

**Oral History of Henry F. Schuelke, III**  
**Second Interview**  
**November 18, 2011**

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 November 18, 2011. This is the second interview.

MR. COHEN: This is Louis Cohen. It's November 18, 2011. This is the second session in the oral history of Henry F. Schuelke, III. And let's get started.

Hank, you said there's a story from your time in Korea that you would like to tell.

MR. SCHUELKE: When I first was assigned to Korea – this is before I returned for the Military Judge program in Charlottesville and then went back – but when I was first there,–

MR. COHEN: So the year's about

MR. SCHUELKE: Early '69. A colleague of mine in the Staff Judge Advocate's Office in Fort Bliss, Texas was also assigned to Korea at about the same time as I. And we were permitted, on our own dime, as it were, to have our spouses accompany us. No housing; we had to make our own arrangements for housing. And my mother had a friend who, in turn, had a friend who was in the diplomatic corps in the U.S. and had a home, a lovely home, in Seoul, Korea, and he had been posted elsewhere. And the home was available. And, so, Rex Ruff was my colleague's name, and I rented this quite lovely home. And it came with two young Korean women as staff. They were 18 to 20, maybe, something like that. And my wife, my then wife, worked with them very closely in maintaining the home and

preparing meals and what not. And she became reasonably proficient in Korean, at least so much of the language as was necessary to communicate on these subjects. And one Saturday, she asked me to accompany one of these young women into the market so that she could purchase rice – you know, like a 25 pound bag of rice or something like that, as part of the weekly staple. And I did and I was in uniform and it was obvious to me that this young woman who had, of course, been, you know, exceedingly deferential simply because, you know, I was the American officer and I was substantially – well, I wasn't that much older actually – but I was somewhat older – but it was evident to me on this day that she was very uncomfortable. And we did the shopping and we returned and my wife later told me that she had asked never to be required again to go into the market with me because people might think that she was my concubine and she would, at least at her societal level, be essentially ostracized, you know, by her family and friends, whatever.

MR. COHEN: Sure.

MR. SCHUELKE: Very, very interesting experience. And we only, that is, Rex and I, only spent weekends, and not every weekend, there at the house because we were working up near the DMZ. And so if I were there on a weekend, I would have one of these young women make arrangements for me to have a taxi pick me up at, say, 5 o'clock in the morning on Monday morning to drive up to Tongduchon which was the village near the 7th Division headquarters. And it was probably only 35 miles maybe but it took at

least 2 hours because the roads were not at all good and there was all manner of traffic from goat carts to oxen carts to people on bicycles with drugged but live hogs strapped to the back of the bicycle because they had no refrigeration so they would transport them while alive.

MR. COHEN: Mm hm.

MR. SCHUELKE: And I had many great times on those trips including one very cold snowy morning. I was in the back of the taxicab and the taxi was driving too fast for the conditions and approached a bus terminal and a bus pulled out in front of us and he slammed on the brakes but, of course, he simply skidded, probably accelerated while skidding, hit the bus broadside, and I saw it coming and kind of ducked down as much as I could in the back seat. I was not injured. Some window broke and the driver got glass shards in his fingers or something. So there was blood around the car and it looked like it was a terrible accident which it really wasn't. And within a matter of seconds, I would say, a hundred people materialized, surrounding the cab, because they saw me in uniform and they were all claiming to have been on the bus apparently and they were going to sue the U.S. government.

MR. COHEN: They hadn't heard about sovereign immunity.

MR. SCHUELKE: Right. So I remember getting out of the cab saying, "That's it, I'm out of here," elbowing my way through this crowd, finding another cab and getting on my way.

MR. COHEN: Were there also loose animals on these roads as you might find in India?

MR. SCHUELKE: No, no. No, I mean, there were a lot of stray dogs and that sort of thing but, no, not livestock. But it is quite true that they would transport these hogs, apparently comatose on rice wine, and this guy would be riding a regular old bicycle with a 200 pound hog strapped on the back. And they took all manner of discarded glass and, I don't know, plastics and some metals and sell them to some kind of reprocessing plant. And they would be riding a bicycle and there would be this stuff somehow tied on and it would be a stack of this stuff that was like 6 or 8 feet high. It was absolutely amazing that they could actually navigate, but they did.

MR. COHEN: They were two wheelers, three wheelers?

MR. SCHUELKE: Two wheelers.

MR. COHEN: Did you work hard during that period in JAG as compared with other jobs you've had since where you obviously have worked very hard?

MR. SCHUELKE: Yes, I would say yes. When I was in a trial lawyer capacity, as either a prosecutor or defense attorney, we had substantial calendars and preparation for trial and ongoing preparation in the course of the trial with which all of us are quite familiar was no different. So, I would be in court from 9 in the morning until 4 or 5 in the afternoon and probably worked until 2 or 3 o'clock in the morning to prepare for the next day. So that was really no different. There was a lot of travel and some consequent down time. When I went back to Korea first as a military judge I had a helicopter assigned to me because I might have two cases to hear on a given day at one base and I might have two scheduled for the following

day at another, and so we would fly from base to base which is always an interesting experience. I did a lot of that when I was in Vietnam, as well, although in Korea I basically had a personal helicopter chauffeur who was a young warrant officer. And I remember one Friday evening, we were up at the 2nd Division which was right adjacent to the DMZ. And, of course, I wanted to get back to Seoul Friday night. And it was snowing and there was snow on the ground. And I said to the pilot, can we get out of here tonight? Because I knew that the SOP, as it were, was that they don't fly, they don't land and take off in snow conditions because the rotors will kick up a lot of snow and you're basically blinded. And his response to me was, "Sir, you're in command. If you say we're leaving, we're leaving." Okay. Let's go. And so we did. Flew back to Seoul that night – without incident I might say.

