ORAL HISTORY OF IRVIN B. NATHAN

This interview was conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewer is Sheldon Krantz and the interviewee is Irv Nathan. The interview took place at the D.C. office of DLA Piper on September 15, 2016. This is the fourth interview.

MR. KRANTZ: The purpose of this last interview is to focus on Irv's time as the Attorney General of the District of Columbia, his service as the chair of the Council for Court Excellence, and Irv's observations on changes in the practice of law in the past 50 years. So we are going to start, Irv, by focusing after learning a lot about various stages of your career about your becoming the appointed – and I guess now we could say the last appointed – Attorney General of the District of Columbia. How did that come about?

MR. NATHAN: Well, as I mentioned the last time, when I left the House as General Counsel and I was thinking about other possibilities, out of the blue I got a call from the Mayor-elect Vince Gray. He had received my name from a number of sources, including Bob Bennett. He asked me to come in and interview about the position and I was happy to do that. About a week or two later he called and offered the job. I was pleased to accept and it turned out to be an excellent experience, the culmination of my many years of practice. I really did not know much about the job before he called. I did do some research on it in anticipation of the interview. What I realized when I got into it was that it really utilized all of the talents and experiences that I had had in my prior career. Obviously, the job entails supervising the litigation for the District both in the local courts and in the federal courts and local appellate court and

the federal circuit court. Obviously I had a lot of litigation experience since I started Arnold & Porter back in 1968. But it also involved some criminal jurisdiction, not enough in my opinion, but we had misdemeanor jurisdiction so therefore my time in the Criminal Division of Justice came into play. I also supervised lots of attorneys when I was the deputy assistant in the Criminal Division of main Justice as well as at the firm. And I dealt with political issues when I was the general counsel of the House and of course there were a number of political issues dealing both with the City Council and the Congress and also dealing with the press which I had done when I was in both the DOJ and the House GC's office. So it brought together a lot of experiences and developed skills, and it was a very challenging and interesting experience. One of the benefits was learning a lot more about the city. It was a chance to give back to the city that has been so good to me and my family for more than four decades.

MR. KRANTZ: What would you say with respect to the autonomy or independence of the Office of the Attorney General as it relates to the Office of the Mayor?

MR. NATHAN: Well I was Attorney General at a very fortunate time. I really lucked out in this respect. What had happened was that in reaction to my predecessor, the City Council had passed a statute that said four years hence there would be an elected attorney general and in the interim the attorney general appointed by the mayor would have to be confirmed by the City Council as had been the case in the past, but the incoming AG would not serve at the pleasure of the Mayor but could only be terminated for cause. So the Council had built in an

independence for the AG's office which I found very useful. While I was independent of the Mayor in the sense that I made the ultimate decisions in the running of the office of AG, I was still appointed by him and was a member of his administration. As a result I attended all of the cabinet meetings of the Mayor and I attended his weekly senior staff meetings. When I testified before the Council, it was on behalf of the administration and the positions had been worked out in advance and I agreed with them. If there had been situations where I had disagreed and I had a different policy view, I would have expressed it and explained, but that did not happen over the four years. I had a wonderful working relationship with Mayor Gray. He is a very intelligent man and in my experience he was always interested in doing the right and lawful thing. We really had no major disagreements during the four years I was there. So it was a situation where we could work harmoniously and yet at the same time our office was independent. We could make the litigation judgments we had to make and do what we thought was right for the city. When there were situations that I thought could be sensitive, I always alerted the Mayor in advance of what we were going to do so he wouldn't be taken by surprise, but it wasn't a situation in which he had any power over our decisions.

MR. KRANTZ: There are often questions raised in a situation like the one you were in about who is the client when you work with a range of executive level agencies and the City Council. Could you talk a little bit about how you would work through those issues?

MR. NATHAN: Yes, that was an important topic of discussion with Mayor-elect Gray when I was seeking and he was interviewing me for the position. He had the impression, and I think it was a fair impression, that the previous Attorney General had perceived the Mayor as his client. He took actions that were clearly on behalf of the Mayor. My view from the beginning was that the client in this situation was the municipality of the District of Columbia. The AG office was formerly known as the Corporation Counsel. In my view, the municipal corporation of the District was our client and we had to do what was in the best interest of the municipality, which means of course the people of the District and the long term interest of the District. That was the ultimate client but there were times that our office also represented the Mayor if the mayor were sued. In the litigation he was a client, and we would represent the mayor and individual officials of the District Government on occasion when they were sued or when we were giving advice to them because when we were asked to give advice to the heads of the various departments. If there were conflicts, and that didn't happen very often, we would seek separate counsel for individuals, heads of agencies or employees of agencies when we thought that their interest differed from the interest of the municipal corporation. It did not prove to be a problem as we worked it out over those four years and I never lost sight of the fact that the city and its residents were our ultimate clients.

