the White House to serve a similar role. She became a witness in the course of Ken Starr’s

investigation and also in the course of the Senate Banking Committee's investigation of the so-called Whitewater matter. As you may recall, Hillary Clinton had worked as a partner in a Little Rock law firm while Bill Clinton was the governor of Arkansas, and there became a question about work that she had done while in Arkansas for which the Rose Law Firm, where she had been a partner, could not produce records. So that became known as the Rose Law Firm records issue, and this was the quite mysterious and quite publicly commented-upon gap.

MR. COHEN: They were described as billing records.

MR. SCHUELKE: They were billing records. And lo and behold, one day years later, Carolyn Huber was in her East Wing office where on the floor she had several boxes that had assorted junk in them including personal things and a couple pairs of shoes and assorted papers and what not, and she was sorting through that to clean up the mess at one point and came upon this folder of the famous missing Rose Law Firm billing records. And she testified before D'Amato's Banking Committee and in the course of a series of informal interviews with Ken Starr's staff about the provenance of these records as I just described it. She was simply a witness. She had no personal exposure. But the abiding question was whether or not her account of the discovery of these records was actually truthful or whether in some fashion, Hillary Clinton, who as this theory has it, had been sitting on these records for some time, arranged to have Carolyn discover them so

that they ultimately could be produced. The truth of the matter is anybody's guess.

MR. COHEN: How was the discovery of the records announced? I can't quite remember. Did Hillary say my staff or Carolyn Huber found these?

MR. SCHUELKE: No, no. The Clintons were represented by David Kendall of Williams & Connolly. Carolyn reported this discovery to me. I alerted Kendall, and Kendall produced them in response to the subpoena.

MR. COHEN: How did Carolyn come to you? Had you known her before?

MR. SCHUELKE: No, no.

MR. COHEN: Do you know who suggested you to her?

MR. SCHUELKE: I'm trying to recall. I think she was referred to me by Kendall at Williams & Connolly at a point earlier than this discovery of the records. I'm pretty sure that's the way that came to pass.

MR. COHEN: Why would she have needed a lawyer at an earlier point?

MR. SCHUELKE: Because there were other personal records of the Clintons which she had maintained which were the subject of a subpoena.

MR. COHEN: What's Carolyn Huber doing now?

MR. SCHUELKE: I don't know. I haven't had an occasion to speak to her in quite some time. She and her husband moved back to Arkansas, I know that. But exactly what she's doing, I think they are basically retired. Her husband had been a long time federal government employee, retired, and they moved back to Arkansas. So that's that story.

MR. COHEN: Okay, we've covered a lot of your remarkable and remarkably interesting career. Before we move on to personal stuff, is there anything else that you are thinking of at the moment that we haven't covered that...

MR. SCHUELKE: There's one case from fairly early in my private practice career which I've always found interesting and amusing which I don't believe we've discussed. I think it was 1982. So I'd been in private practice for two years basically when I was engaged to represent a fairly small engineering and mining company from Albany, Georgia, and they had been engaged in turn by a prolific tax shelter promoter from the West Coast who had conceived of a plan which he put in operation to mine placer deposits, that is the gravel in river and stream beds and banks, for gold at a time when the price of gold had spiked to like \$450 an ounce. It sounds like a matter of financial insignificance today given the price of gold, but it was substantially more than gold had historically traded, making it theoretically profitable not to mine actual gold veins in mountains, as they did for years in Telluride for example, but rather to mine the gravel, sift the gravel and you know if you managed after a month's work to come up with you know 200 ounces of gold or 500 or whatever it was, it was potentially profitable.

MR. COHEN: As they presumably did down the river from Telluride in Placerville.

MR. SCHUELKE: Presumably so. The tax shelter scheme worked as follows. At the time, this is prior to the Tax Reform Act in 1986, one who invested in mining operations could realize a quadruple deduction from ordinary income

taxation for the value of the investment. So if you were a high income individual and you invested a half a million dollars in this placer mining operation, you could realize a two million dollar tax deduction. So whether you ever made a nickel from the actual produce of the mine was of no consequence. The trick to this, however, was that each investor was required both under the tax laws and under the Securities and Exchange Commission regulations to independently control and own the property which was to be mined. Now this outfit commenced these placer mining operations in two locations simultaneously. One, in the jungles of Panama and two, in the jungle of French Guiana completely inaccessible until my client built a so-called all-weather road through to the jungle and very difficult and expensive to operate. So there's no way for an individual investor who is willing to spend a half a million dollars could have dreamt about even commencing such an operation. So the tax shelter promoter, whose name will come to me in a moment, conceived of this structure that was created in an effort to comply with the applicable SEC regs whereby you take a stretch like say a mile long of this given river in Panama or French Guiana and survey it off in little squares of maybe 10,000 square feet per, sell for the investor's half a million dollars an individual sole ownership interest in this 10,000 square foot little plot so that the mining operation could sift the gravel all the way down this ten-mile stretch of the river and in theory Lou Cohen owned this 10,000 square feet, Hank Schuelke owned the adjacent one and we all independently of course hired

the same mining operator to do it and theoretically that was going to meet the...well

MR. COHEN: Sounds like old SEC orange grove case.