Although I did go down once in a helicopter there. These were what they called OH23s which are 2-seat canopy – much as you see the TV stations use. A single gasoline powered Briggs and Stratton engine, it's kind of like what you have on your lawn mower only larger. And they're a workhorse, they're absolutely reliable. A great little aircraft. And in nice weather an enjoyable way to travel because they're completely open on the side so you can stick, put your foot out on the skid and the view absolutely panoramic. And if you're interested in photography, that's a great thing to do, which I was also at the time. But we were flying one night – not night, it was not dark – one evening and it

was rapidly losing oil pressure which was evident on the gauge. And the pilot was trying to make it to the closest available landing zone but didn't. And the engine seized. And we were probably at 2000 feet I would estimate and the aircraft will autogyrate just from the static rotors. And so the aircraft is spinning which slows the descent to some degree. But, you know, we hit the ground with a [hits the desk with a thump] and nobody was hurt.

MR. COHEN: So does the little vertical propeller stop at that point. I mean is that what goes round and around because the—

MR. SCHUELKE: It stops.

MR. COHEN: Okay.

MR. SCHUELKE: It stops. Yeah. And we took a pretty good bounce and I don't remember — I don't know, maybe I was bruised or something but certainly not significantly injured. And interestingly enough, those aircraft had a far greater safety record even with incidents like that than the Hueys which were ubiquitous in Vietnam. And there were some in Korea when I was there, too, but they were gasoline turbine — they still are — so effectively it's a jet engine driving a turbine and when they would go down, either through mechanical failure, enemy action, whatever it was, most of the fatalities occurred because on impact the fuel tank ruptured and exploded. Eventually, oh, I don't know, by '70 maybe, they had designed a fuel cell which was made of some sort of malleable plastic compound so the thing would take an impact and not rupture like the steel tanks had.

MR. COHEN: I always assumed that the big danger is that unlike an airplane that can glide, a helicopter would plummet if it didn't function, but I guess if it's going around a little bit –

MR. SCHUELKE: Yes, it depends on the aerodynamic conditions when you have a mechanical failure. If the helicopter is flying at 125 miles an hour, that momentum is going to counteract with significant degree the autorotation impact, 'cause the aircraft is still moving at a pretty rapid pace. If you're flying, however, as we were on this particular evening, at a reasonably leisurely pace, in a matter of, I don't know, 10 seconds, maybe, the forward motion of the aircraft is overcome by the autorotation and so then it basically goes straight down.

MR. COHEN: Are there other cases that you had either as a JAG advocate or as a judge that we ought to record, say something about. You talked about one case the last time we were together but I think that's all.

MR. SCHUELKE: Oh, we talked about the –

MR. COHEN: The PFC \_\_\_\_ \_\_\_\_.

MR. SCHUELKE: The kid who was charged with yeah – sleeping on guard duty. There were a couple of cases, one of which I prosecuted and one of which I presided over as a military judge which both involved senior supply and noncommissioned officers who had allegedly, indeed had, engaged in sort of massive fraud stealing all manner of supplies and selling them into the black market. And they were fascinating cases because this was all, of course, well before computers and email and so it was – but they were

document intensive cases requiring a great deal of analysis of what came in and what went out and how it was accounted for. And in both of these cases which are completely unrelated, there had been fairly sophisticated and elaborate efforts taken through false documentation to disguise the nature of the transactions. And so it's like white collar investigations that I had occasion to conduct when I was in the U.S. Attorney's Office later where it was a fascinating detective exercise involving detailed documents and financial transactions. And I suppose when one thinks of court martial practice in the military, one doesn't think of cases of that sort but there are and they're hard work and they're interesting. So, yeah, there were a couple of them.

MR. COHEN: My sense of that comes from *Catch 22*. Isn't there somebody in *Catch 22* who was –

MR. SCHUELKE: I think that's right.

MR. COHEN: Milo Minderbinder.

MR. SCHUELKE: Well, that's gone on, I suppose, since the advent of warfare. And there was a huge market apparently available for it which wasn't difficult to access in a city like Seoul or Saigon. And there were a number of interesting and difficult violent crime cases. You know, one of the things that sort of the searing experience for me while I, as I think I probably said last time, I thoroughly enjoyed my service in JAG Corps. But the sort of personally searing aspect of it was that while as a lawyer barring very unusual circumstances, one is not involved in active hostilities. It's not

very likely that you're going to get shot. You could be in the wrong place at the wrong time when there's a mortar attack somewhere. But you're not humping the boonies on patrol and that sort of thing. Nevertheless, what you get to see is this sort of awful underbelly of the military in a combat zone. You get to deal with the worst of society. Some of it is particularly arresting because I can recall cases in which you had a young trooper who had been in country for 8 or 9 months out of his 13 month tour who had an unblemished record, who was a good soldier, who got in a dispute with a noncommissioned or even an officer at the company or battalion level, felt that he had been unfairly treated in some way and because of the ubiquitous nature of firearms and to some degree the extent to which people get inured to the violence and death in a combat zone, the immediate response is to pull out a weapon and shoot the guy. And there was a case like that. He actually did shoot an officer. Killed him. And he was an 18 or 19 year old kid from some farming community somewhere in the Midwest. And that environment made him into this.