MR. KRANTZ: There is a lot of rich history relating to the Office of Corporation Counsel and the Office of the Attorney General. When you got there, what did you find

with respect to the quality of the lawyers who were there and the work that was done?

MR. NATHAN: I thought that there were some extremely able lawyers in the office and I was very pleased to find that. Obviously, some people had been there a long time and were not motivated to work the hardest. I tried as best I could to ease out those folks who had lost some energy and weren't at the top of their game, but we had a tremendous cadre of talented lawyers that I inherited and then I did two things that I think improved the staff. And I think the staff that I left in the office after four years was superb. First I recruited from the private bar a number of partners of law firms who were eager to come in and help out. One of them is Sally Gere who I think is a terrific lawyer and is now a senior deputy with Karl Racine. She just did tremendous work in the civil litigation units of the office. Another was Andy Fois, who took over the public safety sector. I also brought in from private practice younger folks or junior partners. One of them was Jonathan Pittman who also worked on the civil side. So we brought in some of the talent from private practice who were eager to serve the city. The second thing we did was to work an arrangement with the local law schools. I noted that a number of the law schools were being criticized by the ABA because they did not get employment for their graduates. I saw that there were some recent graduates who weren't getting jobs in the private sector or with other government agencies. We needed additional help, but we could not afford to pay for those folks. So we started with Bill Treanor, the dean at Georgetown law school, and we worked an arrangement whereby recent

Georgetown law grads were hired to work with us. Their public interest salaries were divided between the city and the law school. We called them "Ruff Fellows" named for Chuck Ruff who was a great friend of mine and a role model for me and a person who had been the Corporation Counsel as well as US Attorney and White House counsel and was also a professor at Georgetown and other law schools in the area. It seemed appropriate to name the fellowship for him. The fellowship was for one year. These recent grads would come in and work with us as lawyers getting great experience. They would have on their resume good experience and would get good recommendations from practicing lawyers. We offered full time jobs to ones who did very well when we had openings, and many of them accepted the positions, and continued to do excellent work. And those that had worked with us and we didn't have a spot for them at the Attorney General's Office, they generally received offers in the private sector or from other government agencies. So it was a triple win situation: it was a win for the law schools which increased their employment of recent grads. It was a win for the city which got energetic talented lawyers and it was a win for those lawyers who got experience and were able to get hired on a permanent basis. The program expanded to several other law schools, including George Washington, UDC, American and Howard. As a result of recruiting from the private sector and the law schools, we brought in people with experience, energy and commitment so that we met the goal that Vince Gray set for us – to develop a really first rate

professional organization of lawyers in that office. I am very proud of the work that they did, and the legacy that I left for my successor, Karl Racine.

MR. KRANTZ: As you should be. Now there were, Irv, a series of intriguing matters that you had to deal with during the time you were the Attorney General. I want to turn to some of them. One of them relates to the relationship between the District of Columbia and Congress and the whole question of budget autonomy and other related issues. Obviously you came to the Office of the AG after serving as General Counsel of the House. So you were actually in a good position to understand the relative relationships between the federal government and the DC jurisdiction. Could you talk a little bit about the issues that came up and how you dealt with them?

MR. NATHAN: There were a variety of issues. There were difficulties because of the relationship between the Congress and the District. For example, when the federal government shut down or threatened to shut down, the District government had to prepare to shut down as well. There were even differences within the city government. The first matter, before I get to budget autonomy which I will be happy to address, that came up, was we found that there had been a significant issue of defalcation by a City Councilman. I had to be approved by the City Council. I was very fortunate to have been unanimously confirmed by the City Council. I wanted to have good relationships with all the council members and then early on in my time there it turned out that facts had been developed in an investigation that had started before I got there but had been dormant. As a result of my efforts to rejuvenate the matter, we issued