MR. SCHUELKE: Yes, and the same guy had earlier done a similar tax shelter promotion for film in Hollywood by selling individual frames of a film to investors.

MR. COHEN: The theory of this being that he therefore wasn't selling securities.

MR. SCHUELKE: Correct. So I mean that was sort of you know interesting enough and the SEC investigated it for several years, and my client, the mining company, was ultimately exonerated and was never charged criminally whereas the tax shelter promoter was and he's still to my knowledge serving time now 25 years later.

MR. COHEN: For violations of the securities laws or the tax laws or both?

MR. SCHUELKE: Both, and he was also tried and convicted in state court in Indiana and got 15 years there and he's serving this time back-to-back. But here's the interesting part of this to me. I made several trips both to Panama and to French Guiana. The SEC, the individual principal lawyer from the Enforcement Division whose name is Joe Goldstein, who became a good friend of mine as a result of us having met on this case, was of the view that there was no mining operation. He thought this whole thing was made up out of whole cloth. Well that wasn't true, and so first we, we being Pierce O'Donnell. I don't know if you know Pierce. Pierce had been a Supreme Court clerk, went to work for Williams & Connolly right out of his clerkship, led an associate insurrection because they were upset

about the fact that Paul Wolfe was not made a partner when he thought he should have been or they thought he should've been. That was the end of Pierce O'Donnell at Williams & Connolly. Pierce moved out to L.A. First thing he did was run for Congress. He is an amazing character and has had a very long and successful career as a litigator in Los Angeles. So we hired a professional Hollywood film company. We flew them all down to French Guiana to film the mining operation which we did. The ... you know French Guiana is actually a department of the Republic of France. So you're in France when you're in French Guiana and there's lovely little capital city, Cayenne, and Air France flies in there. We flew Air France from Los Angeles on that trip I think and then it's about 20 miles north to the river which is the border between French Guiana and Suriname where there's a tiny, tiny little community whose principal historic claim to fame is that they had a guillotine and many French criminals were shipped from France to French Guiana to be executed. (Well, why they bothered to do that, I don't really know.) Then there was a road that my client's company had built through the jungle from there about 30 miles inland into the jungle, which was a quite hazardous and although they called it an all-weather road it was near impassible in any number of points. And so the company had left behind bulldozers in various spots. So if you drove in a four-wheel drive vehicle and you got stuck in the mud, there was a bulldozer there that could winch you or haul you out or push you out or whatever. There was also a small grass airstrip

at the mine, and I flew in there twice on a little single-engine Piper. But I wanted to transit the road itself so I was personally in position to you know represent what it was like. Well, Goldstein decided that he wanted to see this himself and I felt...

MR. COHEN: This is all to show that the mining operations are real?

MR. SCHUELKE: Yeah, yeah. 'Cause he, he, he basically believed that this was all bogus, that the tax shelter promoter was raising... had raised all of this money and he raised over a hundred million dollars. He claimed that he was the Roger Maris of tax shelter promoters because he had set a new record over a hundred million. And Goldstein was determined he was going to go visit and he was going to bring a mining engineer that the SEC had hired which he did. So I told him that I would be happy with the assistance of my client to make the arrangements to get him to the mine, and initially, he said, hmm, okay until he heard what the plan was. He was to go to the Grand Hotel in Paramaribo which is the capital of Suriname right across the river where at the appointed hour I would have a driver who would take him to the river whereupon he'd be handed over to a paddler in a dugout canoe who was going to take him across the river where he would be met on the other side by somebody from our company who would take him out this all-weather road to the mine site. Now, I had in fact arranged this. I had actually on one of my trips, done this myself just to check it out, and it would've worked just fine. Well, Goldstein heard about the dugout canoe and "no thank you". So somehow he made arrangements

and he got himself to Martinique and then from Martinique to Cayenne and I met him there. And then we drove up, and I wanted him to experience this road. I didn't want to take him in on the plane. That was much too easy. And so we took him to the mine. And he had his engineer with him and I have pictures of Goldstein and me standing on this barge in the middle of the river with this placer mining conveyor belt on it in this sweltering heat. You know we're in our shorts and what not and I, it's a great picture and I think he's the current custodian for many years now. I would have the picture in my office for a year or two and then I'd see him at some occasion, I'd give it to him and he'd keep it for a couple years hanging on his wall and I think he remains the current custodian. So that's the famous, as one of my partners referred to it, bowling for ... mining for tax dollars cause there used to be some show bowling for dollars ...

MR. COHEN: That's a great, that's a great story.