MR. COHEN: Mm hm.

MR. SCHUELKE: You know? My guess is had he stayed in Iowa, gone to work in farming or manufacturing or whatever, he never would have had problems his entire life, you know. So, that part of it I found difficult.

MR. COHEN: What happened to him, what did he receive?

MR. SCHUELKE: He was sentenced to, I don't remember exactly, but a lengthy term in prison back at Leavenworth. I mean, there was no question but that he had

intentionally shot this officer point blank with an M16. Shot him in the chest. Well, you might have made a second degree murder case out of it rather than a premeditated murder case but that's what happened.

MR. COHEN: Did you sense that it happens a lot? I mean, in wars do we lose a lot of lieutenants just because people really, really don't like them?

MR. SCHUELKE: No. In Vietnam, there were a significant number of so-called fragging episodes. That is, some kid is for whatever reason extremely angry and agitated because he's been subject to non-judicial discipline or something which he thought was unjust and unreasonable and marches up to the officers' latrine, and opens the door, and tosses a fragmentation grenade in there. That happened.

MR. COHEN: Mm hm.

MR. SCHUELKE: And it happened a number of times so it was a significant issue. But in terms of absolute numbers, I don't know, my guess is – and this is nothing more than a guess – maybe a dozen officers or NCOs were killed or injured in instances like that over the space of several years.

MR. COHEN: Really?

MR. SCHUELKE: Yes. So, in terms of absolute numbers, though it was not a – there were whole lot more lieutenants that were getting killed on a daily basis in Vietnam in enemy combat. That was a very serious issue. They had a very short life expectancy. Particularly post Tet in spring of '68 through middle of '69 probably.

One of the other things that I found troubling that I think influenced me in some ways when I later became an Assistant U.S. Attorney, there were a lot of civilian judges around the country who would have a kid who was convicted of some offense, not necessarily a serious offense, who would give the kid an option: enlist in the Army or you're going to jail. A terrible practice. But there was a lot of that. And of course that decreased with the rapid increase of draftees in Vietnam. But there was still a lot of that. So you started out to some degree with not exactly the crème de la crème of society.

MR. SCHUELKE: And there were drug problems which were at some times and in some units of epidemic proportion. And there were significant racial conflict issues as well. And there were times when all three of those factors contributed to lots of problems.

MR. COHEN: When you were a judge, did you have anybody like a law clerk? Did you have to essentially do it all yourself?

MR. SCHUELKE: Essentially myself. I mean, we had administrative support for our own personnel needs, pay, housing, that sort of thing, but, no, we had no law clerks. And so I was a big proponent of insisting upon comprehensive pleadings from the parties which a lot of lawyers who up until that point had not been dealing with a military judge found to be burdensome. But, you know, as is true for any trial judge, even if you have law clerk support, it's important to have the positions of the parties well briefed. And it's obviously to their ultimate benefit as well. So that's what I tried

to do, tried to enforce. We had a lot of good lawyers. I think I may have said this when last we met. The popular notion that military justice is somehow deficient. Not so. Wasn't then. I don't believe it is now. We had smart, good, young lawyers. We had a defense bar which was every bit as aggressive as any you'd find in the civilian court system. Nobody was afraid of taking a position that the command wouldn't like. And there were lots of positions taken that the command didn't like but – so, no, I was quite proud and remain so.

MR. COHEN: Mm hm.

MR. SCHUELKE: And I thoroughly enjoyed it.

MR. COHEN: Shall we move on to the U.S. Attorney's Office?

MR. SCHUELKE: Sure.

MR. COHEN: Henry, you go to the U.S. Attorney's Office in 1971?

MR. SCHUELKE: I started in March of '72. Within a week or two of the conclusion of my tour in the Army. I had applied for the position in, I guess, the late summer or fall of '71. And I remember that Tom Flannery, the U.S. Attorney at the time who had hired me with the recommendations of a hiring committee was a lame duck actually at the time he hired me because he had been nominated to the District Court and was awaiting confirmation. So by the time I actually started in March of '72, he was gone.