subpoenas to banks and discovered that a city councilman, Harry Thomas Jr., had taken about $400,000 of city money which had been earmarked for Little League Baseball and had taken it for his own personal use for trips for expensive vacations and the purchase of an SUV and golf equipment and other luxuries. This was sensitive because Harry Thomas Jr. was a close political ally of Vince Gray. But obviously there was no choice on our part, and reflecting our independence, we took strong legal action against him. This is an example of something where after we had made our decisions and drafted our papers I did notify the Mayor of what we were doing, I did not seek his approval, and obviously he did not seek any change in what we proposed to do. Our civil suit against Mr. Thomas was the first lawsuit to my knowledge brought by the Corporation Counsel or the AG's office against a sitting member of the City Council. Because we did not have criminal jurisdiction we had to bring a civil action for the return of those funds. We laid out all the allegations in a very detailed civil complaint seeking reimbursement for the city and then sent the complaint to the US Attorney's office for what action it would take. Of course it did bring a criminal prosecution that resulted in a plea and sentencing and incarceration for the city councilman. We did work a settlement where we got what assets we could and promises for the return of the rest. So that's an example of a sensitive matter that occurred during our time.

Another one that deals with the relationship between the Federal government and the City that was also a challenging matter was a decision by

the U.S. Department of Labor that the construction of the City Center was a Davis-Bacon project. By being designated a Davis-Bacon project, named for the statute that was enacted during the New Deal, it meant that the construction workers who built the building had to be paid at union wage levels. The City Center is a privately developed, privately financed for profit business which has multiple uses. It has private commercial offices and shops and private residences, and it is on land that is owned by the city. There is a long term lease to the city from the private developers but it was not developed by the city and the city did not employ those workers who had built it. The Labor Department decided that it was the city that should pay the difference between the non-union wages of the employees that were actually paid by the private firms hired by the private developers and what the union wages would have been. We calculated that the difference would be about $20 million, and in addition that it would set a precedent that if that were the approach the federal government took to other projects like this which were built on city land with city approvals but done in privately financed and privately developed for private profit that the city would have to pay a half billion dollars of additional labor costs. So we litigated within the Labor Department attempting to prove that this was not a Davis-Bacon project. We demonstrated it was not a public work but a private construction. When we were rebuffed by the Labor Department, we had no choice but to sue them. We filed suit in Federal District Court challenging the decision of the Labor Department. One of the things that I think that case demonstrated was the close collaboration we had

with the private attorneys in the city. Obviously we at the AG's office did not have expertise in Davis-Bacon law and we went to Morgan Lewis, one of the premier labor law firms in the country with offices in DC, and on a pro bono basis they assisted us in doing research, providing advice and appearing on the briefs. We also worked with the private attorneys for the developers who also had an interest in our position. We prevailed in the District Court before Judge Amy Berman Jackson who ruled for us that this was not a Davis-Bacon project. The Federal government took an appeal of that decision. The Circuit Court of Appeals unanimously affirmed Judge Jackson. Our office's legal action saved the District not only the $20 million differential on the City Center project but also much greater amounts on the other projects.

MR. KRANTZ: I thank you as a resident of the District of Columbia (laughter).

MR. NATHAN: So turning to your question – a long prelude to get to budget autonomy – what happened there is that DC Appleseed came up with the idea that they thought there was an opportunity in the DC Charter for the District to take over the appropriations of its local budget. They prepared a memo which they presented to Mayor Gray who is a tremendous proponent of home rule for the District. He said I hope we can do this but you need to run it by the AG's office to see if this is viable. So they came and we looked at their proposal. I relied on people who had been in this office, particularly doing opinions and analyses of the Home Rule charter for over 30 years, and they didn't think this proposal passed the laugh test. When Congress granted partial home rule to the District back in the early 1970s, it specifically and expressly retained the

power over the purse, over appropriations for the District. The law specifically provided that the D.C. budget had to be sent to the President for his approval and then submitted by him to the Congress and reviewed and approved and passed by the Congress. That arrangement was ratified by the citizens of the District back in 1973 and that is the way the D.C. budget operated for the years between the grant of Home Rule in 1974 and 2012 or whenever this Appleseed proposal was presented. So we opined that this would not be lawful under the D.C. Charter and couldn't be done consistent with the express language and the intent of the Home Rule Act. DC Appleseed was not deterred by our legal analysis and took the matter to the City Council, and the Council passed the statute taking unilateral control of the appropriation process for locally raised revenues. I had asked the Chairman of the City Council to testify in connection with the bill and he said he didn't need our testimony. Usually on all bills considered by the Council, they request a legal sufficiency opinion from the AG's office. That was one of the things that our office did. But on this one occasion they didn't want to hear from us. When the statute was to be effective, both the Mayor and the CFO wrote letters to the Council saying they would not enforce this statute or implement it because it would violate not only the Home Rule Act but also the federal Antideficiency law and subject them and anybody who expended money that had been appropriated to civil and possible criminal exposure. So as a result, the City Council brought a lawsuit to challenge those determinations by the Mayor and CFO. The Council brought suit in Superior Court and we removed it to the federal District Court. We