MR. SCHUELKE: And it was great fun, great fun and we did the same if... Joe didn't go to Panama but, but I made the trip to Panama also and I remember in order to get to this mine site in Panama at a point we could, you could no longer drive, and we had to hike several miles including crossing a river (small river, piranha infested so we were told) on a fallen tree. Its span was like a creek. And so you had to balance yourself and walk across this which we did. We also had, we had government, Panamanian government 'cause my client had these connections. We had a Panamanian Army helicopter which flew us as close as they could get to the mine site and back. So,

yeah that was great fun. And this guy, I'll think of his name in a minute, the tax shelter promoter one of the smartest and most creative people you'd ever meet if only his creative energies had been devoted to something legitimate. Jerry ... his, his operation was paying the legal fees on behalf of my client. You know like a corporation would indemnify an individual for his legal fees. And one day, a group of us were in Panama City in connection with the trip to the mine. And at the time there were numbered bank accounts available in Panama much as they were in Switzerland. And in those days, they were impenetrable basically by U.S. authorities. So, Rogers ... Jerry Rogers. So we're having a drink one night before dinner...

MR. COHEN: And that's the name of the tax shelter ...

MR. SCHUELKE: Promoter.

MR. SCHUELKE: So Rogers took me aside and said to me I understand that Wayne, Wayne Fowler was my client, I understand that Wayne owes you X. You know you could open a numbered account here in Panama and I'll arrange simply to have it deposited and your partners won't even know about it.

MR. COHEN: Yes.

MR. SCHUELKE: That was Jerry Rogers. No thanks, Jerry. Great stuff.

MR. COHEN: So the accounts were impenetrable even though the United States has long had considerable influence in Panama.

MR. SCHUELKE: Oh yes, but the banking laws, the bank secrecy in Panama, as was the case until very recently in Switzerland, was pretty much impenetrable. So U.S.

tax authorities weren't going to get access to the bank account records. So that's the famous mining for tax dollars case.

MR. COHEN: I once went across the Mekong River on a raft in Laos, which is the closest I can come to a comparable adventure. Well should we talked about your family?

MR. SCHUELKE: Sure. We did that at the outset I believe talking about my ...

MR. COHEN: Your birth family, yes.

MR. SCHUELKE: I was married in 1968 while I was six months or so into my four-year tenure as an Army JAG officer. I was married to a woman whose name is Ginny Traina and we had two children. My daughter Ginna (Virginia) Schuelke Neyens was born in October 1969. My son Hal who's Henry F. the Fourth, was born in '73 – turned 40 years old today as a matter of fact. Ginny and I were divorced in 1974. We have certainly while the kids were minors had a very agreeable cooperative relationship in the interest of the kids. They spent every weekend with me. She lived in Chevy Chase so it was quite convenient. I lived in Georgetown for most of that time, and we had a grand good time. I had as I may have told you, I had a friend who moved to Telluride [Colorado] in the early '80s and I was traveling back and forth to the West Coast on business quite frequently and so I would stop to visit in Telluride which is how I became introduced to Telluride. And then each Christmas for five or six years when the kids were still young, we went to Telluride for a ski holiday over the Christmas Holidays which is how the two of them got introduced to Telluride.

MR. SCHUELKE: When my daughter graduated from college at the University of Wisconsin in Madison and was contemplating graduate school, she decided she wanted to take the proverbial year off and be a ski bum. So she went to Telluride. That was 1971. She remains in Telluride, now married, has two little girls who are five and three years old and she and her husband, Mark, are doing wonderfully well. They love life in Telluride and they're never leaving the mountains. My son...

MR. COHEN: What do they do for a living?

MR. SCHUELKE: He is an electrical contractor who has a terrific business which even throughout the recession since 2008 has done reasonably well. As you undoubtedly know as a part-time resident of Telluride, the construction of mega homes has been extensive over the last 20 years, and it is pretty much unabated. And so his company does all the electrical work for these, you know, 15,000 square foot mansions that are being built up in the mountain village and...

MR. COHEN: What's the name of the company?...

MR. SCHUELKE: His name is Mark Neyens, NEYENS and the company is Pinnacle Electric. And what...

MR. COHEN: I don't have such home but I may need it.

MR. SCHUELKE: Well, he'd be he'd be happy to help. One of his clients is Jerry Seinfeld. And not only did he do all the electrical work on these two homes he built up outside of Telluride, but it's like a lifetime sinecure because Seinfeld's wife wants to change everything like every two months.

MR. COHEN: I've been through there because actually the neighbors on both sides of him are good friends of ours.

MR. SCHUELKE: Yeah, I understand it is on the market. My daughter who did, before she was married, virtually everything a young person could do in a ski town, waitress, bar tender, ski instructor, ski patrol and so on, works for Telluride Property Management Company, one of several that do property management maintenance for largely absentee homeowners because many of them are there for a couple of months a year and the homes are rented.