At the time I started, there were about a hundred Assistant U.S. Attorneys. I do remember that when I left in October of '79, there were

161. And I'm thinking it was probably around 100 when I started, maybe some fewer. The office, of course, was then as it remains, divided in divisions with responsibilities for the District Court and the Superior Court. And within each of them, it was further divided up into Appellate Division which handled the appellate work in both the Circuit Court and the D.C. Court of Appeals. Felony Trial Divisions in both courts. Grand Jury Divisions in both courts. And Major Crimes Division in the District Court. A Fraud Division in the District Court. Misdemeanor Trial Section in the Superior Court. This, in 1972 when I started, was very shortly after the implementation of the Court Reorganization Act. Theretofore, all felonies were prosecuted in the U.S. District Court because the Superior Court, until reorganization, was not a court of general jurisdiction. By the time I started, all the D.C. code offenses were tried in the Superior Court and the District Court handled federal criminal law as well as federal civil litigation, the Civil Division I forgot to mention because a while later when I became the Executive Assistant I had supervisory responsibility for the Civil Division. I never practiced in Civil and had very little knowledge or insight into it. When I became the Executive Assistant, I didn't really have to do very much because now Chief Judge Royce Lamberth was the Chief of the Civil Division. And Royce, a terrific lawyer, knew more about civil litigation than I would ever dream of knowing. And the protocol within the Office was if they were going to settle a case for above a certain dollar threshold, they had to have front

office approval. So Royce would say, I want to settle this case for X dollars and I would say, “Yes, sir. Done. If you think it’s right, it’s fine with me.”

MR. COHEN: So he was the head of the Civil Division of the Office?

MR. SCHUELKE: Yes.

MR. COHEN: At that point?

MR. SCHUELKE: Yes.

MR. COHEN: Yeah.

MR. SCHUELKE: But back to when I began. The practice in the off – well, first of all, everyone had a 3-year commitment which was rarely ever honored in the breach. And because it was the policy and practice of the Office to train young Assistants, there was a rotation which was commonly followed. So one would first be assigned either to the Misdemeanor Trial Section which was a great learning experience but it’s also a place where you can do less harm or the Appellate Division on the theory that before you’re going to seek to apply the law in the trial court, you ought to know what the law is.

MR. COHEN: Besides that, by definition some other lawyers’ already been involved with the case, so you’re –

MR. SCHUELKE: Correct. Consistent with that practice, my first assignment was in the Misdemeanor Trial Section. I think I was there for 4 or 5 months. The typical rotation was a year.

MR. COHEN: Is that the Superior Court?

MR. SCHUELKE: Superior Court, yes. Yes. Now, –

MR. COHEN: Before you get there, why did you apply to the Office? Did you think about any other possibilities, seriously, as you were coming out of JAG?

MR. SCHUELKE: I thought about other possibilities. I don't know that I terribly seriously thought about other possibilities. I had decided, based on my time here in Washington over the last year and a half in the Army, that I wanted to stay in Washington. I didn't know anybody in Washington. I didn't have any network of colleagues as I might have had if I went back home. And it seemed to me that if I were going to practice law here in Washington, I ought to become acquainted not only with the courts but also with practitioners here in Washington. And even though by that time I had tried a substantial number of cases in the JAG Corps, I persisted in the view that if I wanted to be a trial lawyer which is what I thought I wanted to be, you couldn't have a better opportunity to develop and perfect those skills. And I went into it expecting that I would fulfill my 3 year commitment but then I would go into private practice. Now it didn't quite work out that way because I was there for 7 years and I can tell you why but that was basically my motivation.

MR. COHEN: Was it hard to get a job in the U.S. Attorney's Office at that point? Were those jobs eagerly sought after?

MR. SCHUELKE: Oh they were eagerly sought after. I can't remember to tell you the truth what was going on then with respect to available slots, you know. There were periods of time thereafter when there were hiring freezes in place and I don't believe that was so at that time. It was highly sought after. It was

competitive. I can tell you that several years later when I was the chairman of the hiring committee for the Office that we would typically have a pool of applicants of several hundred. We would winnow that down to about 40 finalists as it were and then make offers to maybe a dozen a year. So it was quite competitive. You know, I think a lot of people well understood that this was an opportunity impossible to equal elsewhere. And I still think that's the case. I mean, surely the U.S. Attorney's Office in the Southern District of New York is a great office. It's not as great as they think they are but it's a great office. And while there are certainly significant opportunities for young lawyers in that office to gain trial experience, it's nowhere near as great as it is here simply in terms of the volume of cases. You could join the U.S. Attorney's Office in the Southern District – and I think this is true in Chicago, L.A., you know, virtually anywhere – you could join that office and you could be there for 2 years and never have first chair at a trial. The volume isn't nearly as great. There is I think somewhat less attrition and so senior lawyers are there longer whereas when you join the U.S. Attorney's Office here you can go to Superior Court and whether you're trying misdemeanors for six months or a year, or what they call felony twos which are guns, drugs, uncomplicated homicide cases, you're going to try somewhere between 2 and half a dozen cases a month. And there's just no substitute for that. And because I believe that in addition to developing the obvious skills of conducting a direct and cross

examination, making an opening statement, closing argument, the fundamental thing that one has to learn as a trial lawyer is judgment. And if you're trying a lot of cases, and you're thrown into them, as was true in Misdemeanor Trial with virtually no opportunity to prepare, I mean none, you would meet the police officer in the hallway outside the courtroom and you would spend 10 minutes frantically trying to read the relevant documentation and you'd walk into the courtroom and start the trial. You may or may not have had the opportunity even to interview a principal complaining witness. So you learn very rapidly not to take stupid, unreasonable positions. And that's the only way one learns that. You can't find that in any book. And so I just think there's no substitute for that sort of sink or swim approach to trial work. And we had that in spades.