filed briefs and I personally argued the case in the federal District Court before Judge Emmet Sullivan. Judge Sullivan issued a 40-page opinion ruling for us, upholding our positions that the statute was unlawful because it violated several provisions of the Home Rule Act and also the Antideficiency Act. He declared the Budget Autonomy Act null and void and enjoined the Council from doing anything to implement it. The Council took an appeal and it was argued in October. But before any decision, there was an election which, as you know, in my opinion, was heavily influenced by the US Attorney's Office and Mayor Gray was not re-nominated by the Democratic Primary. After the general election, the new mayor, Muriel Bowser, came in and while the matter was pending, Mayor Bowser filed a motion suggesting that the matter was now moot because unlike the previous mayor she was prepared to implement the Budget Autonomy Act. And the panel of the Circuit Court of Appeals agreed that the case was moot, ignoring the fact that there was also another defendant who hadn't changed and wasn't going to implement it – that was the CFO. The Court of Appeals directed the District Court to remand the case to the Superior Court for dismissal since under the law a mooted case goes back to the court where it originally started. But when the case got back to the Superior Court, the Mayor changed her mind and her counsel claimed that what had been moot a few weeks before was now ripe for resolution. The matter was decided on the briefs without oral argument by Superior Court Judge Holman, who disagreed with Judge Sullivan on every issue and upheld the Budget Autonomy Act. I do not believe Judge Holman's opinion would withstand

appellate analysis. But the only remaining defendant, the CFO, who was appointed by the Mayor and confirmed by the City Council the two plaintiffs in the matter and who control his continuing in office, now declined to take an appeal of the decision. So we have a Superior Court decision upholding budget autonomy and a federal district court striking it down. But as I have pointed out several times, the law is still subject to collateral attack and future expenditures might be challenged by people adversely affected who are still free to challenge the legitimacy of the Budget Autonomy Act. So I don't think the last chapter has been written in this matter.

MR. KRANTZ: Irv, I asked you a question about this because it seems to me that it raises several issues. One is that it may not be fully understood that there can be extremely complicated legal matters that an AG has to deal with. The second is that in your role trying to do what is right even though it is not popular can be a challenge in an environment where there is really a strong view about issues like budget autonomy in the District. Can you talk a little bit about how that played out for you and how difficult it was?

Mr. NATHAN: Well, it was a very difficult situation. In the first place, you know it's against my personal political beliefs. I certainly want the District to have budget autonomy. In fact, I want the District to be a full state. I think it's appropriate – the District is a larger, has a greater population than two states, Vermont and Wyoming. It's a fully bustling jurisdiction and it has the attributes of a state for many purposes such as dealing with the Federal government on matters like education and Medicare and Medicaid. So I am a proponent of statehood and

certainly a proponent of autonomy for the District believing that when we collect our local taxes we should be able to spend that money as our elected representatives determine. So I philosophically agreed with that. On the other hand, my job was to uphold the law and I think the Home Rule Act is absolutely crystal clear that it was not the intent of Congress to give the District budget autonomy. Of course, the proof of that pudding to me was that for forty years after the adoption of Home Rule the representative to the Congress from the District introduced legislation seeking budget autonomy from the Congress, which is a recognition that that is where authority had to come from. But Congress never did pass it. I was not subject to election but I give Karl Racine great credit for supporting our legal position. He ran for AG and in the campaign he was the only one of the candidates who said we were right about this issue as much as he didn't want that to be the case. That took great courage, but the person who showed the most courage on this was Mayor Gray who a) was a great proponent of Home Rule and b) was expecting to run for re-election. He knew how unpopular this position would be but acceded to the legal opinion of his AG that this was not lawful. He wanted to get budget autonomy in a lawful way, from Congress. So this was a very difficult decision certainly for me and people on my staff, but it was very clear that we had to do what was lawful and not what was politically popular or desirable.

MR. KRANTZ: I'm aware of a number of other issues you had to confront. One role that the Office of Attorney General plays is to defend the city when lawsuits are brought in a variety of contexts and obviously this is an important role because

potential liability for this city is potentially significant with a limited budget. Could you talk a little bit about what concerns you with respect to how liability can be imposed now? Again this goes back to the relationship, to a certain extent, between the District of Columbia and the Federal government.