MR. SCHUELKE: And that's been great for her because she can, with the little children, she's able to do much of that from home. They did, until about a year ago, they lived down in Rico, and Rico is about 27 or 28 miles from Telluride. Actually, it's probably 27 or 28 miles from what they call Society Turn. And so that's a long commute particularly in winter weather conditions when Lizard Head Pass is closed and so now they're in Telluride proper. So she can take the kids to school and spend a couple of hours in the office and so on so they're doing great. My son, Hal, and his wife, Wight, a good Atlanta, Georgia girl...

MR. COHEN: ...Wight!...

MR. SCHUELKE: ...Wight. It's a family name, W I G H T. Sarah Wight. Her maiden name was Sarah Wight Floyd and so, of course, a lot of people who remember Pink Floyd have always referred to her as Wight Floyd. She was in Telluride for a couple of years after college, was a good friend of my daughter, Ginna. Hal, my son, went out to visit a couple of times, met

Wight and for a couple of years they had a long distance relationship. She then relocated to Atlanta. He went to college at the University of Oregon, and then they both decided to move back to Telluride. And so they moved back to Telluride and spent about three years. And then he came back East because he always wanted to pursue his lifelong interest in the culinary arts, so he got a degree from Johnson & Wales in Charleston, and they lived outside of Charleston on Sullivan's Island while he was doing that. And then he got an internship, which is a requirement of the last semester at the Grove Park Inn in Asheville, North Carolina, which is a beautiful place.

MR. COHEN: That's where they hold arts and crafts fairs.

MR. SCHUELKE: Yes, and they also have this elaborate Christmas time gingerbread house national competition. I've stayed there many times since they have lived in Asheville, and it's a very nice place. When he finished his internship, they offered him a job, he took the job, he worked as a *sous chef* for a couple of years, got very tired of that, went to work for a very nice upscale restaurant in Asheville, was a sous chef for another couple of years, had intended one day to open his own restaurant. But once they decided to raise a family, he decided no, he did not want to be at the restaurant until 2:00 o'clock in the morning every night. And so he went and got a residential real estate license and he's been selling real estate in Asheville and doing, doing well. They have two boys, Henry Frederick V and I'm doubly honored because they call him Hank, who's now – he'll be seven

in October. And his little brother, Hyde, which is another of Wight's family names. Thomas Hyde is his name and they call him Hyde and he's five. And they're both terrific kids. They're great fun. And as I told you earlier, they went out to Telluride yesterday to celebrate Hal's birthday and so all the cousins are together and they had a great old time together.

MR. COHEN: I've told you I too have a seven-year old grandson Henry.

MR. SCHUELKE: You did.

MR. SCHUELKE: After Ginny and I were divorced, I was single for ten years. I met my wife, Julie, through my partner, Larry Wechsler, actually. She had earlier been married to a guy who is also a friend of mine. His name is John McCarthy. And Wechsler and McCarthy went to GW Law School together. And McCarthy and Julie were married while they were still – while he was still in law school. So Larry had known her since they were kids in law school. And one day in 1987 sometime, Julie was making a career change and went into the commercial real estate business with the Julien Studley Company here in Washington. And she was doing a little marketing among potential law firm clients. So Larry buzzed me one morning and said I'm going to have lunch today with Julie McCarthy; do you want to join us. I said, "No no no, I'm too busy." And then I happened to be walking through the reception area of our office while she was sitting there waiting for Larry and I said, mmm I think I have time. And it was actually several months after that that we started dating. But we did and we were married in October of '88. And I had two years

earlier bought property south of Annapolis on the bay and moved from my house in Georgetown and it's two and a half acres on the water. The house was an 1876 frame farm house which I loved and actually was a quite charming little house. I told Julie when we were getting married that living on the bay was nonnegotiable for me; she lived in northern Virginia at the time. She said okay, but she always from the beginning had a plan to do something about this house because while it was charming it was an 1876 structure with no closets to speak of and she's quite the cook and the kitchen wasn't to her liking and so on. So we spent about ten years actually looking for alternatives. We looked at a lot of property on the Eastern Shore, which probably would have meant that we'd have to get a place in town as well. And you know we'd find property that I liked and a house she didn't like, or we'd find a house she liked with a property I didn't like and never actu—we made offers on a couple of them that never were consummated. And then finally, now eight years ago we decided, because we liked the current property, to build a new house on that property. And so we built a house which is to her liking. She basically designed it, working with an architect, of course, on a different site from the original house. We lived in the old house while the construction was underway and after we moved to the new house we tore the old one down and there we are.

MR. COHEN: An 1876 house and you tore it down?

MR. SCHUELKE: Yep. It was not protected by any kind of historic easements. We actually did what's called deconstruction of the house. We engaged a firm that specializes and they—and they basically take the house apart to salvage everything that can be donated to a 501(c)(3) like Habitat for Humanity. So all the windows, doors, fixtures, hardwood floors, even some timbers from the house all were donated and we had a substantial tax deduction from the donation.

MR. COHEN: Hmmmm.