And we had in those days in the Superior Court quite an interesting collection of judges most of whom were superannuated judges who'd been on the Court of General Sessions before it became the Superior Court at the time of the court reorganization. And it was a collection of either unqualified, irascible, and some of them nut cases, you know. And that was true. And so one had to learn to deal with all manner of wackiness which is just a great experience.

So I did the Misdemeanor Trial assignment –

MR. COHEN: Was it another difference between here and let's say the Southern District that up there they simply don't have anything equivalent to Superior Court jurisdiction?

MR. SCHUELKE: Yes. Yes. The U.S. Attorney's Office here in the District is the only one in the country that is a local D.A. as well as the federal prosecutor which adds another sort of interesting dimension. Forgive me if I'm getting sort of off the track –

MR. COHEN: No, no. I think this is interesting.

MR. SCHUELKE: – chronologically. But I have thought and continue to think that my experience in the U.S. Attorney's Office here in the District was the time of my professional life. I had a great time every day which is not to say we didn't work hard because we did. But I did it in the company of some terrific people. I always felt like I could walk down the hall to the guy next door who was smarter than I was to hash things out, you know?

I had the pleasure of working for U.S. Attorneys who had no political agenda whatsoever. And so our only charter was to do what we thought was right. And barring coming up with some totally wacky idea, you could expect you'd get support. That's not true in U.S. Attorney's Offices around the country. You know, the U.S. Attorneys other than here in Washington are selected as a result of a political process. Not that I'm suggesting there's something wrong with that, it's just a fact. So, the Congressional delegation in you name it, Ohio, Texas is largely responsible for the nominations that come out of the White House for the

U.S. Attorneys. And as a result of that, there are some political agendas. There are U.S. Attorneys who want to be the governor of Texas and they make prosecutorial judgments which are seen to advance their political ambitions. I think that's just a fact of life. And that's true in the state systems as well. Not so here. Paradoxically, the U.S. Attorney's Office in Washington is only 7 blocks from main Justice but we were more distant from main Justice than I think the U.S. Attorney's Office in Alaska was. Part of that was because –

MR. COHEN: Because it's less political?

MR. SCHUELKE: – Yeah, part of it was because half of our business was being the local D.A. for the District of Columbia. The Justice Department had no – I wouldn't say that – it would be unfair to say they had no interest in that, but it would be fair to say that it did not implicate administration goals and policies in any way. And because we don't have a Congressional delegation in Washington, you never had that kind of political influence into the selection process. And so this office has always been free of that kind of political influence. We also happened to have had a U.S. Attorney when I was there of absolute integrity who I'm confident would not have succumbed to any kind of political pressure even if there'd been any. Someone like Earl Silbert I have in mind principally.

MR. COHEN: Who were these U.S. attorneys? Let's just sort of get that down.

MR. SCHUELKE: Who were the U.S. Attorneys during my tenure? Judge Tom Flannery was the U.S. Attorney whom I described earlier who actually hired me while

he was a lame duck awaiting confirmation to the District Court. By the time I began in March of '72, he was on the bench and replaced by Harold Titus who had been his principal assistant. Titus was a fascinating man who had been by all accounts a superb trial lawyer, one of the best at mustering and evincing righteous indignation on behalf of the people in a criminal case. He was quite a patrician in bearing. There were stories about how he would try a rape case, for example, and among the physical evidence, let's say, were the victim's panties. Well, he would ostentatiously put on latex gloves before he would handle the evidence. I don't really know, or if I did I don't remember the details, but he was somehow an intimate of the Eisenhower family. He was not related to the Eisenhowers. But at some point during his youth and perhaps into his 20s and 30's, he was always described to me as kind of a member of the Eisenhower family. He had been married at one point to Dina Merrill, the actress.

MR. COHEN: Yes.

MR. SCHUELKE: And he was a close friend – I couldn't tell you how or why, of Tyrone Power. And I remember tales about how when during the late 60s, early 70s, Tyrone was a very popular name among the African American community, and as a consequence there were a number of criminal defendants in the system whose name was Tyrone. He was always offended by that because of his friendship and affection for Tyrone Power. But he, like Earl who followed him, but for completely different reasons,

was completely independent, and I think part of it may have been the fact that he was so well connected among the Republicans that he didn't need to curry any political favor and he felt he was immune from that sort of pressure which may have been the case. But he was a great proponent of hiring assistants who appeared to have the ability to be trial lawyers. That's what he was most interested in, and he would unflinchingly support any of us. Earl was apolitical – completely apolitical.

MR. COHEN: When does Earl take Titus' place? How long had he been there?

MR. SCHUELKE: Well, Titus resigned at the point during the Watergate investigation at which Richard Kleindienst had been implicated in some failure of oversight allegedly at the behest of the White House. Titus and Kleindienst were very close friends. Titus, I don't know this because Titus ever told me personally, but I was given to understand that Titus at that point was so troubled by what had occurred both at the Justice Department and the FBI as it was becoming known through the Watergate investigation and publicity that he was sick of it and he'd had it. Now when exactly that was –

MR. COHEN: Well, that has to be in '74.

MR. SCHUELKE: – '74, I would say probably mid '74 because Earl was one of the three original prosecutors from the U.S. Attorney's Office who investigated the origins of the Watergate scandal, namely the break-in at the DNC before the special prosecutors were eventually appointed.