MR. NATHAN: We were tasked with defending all of the lawsuits that were brought against the District for damages, including, for example, police brutality cases by people who were shot by police or those otherwise injured by municipal employees operating buses or other city vehicles. Our approach was to analyze the merits of the lawsuits and where we could to try to settle on reasonable terms to compensate the people who had been injured by the negligence or misconduct of city employees. And we certainly settled a large number of cases on that basis. But where we thought the city was being wrongfully accused or when people were seeking to hold us up for great amounts that were not due, we defended those suits vigorously. We moved to dismiss those kind of cases, and if we didn't succeed, we went to trial and we generally succeeded at trial in those cases that we thought were not meritorious. In those cases, we litigated hard on behalf of the city because again the client is the municipality and the residents of the city and it is their hard earned tax dollars that we were trying to preserve. I think we did a pretty good job of preserving those funds. There was one class of cases, I think you were referring to, Sheldon, that particularly galled me when I was AG because it resulted from a statute that the City Council had passed many years before when David Clark was the chair. It has turned out to be very detrimental to the best interests of the city.

That is the statute that says simply that anyone convicted wrongfully of a felony in the District of Columbia under the DC Code can sue the District for unlimited damages that were suffered during that period of incarceration. At the time that this local law was passed, the Federal government had a statute that provided very limited recovery, I think to $5,000 per year that any wrongfully convicted defendant could receive from the Federal government. That has been changed and now Congressional legislation provides such a person can receive $50,000 a year for every year of wrongful imprisonment. There was a situation in which there was a person who had been wrongfully convicted and Clark wanted to get that person properly compensated and he said he did not expect this would happen very frequently. The unfairness in this statute derives from the fact that the Congress from the beginning of time had decided that felonies in the District would be prosecuted by the U.S. Attorney's Office. As a result, the District doesn't have direct responsibility for making those decisions to bring felony prosecutions and because the U.S. Attorney's office handles it the Federal agencies are often involved in the investigation. Obviously MPD is also involved in street crime matters in the District and they make arrests but the decisions on the prosecutions are made by the Federal government. When I was AG and following that, there was a series of cases where it turned out that defendants who had been prosecuted by the US Attorney's office had been convicted on the basis of FBI hair analyses that turned out to be erroneous. These people had been convicted of very serious crimes – murders or rapes – by the Federal government, sentenced by

judges appointed by the president and confirmed by the Senate and sent to Federal institutions. When they were exonerated on the basis of recent DNA analysis, they were compensated by the federal government at the maximum levels set by Congress. Thereafter their lawyers brought lawsuits against the District under this basically no fault local law. So if they had been in jail twenty years the feds paid them a million dollars, $50,000 a year for twenty years. Let me make it clear this is a terrible injustice that is done and there definitely needs to be appropriate compensation but my point was that the appropriate compensation should have come from the people who made the mistakes and who sent them to jail. In many cases, these were FBI investigations with faulty forensic analysis and assistant U.S. attorneys who had made the decision to bring the cases and tried them in court. Under the DC law there was no offset for the amounts paid by the Federal government and unlike both the Federal government and almost every jurisdiction that I know of we have no cap on liability. The District has no cap on liability, no offset from the Federal government and no requirements that the plaintiff – the person who had been sent to jail – demonstrate that there was errors made by District of Columbia employees that led to their incarceration. Now sometimes that happens that MPD made some mistakes along the way and therefore it seems appropriate that the District should bear some responsibility. But where the District had no responsibility for the incarceration, it seemed to me quite inappropriate for the District to be on the hook for damages, but the courts, because the statute which is so clear and no fault is required, imposed

tremendous damages on the city. And in the last year to my knowledge the city has paid out over $50 million to these individuals, a lot of which goes to the attorneys who handle these cases on a contingency fee arrangement. I had urged the Council to make changes in that law but they were not interested in doing that. I think a major reason for that are the political contributions the trial lawyers bar make to candidates for local offices. I think that is an injustice that the District suffers.

MR. KRANTZ: And I think another illustration of the complex nature of the role that the AG of the District of Columbia has. Early on in this conversation you raised a question about the relative jurisdiction between the Office of AG and the US Attorney's Office on criminal matters and I think you had indicated that you had some views on that. I'd really like to hear them.