MR. SCHUELKE: And the cost of the deconstruction was also tax deductible. And so by the time they finished, all that was left of this house was the foundation, a couple of chimneys. And so we had another contractor come in and leveled that and graded the area. So you would never know now that there had been a house there.

MR. COHEN: Why's the cost of the deconstruction deductible?

MR. SCHUELKE: Because that's the cost of the donation.

MR. COHEN: Okay, good. Did you, did you buy the original house because you're a sailor?

MR. SCHUELKE: I'm a power boater and a fisherman, and I had a boat which I kept down there not too far from there while I lived in Georgetown. And that was fine. But I became increasingly tired of living in the city. I lived only a block from the Georgetown University campus; 35<sup>th</sup> and N, and parking was impossible. I had the largest collection of parking tickets in history, I think. I actually had two cars for a couple of years, which I had to park on

the street. And I had this lovely carriage house with a courtyard and every Saturday and Sunday morning there'd be broken beer bottles in the courtyard because the kids toss them in there and I just got sick of it and I have always had the attraction to the water. I grew up in New Jersey and spent most of my summers at the Jersey Shore and have been boating since I was a little kid. And I had never really formulated much of a plan to do this. But one weekend my parents were down visiting and I took them out on the boat and I had never been up this particular creek before, but we were just kind of cruising around. And I went up this creek, here's this house, for sale sign on the dock, and I thought, hmmm. And I went back a week or so later, that was at the end of the summer, early fall, all excited, I was going to buy this house. And I tied up at the dock, went up to the house, very nice couple, they said no, no it's under contract. So much for that. But by that time I was convinced I wanted to do this so I engaged the real estate broker down there to look for properties. And to make a long story short I learned in the spring that their contract had fallen through, and so I bought the place, did a fair amount of renovation to it, which all went when it got torn down, of course. But Julie and I lived in that house for, yeah, ten years. Ten? No, a little more than that. Twelve, I guess, before we built the new one.

MR. COHEN: And you, to this day commute, essentially every day from there.

MR. SCHUELKE: I do, I do.

MR. COHEN: How long does that, does that take?

MR. SCHUELKE: An hour. You know, at off times you maybe you can do it in forty-five minutes, at the worst time it can take you an hour and fifteen minutes. But I came in this morning, left home about ten after nine, took an hour exactly.

MR. COHEN: But it's this side of the bridge.

MR. SCHUELKE: It's this side of the bridge. And I've been doing it so long that I'm completely inured to it, you know it really doesn't bother me.

MR. COHEN: Do you listen to books, or music?

MR. SCHUELKE: No, no. I am, I mostly listen to the news on NPR and some music, yeah. So, and for many years, you know, Julie and I would always drive separately because we wanted to have the flexibility not to have to wait for the other, you know? And we'd spend most of the time driving home on the phone, talking to one another all the way home.

MR. COHEN: So she continued to work in Washington in real estate?

MR. SCHUELKE: Yes, yes.

MR. COHEN: Does she still do that?

MR. SCHUELKE: She is mostly retired. She has one project she's working on for a big firm in town and she plans to retire completely when that's concluded. So she only comes into town now maybe once a week. So I don't have her as my chauffeur in my current crippled state. [At the time of this interview, HFS was recovering from Achilles tendon surgery.]

MR. COHEN: What, what other adventures should we talk about? You are a motorcyclist.

MR. SCHUELKE: Well, yes, my two recreational passions are boating, I have a forty foot sport fishing boat, and I've done a lot of offshore fishing, billfishing.

MR. COHEN: Say that again, bill?

MR. SCHUELKE: Billfishing, it's sailfish, marlin, and we belong to the Ocean Reef Club in Key Largo, Florida which has a spectacular marina. And for ten years Julie and I ran that boat down to Key Largo every fall and back in the spring in the fond hope that we'd have the time to spend some meaningful time down there during the winter, which never materialized. You know, we'd go down for a week and I'd have some business crisis and I had to come back. And actually that happened on most of the trips down and back as well. And for me it became somewhat tiresome because I—there wasn't much of an adventure left in it because I'd done it so many times, and I was tired of, you know, getting to Charleston and having to leave the boat for two weeks because I had to be back here or in Houston or in some place only to return a couple weeks later and make another leg of the trip. So I tired of it and we haven't done it now in three or four years, about which Julie is not happy because she loved that trip. She's a great, she's a pilot, her license is no longer current, but she has been a licensed airplane pilot. And so she's an accomplished navigator and she loves doing that on the boat as well. And she loved getting away because she would sort of pretend that she was unreachable by clients or what not, and so she really enjoyed that. But I still have the boat right at home. It's literally in my back yard and, and we do some cruising on the bay. And you could spend

your life doing that. I mean there are so many interesting places on the Chesapeake that I've yet to see. The shoreline of the Chesapeake Bay is eight thousand miles and you could spend several lifetimes exploring it, and I fish. And I particularly enjoy being able to do that without having to devote an entire weekend to it. So I could get up on a Saturday morning and decide I want to go fishing and go fishing for a couple hours and be home at noon and do something else. I also as you mentioned have a collection of motorcycles both vintage and modern. Although I'm particularly interested in the vintage bikes and I've always been a bit of a gearhead. I do my own work on them which I enjoy. It's great mental therapy. And Julie rides as well, and so we've had a number of fabulous trips, we particularly like the Rockies and the far West. And most every summer for the last five or six years we would do a ride out west. A couple of times we took our own bikes, not, we didn't ride them out there...