MR. COHEN: Well, was Earl appointed by – this is Earl Silbert. Was he appointed by Nixon or by Ford?

MR. SCHUELKE: Nixon.

MR. COHEN: That's interesting.

MR. SCHUELKE: Hmmmm, and Earl was, well, I said earlier that he was completely apolitical and I think that's true. He was a registered Democrat, came from a good Massachusetts Democratic family. So in short, I had the distinct pleasure of working in that environment where we were free of any kind of political influence. And Earl remained the U.S. Attorney almost to the end of my time there. Earl left in July of '79. I left on Halloween of 1979. So for a couple of months, Carl Rauh, who had been the principal assistant to Earl, was the acting U.S. Attorney, and Earl and Carl and I had worked together in the so-called front office since sometime in '76, so from '76 to '79.

MR. COHEN: Your point that it's remarkably apolitical is corroborated by the fact that Earl I guess – you said he was appointed by Nixon. He survived through the Ford Administration and into the Carter Administration.

MR. SCHUELKE: Right.

MR. COHEN: Even though I take it this is a job that serves at the pleasure of the president.

MR. SCHUELKE: It does indeed. And that's another example, I think, of this phenomenon that we talked about earlier that, unlike elsewhere, even putting aside the Justice Department, presidents don't come into office saying I need to

replace the U.S. Attorneys. If they do, they're not focused on the District of Columbia.

MR. COHEN: So go back to your own career.

MR. SCHUELKE: Even recently during the claimed scandal I'm not sure how much of a scandal it actually was – about U.S. Attorney firings during the second term of the Bush Administration. Nobody got fired here.

MR. COHEN: I was going to say go back and give me the short history of your career. You come in, you spend six months in the misdemeanor section, and then how does the rest of the time break down?

MR. SCHUELKE: Well, then the normal rotation would be you start in misdemeanors and then you would go to appellate, or you start in appellate and then you go to misdemeanors. And then you would go to one of the grand jury sections either in Superior Court or District Court. After I don't know, I think it's around six months that I was in Misdemeanor Trial they sent me to the Felony Trial Division. So I skipped the typical rotation because I had had significant trial experience before I ever arrived there, and the powers that be were apparently satisfied that I had equipped myself well enough in those first six months. And so I went to the Felony Trial Division in Superior Court. As I alluded to earlier, the structure of the calendars in the Superior Court then as now was Felony II calendar which were guns, drugs, uncomplicated homicides, sexual offenses, larcenies, burglaries.

MR. COHEN: Some of those sound pretty serious.

MR. SCHUELKE: Well, they are. They're serious, and the only reason that they're distinguished from the so-called Felony I calendar is because the Felony I calendar would include conspiracies, multiple defendants like three or more defendant – three or more codefendant cases, complicated first degree murder and felony murder prosecutions which were thought to involve more complex and protracted litigation so a given judge could manage fewer of those cases on the calendar. Whereas in the Felony II you had serious crimes, but you maybe had solo defendants and you didn't have conspiracy cases and so on. And the U.S. Attorney's Office was organized so that each judge who had a felony calendar, one or two, had three AUSAs assigned to that calendar. And when I started in Felony II's in late '72, the typical Felony II calendar had maybe 350 cases on it. I mean it was a big calendar. And in an effort to manage the calendar, a judge would set maybe three different cases for trial on a given Monday in the expectation that two of them were going to break down for some reason. Either they're going to plead or a continuance is going to be granted for some reason, and that happened. And so that was a sensible way to calendar. But what would often happen is I would try a case from Monday of week one through Friday, some four or five day trial. The next Monday I've got one of the three that is calendared for trial and the other two are the ones that break down. I'm in trial again, you know, back to back. And so, you know, we were very, very busy. We had –

MR. COHEN: Well, it sounds like a better way to handle the judge's calendar than to handle the lawyers' calendars.

MR. SCHUELKE: No question, no question. It was designed for docket management on the part of the court. Now, you know, I'm not suggesting that on that given Monday I was totally surprised that it was my case that was going to go to trial. I mean I had a sense from my colleagues on what's likely or what's going on with your case, is it going to go on Monday or is it not. We pretty much knew. That didn't lessen the burden anyway if the chips fell the way I described. Most of these judges developed an affection for the team of AUSAs working before them. These are my AUSAs. And to the extent that we were good at what we did, knew the law because some of these judges were new to that aspect of the practice, they were most appreciative. Now, you know, one could argue, I suppose, and I'm sure some did that that's the problem, you know. That's why we've got so-called government judges, you know. They buy what their AUSAs have to say, and I suppose in some cases that there may have been some truth to that. But I think it was a result of the fact that we did call the shots straight and that we did know what we were talking about and that we did not lead them down some inappropriate path. Which is why, touching on the subject that I have had the misfortune or fortune depending on how you look at it to be investigating for the last couple of years for Judge Sullivan, which is why it pains me to see on an ever increasing basis

district judges and circuit courts around the country appalled at *Brady* violations on the part of the federal prosecutors.

MR. COHEN: Now you're referring to the Stevens investigation I assume.

MR. SCHUELKE: Yes, yes.