MR. NATHAN: I have written articles on the subject. I think that the employees of the District of Columbia government have matured over the years and like other municipalities and other states, the District should have criminal jurisdiction as well as civil jurisdiction and not have all the criminal matters handled by the Federal government, which doesn't necessarily have the same set of priorities as the residents or the government of the District. I'll give you a recent example that is very disturbing to me. There was a situation of a private charter school called Options, where we did an investigation and found that the management of the Options school had set up a self-dealing situation in which they created a private corporation that they owned and ran to provide services to the charter school. And these insiders took tremendous amounts of money

which was city taxpayer dollars that went to the charter school, that then was siphoned off to this management company and used for the personal gain of the officers of the charter school. So we brought a civil action against those people, again because we couldn't bring a criminal prosecution. The city did get a preliminary injunction against their continuing to utilize this operation but our suit to recover the funds was halted when the U.S. Attorney's office came in and said to the court we think this is a criminal matter and we want to stay the civil litigation pending our criminal investigation. Then several years went by and only recently the U.S. Attorney's office announced that it would not bring any charges in connection with this matter. During that entire time when they could have been conducting an investigation, and maybe they did, I don't know what they did, the civil suit did not proceed. So now the Attorney General's Office has to pick up that civil suit after these people have had a chance to dissipate those assets and move on. It makes it very hard to deal with the case now and that's an example of the situation. It's obvious that the U.S. Attorney's Office has tremendous experience in handling these criminal matters, and I'm not suggesting that there ought to be wholesale changes right away but I think there should be a transition to the local elected AG for the prosecution of criminal felonies. I think it ought to start with those situations in which it is city money which has been taken such as in the Harry Thomas situation and the Options charter school situation where the city is the victim. It seems to me that in other places the cities and states and counties have that criminal responsibility. I think the District should have that responsibility, and

at least concurrent jurisdiction with the U.S. Attorney's office for those kind of cases. It will take time for the police to work with the AG office to develop this expertise and the relationship to do these criminal matters and then over time take over other criminal matters. But it doesn't seem appropriate for the U.S. Attorney who has different priorities to have exclusive jurisdiction to handle all the criminal matters. Another good example is the laws on medical marijuana where the District and the feds have different priorities. We set up a regime to deal with that and when we did that we got letters from the Federal DOJ saying, we are going to watch you very carefully and we may shut down the whole program. They said we may prosecute people who are acting in accordance with District laws on this. There are a variety of issues where there needs to be, in my view, more autonomy for the District in these areas.

MR. KRANTZ: Now the last question I wanted to ask relates to the shift from an appointed to an elected AG. I'd be very interested in your views on whether you think the decision to change to an elective system is the right one.

MR. NATHAN: It's a judgment call and I think it is a judgment for the residents of the District. It's obvious that in a jurisdiction where we don't elect many officials, where we have no senators and we don't have a representative in Congress that has a vote in Congress that when our citizens are given the option of saying would you like to have your AG which is a fancy title for Corporation Counsel elected, they said "yes." There are definitely advantages to having an elected accountable official, but there are drawbacks too. In most eastern cities, the corporation counsel is appointed by the Mayor and works closely with the

mayor. Ina relatively small jurisdiction, like the District or major cities like New York, Philadelphia or Baltimore, it's beneficial to have both the mayor and lawyer for the city rowing in the same direction. It was obvious from the moment that there was going to be an elected AG that there was going to be friction between the mayor and the AG because the mayor who may be interested in reelection is going to view an official who has won a city-wide election as a potential adversary in the next election. So there is that tension that is inevitable. It also changes in some measure the nature of the job. When I was there, my focus was internal, on getting the best people in the office, organizing it well, making the litigation judgments, doing the right thing under the law, and not being concerned with the politics. I think the elected AG has a lot of the same interests and I think the city is very fortunate to have Karl Racine who is a very responsible individual, and he is interested in those things as well, but a lot of his attention seems to me is external to the office. And his focus is more on visibility with the public. As the elected incumbent, he has to anticipate at least re-election as AG and maybe future other elective positions. So there are pluses and minuses. I was very fortunate, I thought, to have had the office at a time when we had independence from the Mayor but also an excellent relationship with the Mayor and the Mayor's cabinet, who were confident that I was not going to be running against him some day. That may not be the same when you have an elected AG.

MR. KRANTZ: Any other comments or observations you would like to make now about the time that you had spent as the AG of the District of Columbia?