MR. COHEN: So I should picture you on separate bikes?

MR. SCHUELKE: Separate bikes, yes. Julie is the epitome of the independent woman. She's not riding behind.

MR. COHEN: Or in front?

MR. SCHUELKE: Or in front. Although she'd rather ride in front if I were the passenger, I suppose. So a couple of times we trucked or trailered the bikes out west. But that became sort of a waste of time. You know, it'd take you three days to drive to Salt Lake City, for example, which we did once. And then

rode for two weeks in Idaho, Montana, Wyoming, and then you're going to drive back three days. So in the last ten years or so there are good, reputable folks who rent motorcycles most every major city. So you can fly, rent a bike. So that's what we've been doing. So we've rented bikes in Salt Lake, rode through southern Utah into southwest Colorado making Telluride kind of a home base because my daughter was there. We've done that from Grand Junction. We've done it from Denver, one...

MR. COHEN: Have you ever been to Gateway, where there's the old car museum?

MR. SCHUELKE: Yes. It's just barely east of the Utah border, along the Dolores River. Fabulous ride from Telluride. I've done it many times. It's owned by the guy who was the founder of the Discovery Channel.

MR. COHEN: And it's a beautiful place. And we've stayed there, it's a beautiful hotel. Gateway.

MR. SCHUELKE: Gateway. So we've done that a number of times. One trip for example we went Denver, Leadville, Telluride, Moab, couple other stops in southern Utah, visited a couple of National Parks, Arches, for example, Sedona, and ultimately Phoenix, and turned the bikes in and flew home from Phoenix. Great trip. Another trip we did L.A. to Bend, Oregon, rented bikes in L.A., rode up the Pacific Coast Highway all the way to Bend, flew back from there.

MR. SCHUELKE: But I love riding in southwest Colorado and southern Utah. The weather in the summer, as you know, is fabulous. You rarely get any rain. It's maybe, in the high country, you know, it's seventy, maybe seventy-five

degrees and some of the desert in southern Utah can be eighty-five or ninety. But it's dry and it's pleasant. The roads are great and there is no traffic.

MR. COHEN: You ever spend any time in Grand Staircase Escalante?

MR. SCHUELKE: Yes, we have ridden...

MR. COHEN: Fabulous place.

MR. SCHUELKE: We've ridden through there. And so that's a, that's sort of what I do for, for fun. I have a brother outlaw, I call him, my first wife's brother who has been a buddy of mine since we first met in 1968. Lives in northern New Jersey. Also has a collection of vintage bikes. One of which is in my garage where it's been for five years since he bought it because I arranged the purchase because the bike was down here. And he has been meaning, of course, to get it back, but never has. So he comes every month or so, and we tinker on the bikes, and we ride, and I live five miles from pretty much undeveloped, minimally developed, rural countryside in southern Anne Arundel county. So within five miles of my home I'm out on this lovely two-lane black top country road with very little traffic, I know every bend and every road in south Anne Arundel County. And so we can go on a Saturday afternoon and ride for an hour and a half, stop and have lunch somewhere, ride an hour and a half back, and it's just great.

MR. COHEN: Terrific, good.

MR. SCHUELKE: And I'm looking forward to doing southwest Colorado again this summer, and God willing I'll be able to do that.

MR. COHEN: The cast that's currently on your leg will be gone by then.

MR. SCHUELKE: It will be gone by then, and hopefully I will have completed my therapy and I'll be good to go.

MR. COHEN: Terrific. Well, why don't we cut it off here.

MR. SCHUELKE: Well great. Well you've been very kind.

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*United States v. Gupta*, 11 Cr. 00907 (S.D.N.Y. 2012), 271, 274-275, 277

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*United States v. Poindexter*, 727 F.Supp. 1470, 1477 (D.D.C.1989), 241

*United States v. Peter Kott and Bruce Weyrhauch*, 07 Cr. 00056 (D. Alaska 2007), 204, 231-235

*United States v. Rajaratnam*, 09 Cr. 01184 (S.D.N.Y. 2011),, 274, 275-276, 277, 278

*United States v. Roger Clemens*, 10 Cr. 00223, (D.D.C. 2012), 271-272

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*United States v. Victor Kohring*, 07 Cr. 00055, (D. Alaska 2007), 204, 231-235

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*District of Columbia Home Rule Act*, Pub. L. 93-198, Dec. 24, 1973, 87 Stat. 774, 179

*Foreign Corrupt Practices Act*, Pub. L. 95-213, title I, Dec. 19, 1977, 91 Stat. 1494, 287, 289 (amended 1988), 291, 295

*Jencks Act*, Pub. L. 85-269, Sept. 2, 1957, 71 Stat. 595 (18 U.S.C. 3500) 119, 239

*Military Justice Act of 1968*, Pub. L. No. 90-632, 82 Stat. 1335, 35-36

*Tax Reform Act of 1986*, Pub. L. 99-514, Oct. 22, 1986, 100 Stat. 2085, 1042, 307

Henry Frederick Schuelke, III  
Curriculum Vitae

Professional Experience

1979-present: Founding partner, Janis, Schuelke & Wechsler, Washington, D.C.