MR. COHEN: Which we'll come back to by the way it seems to me I have read within the last few weeks a story in the Washington Post about a number of *Brady* violations and judges complaining about *Brady* violations around the country.

MR. SCHUELKE: Yeah, yeah. I mean the Supreme Court has recently heard two from New Orleans, not the Justice Department, Harry Connick's office, the district attorney in New Orleans, you know, cases in which the guy's on death row. It's a one witness ID case. They failed to disclose to the defense that first the witness had told them he didn't really get a good look at anybody. Then he couldn't describe the person who committed the offense. Then, you know, by the time the trial started, oh, yeah, it was this guy. So, yeah, that's troubling, but that's a different subject. So I was in felony trial, oh, yeah, I was in felony trial, both Felony II and then the Felony I calendar from late '72 until early '74, yeah, so about a year and a half at which point I was appointed as the Chief of the Superior Court Grand Jury Section where I earned the well-earned reputation for never being around because shortly after I had that assignment, I was asked to try the then remaining Hanafi Muslim murder case, a murder – seven murders that had occurred in January of 1973. And so even as I held this position

ostensibly as Chief of the Grand Jury Section, I was almost immediately off preparing to try that case. And you may remember there was a comic strip for years called the Phantom.

MR. COHEN: Yes.

MR. SCHUELKE: And the Phantom's nickname in the comic strip was the ghost who walks. So some wag –

MR. COHEN: Mr. Walker, he was called.

MR. SCHUELKE: So some wag had made up a name plate for the door to my office in the Grand Jury Section, the ghost who walks.

MR. COHEN: Well, we'll come back to the Hanafi case. Was the Superior Court subject to Fifth Amendment grand jury requirements?

MR. SCHUELKE: Yes. The system is identical.

MR. COHEN: And what does, so the Grand Jury Section is the section that is seeking indictments?

MR. SCHUELKE: Yes, or presenting cases in circumstances in which it was the policy of the office to present them even if the office was not actually seeking an indictment. I'll give you an example of that. First, let me describe the function of the office. Ninety-eight percent of the cases processed in Superior Court, felony cases, are originated by the police. The case is brought to the office for initial papering and scheduled for a preliminary hearing and virtually immediately assigned to an assistant in the Grand Jury Section. If the case is indicted before the preliminary hearing was scheduled, then no preliminary hearing is needed because the indictment is

the finding of probable cause, making the preliminary hearing a moot exercise. And so the assistant assigned to the grand jury would present the witnesses to the grand jury, would advise the grand jury on the elements of the applicable law and would prepare for the grand jury a draft indictment and, after the grand jury voted to indict, would present the indictment which was done on a weekly basis at considerable volume to the chief judge or his designee of the Superior Court, and the case would then be assigned to a trial judge and that would commence the process. There are cases that are initiated by the police which the U.S. Attorney's Office oftentimes will decline to prosecute, what we call no papering. That can sometimes be controversial as between the police and office or the FBI and the office. There are cases which are papered and presented to the grand jury, one class of cases regardless of what the office's view of the merits of the prosecution might be – homicides. It has long been the policy of the office and I believe it still is that homicide cases are going to be indicted or not by the representatives of the community, not by the U.S. Attorney. So I might have a homicide case where it is clear to me that the defendant acted in self-defense, but it will be presented to the grand jury. Now one way or the other, during the course of the presentation, the grand jury is going to hear the defense case as well and virtually all of those cases are no billed. Once in a blue moon, you might have a grand jury that takes a different view and indicts a case.

MR. COHEN: Which means that you then have to try it.

MR. SCHUELKE: Well, one case that I recall, I think while I was, at least in titular fashion, the chief of the grand jury section, involved a couple, both physicians, who lived on upper 16<sup>th</sup> Street Northwest, the Gold Coast, and there had been a long history of spousal abuse by the husband. One day he walked in the front door, she was waiting for him and shot him right smack in the center of his forehead. And it was the view of the office that this was a murder case. This was not a case of immediate self-defense. He may have deserved killing, but this was a murder case. Well, the grand jury was not going to indict this woman. So we withdrew it and presented it to another grand jury, which did.

MR. COHEN: That's interesting.

MR. SCHUELKE: That happens very, very rarely. So that's essentially what the grand jury section does, and the chief of the grand jury section is responsible for reviewing indictments. And the practice is the assistant assigned to the case will write a memorandum describing the evidence and the charges and the weaknesses and the strengths of the case and so on, and the chief of the grand jury section might say that's great, but I think you need to explore this and you need to explore that before I sign off on this. I remember one case, for example –

MR. COHEN: So this is after indictment.

MR. SCHUELKE: No, no. This is after the assistant has basically presented the evidence to the grand jury and is seeking approval to ask the grand jury to indict on the following charges. I remember a homicide case, a stabbing case in

which the postmortem examination report identified two wounds. And recovered from the defendant or at the scene of the crime was a knife with a serrated blade. And so I'm reading this assistant's account of this, and I have a couple of questions about this. Okay, there's a serrated blade. There are two wounds. According to the ME's office, are they both compatible with a serrated blade?