MR. NATHAN: I am very proud of the record that we developed there. One of the disabilities that we had in that office was that the District unlike the other jurisdictions is controlled by the Federal Antideficiency Act. The way that operated was-- we found out-- that we were not allowed to have any contingency fee arrangements with private lawyers which other jurisdictions have. Even the Federal government has as an exception to the Act which allows for contingency fee cases, but the exception does not apply to the District. We were faced with the situation in which contingency fee lawyers approached us, as they had other jurisdictions, to deal with these online hotel companies which were not paying their hotel taxes and had not paid their taxes for a long time. It would have been easy if we could have had contingency fee arrangements with these lawyers, but we weren't allowed to do that, so we handled it on our own. And we secured a payment of over $70 million for the District based on the very hard work in litigation by our lawyers, including Bennett Rushkoff and Jimmy Rock and others. We were up against major law firms located in the District and we got a judgment and a large settlement from these companies. So we overcame a disability that we had as a District office and through hard work we secured a great victory. That amount is certainly greater than the local part of the budget of the AG's office. I should also mention another major accomplishment that really relates to Home Rule, that is, getting the District out of a number of consent decrees that had existed for decades in the District. In several of these matters, the Federal government was essentially supervising basic city services, such as in the education area and mental health

areas. These were situations that cried out decades ago for some supervision, but in the interim and certainly in the recent administrations and the Gray administration, there were substantial improvements, and we did not need to have that kind of supervision. These consent decrees were very expensive because we had to pay plaintiffs lawyers and monitors. They also undermined Home Rule since the control of the basic operations of the District were under federal supervision. So in a number of those cases – mental health, transportation of special needs students and the oversight of St. Elizabeths – we were able to end those consent decrees during our time and lay the foundation for release from others. That took tremendous effort, working with members of the Gray administration, cabinet officers and officials as well as lawyers in the Office of the AG. We were very pleased with that. We had a number of other successes in dealing with issues in the District. One of them, for example, was preserving the Corcoran Art School and the museum through an arrangement with GW and the National Gallery of Art. So there were a number of successes we had during my tenure. But, as I have said, my greatest accomplishment was leaving to my successor a top- notch legal staff that I think has continued to do great work for the District.

MR. KRANTZ: The range of experiences you have had throughout your career are pretty extraordinary. Why don't we turn now to what you are doing at the moment? You have now left as the AG, [Nathan: my time had expired!] What are your areas of focus now?

MR. NATHAN: I am back at Arnold & Porter where I started. I am not a partner, I am a senior counsel and I am handling some commercial matters there, including some matters that related to state attorneys general. When I was the AG of the District I was a member of National Association of Attorneys General and currently I am a member of SAGE, which is the Society of Attorneys General Emeritus. There are some issues that clients have dealing with State Attorney General's offices in other jurisdictions and even in the District of Columbia, and I have been handling those matters as well as some other kinds of matters that I have handled before such as internal investigations. A lot of what I am doing obviously is in the pro bono world. One of the matters that I am pleased to be able to help out on is for an organization that provides college and graduate school scholarships to Native Americans and Alaskans. The organization was created by the Cobell Trust, which secured a large settlement as a result of litigation against the Department of Interior. My colleagues and I are serving as general counsel for the organization that provides those scholarships. As you mentioned at the outset, I'm also serving as the President of the Council for succeeding your partner Earl Silbert. I am really quite honored to be in a chair that was started by Charlie Horsky of Covington and Earl Silbert and other distinguished leaders of the Bar. It has been a fascinating experience. It's a wonderful organization that focuses on what we can do to improve the administration of justice in the District and to work with lay people in private enterprise, practicing lawyers and sitting judges in both our local and federal courts to improve the understanding of the law and the

fulfillment of what we hope for in a just society. So for example I co-chaired along with Judge Katanji Brown Jackson, a federal District Court judge here, a wonderful and very bright individual – and a whole group of volunteers from the Council on how to improve jury service. We focused on how to make jury service more palatable to the residents of the District, how to improve the return of summons for jury service and make service on the jury a better experience for our citizens. We did a year-long study, and we met with past jurors and judges litigators and litigants, and came up with a set of recommendations, and are working now in a group headed up by Peter Kolker of Zuckerman Spaeder to implement those recommendations. Some will require Council legislation, and others may require court rule changes or changes in procedures in the clerk's office. We also just recently concluded a study of the Office of Administrative Hearings to make sure that citizens get a fair and prompt hearing in administrative appeals in the city. We made recommendations to the City council and to the judges of OAH for improvement there. We did that pursuant to a contract we received from the city auditor, and we have a new contract from the city auditor to look at the issue of the relationship between the criminal justice system in the District and mental health services. So we have a whole set of very important issues, and we have a wonderful staff headed up by June Kress and we have great volunteers. I have spent a lot of time dealing with that and am very pleased to have this opportunity to continue to contribute my services to the District.