Nationally renowned practice of criminal defense representation in “white collar” cases with focus on the representation of corporations and their officers and employees in grand jury proceedings and criminal prosecutions, primarily at the federal level. As a corollary to that work, the firm often represents clients in situations involving parallel civil and administration proceedings and congressional investigations.

Since 2006, specialized in the representation of the Boards of Directors of publicly-trading companies and their constituent audit, management oversight and special litigation committees in matters involving the Foreign Corrupt Practices Act, the Food, Drug and Cosmetic Act, federal securities law as applied to public company accounting and shareholder demands for pursuit of derivative actions.

Illustrative representations:

- The Board of Directors of Halliburton, its management Oversight Committee and its Audit Committee.
- The Board of Directors of Boston Scientific Corporation and its Special Litigation/Legal Affairs Committee;
- The Audit Committee of the Board of Directors of Ingersoll Rand PLC.

Special Prosecutor appointed by the United States District Court for the District of Columbia to investigate the conduct of the U.S. Department of Justice prosecutors in *United States v. Theodore F. Stevens*, 2009-present;

Special Counsel to the District of Columbia Commission on Judicial Disabilities, 1982-present;

Counsel to the United States Senate Select Committee on Ethics, 1989-1991;

Counsel to the United States Senate Committee on Foreign Relations, 1980-1981;

General Counsel, the National Society for Autistic Children, 1980-1990.

1972-1979: Assistant United States Attorney and Executive Assistant United States Attorney, United States Attorney's Office, District of Columbia.

1968-1972: Captain, United States Army Judge Advocate General's Corps; Military Judge, United States Army Judiciary.

#### Bar Admissions

District of Columbia Court of Appeals, 1968;  
United States District Court for the District of Columbia, 1968;  
United States Court of Appeals for the District of Columbia Circuit, 1972;  
United States Court of Military Appeals, 1968;  
United States Supreme Court, 1980;  
United States District Court for the District of Maryland, 1985; and  
United States District Court for the Southern District of Texas, 2002.

#### Memberships

Committee on Grievances, United States District Court for the District of Columbia;

American Judicature Society;

Fellow, American College of Trial Lawyers

#### Education

St. Peter's College, Jersey City, New Jersey, A.B., 1964 Villanova University School of Law, Villanova, Pennsylvania, J.D., 1967.

Born November 10, 1942, Newark, New Jersey.

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Since Henry Schuelke's departure from the United States Attorney's Office for the District of Columbia as Executive Assistant U.S. Attorney in November 1979, Mr. Schuelke has represented scores of clients—corporations and their directors, officers and employees, members of Congress, Committees of the Congress, Executive Branch officials, and law firms—as a founding partner of the Washington, D.C. boutique firm, Janis, Schuelke & Wechsler.

Mr. Schuelke's practice has included representation of senior corporate executives in diverse criminal matters, including accounting fraud (Sundstrand Corporation, United Technologies), securities fraud (Enron), Foreign Corrupt Practices Act ("FCPA") violations (Monsanto), criminal tax (Credit Suisse), environmental crimes (Koch Industries, Alcoa), criminal antitrust (Hoffman LaRoche, Philip Holtzmann, Ingersoll Rand), and healthcare fraud (Health South). Many of these matters involved parallel SEC enforcement actions.

A significant portion of Mr. Schuelke's practice in recent years has been the representation of the boards of directors of publicly traded companies in the course of their oversight responsibilities with respect to FCPA, healthcare fraud, and accounting irregularity investigations (Halliburton, Boston Scientific, Ingersoll Rand). This representation has included the conduct of internal investigations, the supervision on behalf of the boards of settlement negotiations with the DOJ and the SEC, the provision of advice on corporate governance issues, and the investigation into and response to shareholder derivative actions and demands.

For many years, and in diverse subject areas, Mr. Schuelke has conducted internal investigations on behalf of the United States Senate Ethics Committee (then-Senator Alphonse D'Amato of New York), law firms (Greenberg Traurig—the Abramoff scandal), the United States District Court for the District of Columbia (criminal contempt investigation of the conduct of the DOJ prosecutors in *U.S. v. Senator Ted Stevens*), and has, since 1982, as counsel to the District of Columbia Commission on Judicial Disabilities and Tenure, investigated allegations of misconduct in office by judges of the District of Columbia courts.