MR. KRANTZ: The last thing we were going to talk about was your views on what's happened to the practice of law and legal profession over the last 50 years. Are there some observations you would like to make on the changes that have occurred and the ones you would like to see made?

MR. NATHAN: I'll leave the future improvements to you, Sheldon. You wrote an excellent book on that subject and you are carrying it out and doing a great job in connection with the Affordable Law Firm to make legal services available to people who cannot afford the kind of commercial rates that are charged. But I can comment on the changes I have witnessed. First, I would say there is a similarity in that both when I started in the late 1960's and now, there is a wonderful group of people who are going into the profession, very talented, very able lawyers with a lot of dedication to help people and to create a more just system.

On the other hand, there have been a number of changes since I started, not all for the better. One of the changes, of course, is the technology. When I started at Arnold & Porter in 1968 and there were about 50 lawyers there, we used carbon paper and manual typewriters and they had a procedure in which they circulated throughout all the lawyers in the firm carbon copies of all the correspondence and filings and briefs that had been written by the firm in the previous month. You would get these things in binders you didn't really have time to examine, but they were there to let everyone know what everyone else was doing. In addition, obviously you made filings by hard copy and traveled to places to make the filings and had to get to the court before 5:00. Now, of

course, with technology everything is online and is done electronically. Even meetings with out of town lawyers can be done electronically without anyone travelling from their office. Because of electronics everything has sped up, which is both a blessing and a curse. That technology, of course, has changed the practice of discovery now. It is all about electronic discovery and emails that didn't exist at the time. Obviously we didn't have instant communication .You had telephone calls and telegrams and that was about it. So that's a difference. And the difference in the massive discovery that comes from searching e-mails and electronic files is that litigation teams are much larger, and there is more drudge work for young associates. They sign up with big firms, paying large salaries because of the massive debt it takes to go to law schools, and they are often unhappy with their experiences at commercial firms. When I started, litigation teams were much smaller and one could get more interesting experiences earlier. Another major difference has come with journalism dealing with the legal profession. When I started there were not the publications that there are now, and those publications focus on law firms and law firm profitability. That did not exist and I think that has changed things. When I started, the premise was one went to a law firm and at least in DC it was likely if you did well you would stay with that law firm the full time of your career. It was the premise that your law firm would handle a lot of matters for the same client. Now clients pick and choose law firms or individual lawyers based on their specialties, and lawyers move from one law firm to another chasing the highest dollar. Loyalty both from the clients and

from lawyers to law firms obviously has been impacted by those changes. Clients now demand and firms provide more specialization. When I started, generalists were prized and I have enjoyed being a litigation generalist. Another major change is that national law firms have opened large branch offices in D.C. When I started, a number of the large DC firms served as counsel to the clients of national law firms elsewhere handling their Washington problems, and then returning the client to the firms in other cities for all of their normal commercial work. Now the branch offices handle those Washington matters for their firm clients, and the DC firms have had to change their focus. When I went into practice, it wasn't the expectation that you would make a fortune in law. Now it appears there are a number of folks who go in with great expectations of earning a lot of money in the law. There wasn't the focus when I started on entrepreneurial skills. The notion was, at least at A&P – I can't speak for all firms – but the notion was that there were a couple of rain makers who would bring in the business. The important part for a young lawyer was to do a good job and keep your nose to the grind stone and turn out good work and your reputation would hold you in good stead. Now we look for the entrepreneurial skills of new arrivals at the firm before they have had a chance to begin the practice. So there have been a number of those changes. It seems that is has moved into the direction of being less a profession and more of a business at major law firms. Still there are people and law firms that are dedicated to public service. Arnold & Porter has maintained its commitment to pro bono practice the entire time I have been there and like a

lot of firms in Washington there is still encouragement to allow their lawyers to do government service and then to return to the firm. As I mentioned earlier, I think that is a benefit both to the firm and its clients as well as to government agencies and the public.

MR. KRANTZ: Okay, we have come to the end of what has been a privilege for me to do, which is to interview you and record your personal history. Irv, you clearly deserve to be part of the oral history project of The Historical Society of the District of Columbia Circuit. So this has been a rewarding assignment for me.

MR. NATHAN: And it has been a great pleasure for me. I really appreciate it, Sheldon. It's an honor to be interviewed by Sheldon Krantz who is a great lawyer in his own right. Thank you very much.