Mr. Schuelke is recognized by *Chambers USA* as a leading white collar crime & government investigations attorney. According to *Chambers*, "market sources enthuse that 'he's an absolute joy to work with' and consider him 'a really well-respected white-collar litigator.'"

**Blank Rome LLP**—Washington, DC  
May 2012–Present  
Partner, White Collar Defense & Investigations

**Janis, Schuelke & Wechsler**—Washington, DC  
November 1979–April 2012  
Founder

## People

Louis R. Cohen

Senior Counsel

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Louis Cohen is a senior counsel in the firm's Litigation/Controversy Department, and a member of the Appellate and Supreme Court Litigation Practice Group. He joined the firm in 1967. Mr. Cohen served as Deputy Solicitor General of the United States from 1986-1988, and focuses on US Supreme Court and other appellate litigation and corporations law. Mr. Cohen's appellate practice has included more than fifty cases on the merits in the US Supreme Court and a large number of cases in the courts of appeals. He has argued sixteen cases in the Supreme Court, winning fifteen.

### Practice

Mr. Cohen's victories before the Supreme Court include such significant cases as the *City of New York v. Clinton* (the Line Item Veto case), *US Term Limits, Inc. v. Thornton* (invalidating congressional term limits), and *Cargill v. Monfort* (predatory pricing under the Clayton Act). Other Supreme Court cases in which he has participated include: *Regional Rail Reorganization Act Cases* (constitutionality of a reorganization statute); *Piper v. Chris-Craft* (interpretation of the Williams Act); *Basic v. Levinson* (materiality issues under the federal securities laws); *Carpenter v. United States* (Rule 10b-5; wire fraud); and *Norwest Bank v. Ahlers* (priorities under the Bankruptcy Code).

Mr. Cohen's court of appeals cases include arguments on behalf of Bear Stearns in *deKwiatkowski v. Bear Stearns* (2d Cir. 2002); Sears Roebuck in *Bolin v. Sears Roebuck & Co.*, 231 F.3d 970 (5th Cir. 2000); Painwebber Group in *Painwebber v. Zinsmeyer Partnership Trust*, 187 F.3d 988 (8th Cir. 1999); First Commonwealth Savings Bank in *United States v. John C. York, et al.*, 112 F.3d 1218 (D.C. Cir. 1997); General Electric in *United States ex rel Taxpayers Against Fraud v. General Electric*

### Practices

- Litigation/Controversy
  - Appellate and Supreme Court Litigation
  - Business Trial Group
  - Government and Regulatory Litigation

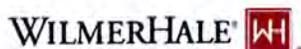
### Education

LLB, *magna cum laude*, Harvard Law School, 1966  
University of Oxford, Wadham College, Henry Fellow  
AB, *magna cum laude*, Harvard University, 1962

### Bar Admissions

District of Columbia  
United States Supreme Court

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*Company* (6th Cir. 1994), and the CBS and NBC television networks in *Schurz Communications v. FCC*, 982 F.2d 1043 (7th Cir. 1992).

On the corporate side, Mr. Cohen has advised clients (including both for-profit and nonprofit firms) in connection with offerings of securities, mergers and acquisitions, purchases and sales of businesses, proxy fights, tender offers, corporate restructurings and liquidations.

#### Honors & Awards

- Selected by peers for inclusion in the 2005-2006, 2006, 2008, 2009, 2010, 2011, 2012, 2013 and 2014 editions of *The Best Lawyers in America*, in the areas of appellate law, commercial litigation (2006, 2008, 2009, 2010, 2011, 2012, 2013, 2014), M&A (all editions), business litigation, corporate and securities law (2005-2006, 2008, 2009, 2010, 2011, 2012, 2013, 2014)
- Selected for inclusion in the 2012 and 2013 *Washington DC Super Lawyer* lists
- Featured in an *American Lawyer* article identifying leading litigation departments (2002)
- "Highly recommended" in PLC's 2003/04 *Dispute Resolution Global Counsel Handbook - Public Policy Award*
- National Trust for Historic Preservation - Public Policy Award
- *Pro Bono* Advocacy Award, ACLU Foundation of Southern California

#### Recent Highlights

Mr. Cohen's Supreme Court victories include *Enron Power Marketing, Inc. v. FERC* (2002) (non-discriminate access to the electric grid), and *The Wharf (Holdings) Ltd. v. United International Holdings, Inc.* (2001) (Breach of SEC Rule 10b-5).

#### Professional Activities

Mr. Cohen is a past winner of the Public Policy Award of the National Trust for Historic Preservation and of the *Pro Bono* Advocacy Award of the ACLU Foundation of Southern California. He is a member of the American Law Institute and the American Academy of Appellate Lawyers. He has served as National Chair of The Harvard Law School Fund. He has taught Corporate Finance courses at Harvard University and Stanford University, and Securities Regulation courses at George Washington University.

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