And the answer was I don't know. I said, well, I think we need to know that. And by this time, I had tried a significant number of homicide cases, and I always enjoyed digging into the forensic aspect of it. In a lot of cases, there's not much of a forensic issue, you know. Somebody's shot in the head, well, it's that. But sometimes it's fascinating, and I knew most of the medical examiners as a result of my own cases. And because of that interest of mine, I said to the AUSA, Steve Gordon is his name, terrific guy, he's a partner at Holland & Knight, let's go over and talk to Dr. Blackburn. His name was Brian Blackburn. Okay, so we go over to the ME's office. I said Brian [Blackburn], I understand there, I guess by that time I had read the autopsy protocol myself, were two wounds. I'm told the guy had a knife with a serrated blade. What's the story here? Well, one of them is consistent with the serrated blade. The other one was a scalpel. That was the lethal wound. That was the end of that case.

MR. COHEN: Sounds like somebody else did it to me.

MR. SCHUELKE: Well, it was not that – what the hell is the name of the hospital up on Capitol Hill? There's still a hospital there, but it's got a different name

and under different management. But for years during the 70s, I cannot think of the name of the hospital, but it was renowned among the homicide detectives to such a degree that if they got a call or they monitored a call for a shooting or a stabbing and the victim went to that hospital, they'd send Homicide because if the wound inflicted by the perpetrator didn't kill them, the hospital would. That was their reputation. And the lethal wound in this case in the medical examiner's view was administered by someone in ER. It was a scalpel. So that's sort of the function of the chief of the grand jury section. Now a case like that, obviously is extremely unusual which is why I happen to remember that one. There are hundreds of others that unless prompted somehow I would not remember.

MR. COHEN: So you're chief of the grand jury section, and then, and then what, just in terms of the structure of your own career in the office?

MR. SCHUELKE: Well I was then asked to try the Hanafi case which I did three times between the fall of 1974 and sometime in 1977. And this was somewhat of a long convoluted story involving three successive trials of the same matter.

MR. COHEN: Why don't we come back and we'll walk through it. But how much else are you doing at the time?

MR. SCHUELKE: Well, I'm ostensibly doing this grand jury supervisory work, which I did in fact, although I did earn the "ghost who walks" reputation. I was hard to find, and so a deputy had to do a lot of this stuff. When I concluded the Hanafi cases which I did basically full time for three years and I was sort

of tired and was figuring out ways that I could dabble to give myself a little bit of a break for a while when the chief of the homicide division of the Metropolitan Police Department, with whom I became quite close as a result of the Hanafi cases, came to me and asked me if I would work with them on a difficult open case about which they were getting a lot of pressure. And so I said yeah, I'd be happy to do that. Let me talk to Earl, and so Earl said fine. If that's what you're going to do, great. So I did that open case investigation until we closed it and then I tried that case in '75. That's right. That case, that investigation and trial came in the interspace between the second and the third of the Hanafi cases I tried. By the time I had finished the last of the Hanafi trials, I was assigned to the Fraud Division over in District Court. The first time I had been out of Superior Court in all the time I'd been there. And I was in the Fraud Division for a very brief period of time when I was appointed the Executive Assistant. So Earl was the U.S. Attorney and Carl [Rauh] was the Principal Assistant and I was the Executive Assistant with management responsibility across the office which we tried to divvy up into subject matter areas and because of my then long and intimate experience in the Superior Court, I tended to focus to a significant degree on the Superior Court, although the Fraud Division was in my portfolio as well. Which led to my involvement in another rather interesting case, the Church of Scientology which we can talk about at some point if you'd like.

MR. COHEN: You bet.

MR. SCHUELKE: But basically from the summer of 1974 until mid, no, until, yeah, like mid '77, I was asked to and did try specially assigned cases. There was an hiatus for what turned out to be a fairly brief period of time when I became the Executive Assistant, up until, that was mid '76, I think, until probably the fall of '77 or maybe early '78 I was asked to try the *Antonelli Yeldell* case, along with Rick Beizer, who had been – who was in the Fraud Division and had been investigating that for a couple of years. And so I was asked to join him so the two of us would be the trial team. I tried that case twice along with Rick. The first trial started in September of '78, yes. Tried to guilty verdict. New trial granted. Then the case was transferred to Philadelphia owing to the publicity of the, principally of the guilty verdict here in Washington, which Judge Gesell thought would make it impossible to select an unbiased jury here in the district, which is probably right. We tried the second time in Philadelphia in the fall of '79. And that was the last case I tried in the office. Now, much as I was the “ghost who walked” when I was in the grand jury section trying cases, I was sort of the “ghost who walked” when I was the Executive Assistant as well because I held that position throughout the – until I left the office at the – in October of '79.

MR. COHEN: Why don't we go back and walk through the Hanafi case. Do you want to start by just summarizing what it was about?

MR. SCHUELKE: Yes. In the, from the late '60s through the early '70s and somewhat beyond, the Nation of Islam, also known as the Black Muslims, a Black separatist organization lead by Elijah Muhammad whose headquarters was in Chicago, had mosques around the country. I'm trying to recall, but I cannot off the top of my head, how many mosques there were, but principal among them was the mosque in New York which was headed by Louis Farrakhan, at the time. A mosque in Philadelphia, which was known even before the Hanafi case as the gangster mosque. One of the principal lieutenants of Elijah Muhammad in the late '60s was a man whose name was Hamaas Khalis. He was born Ernest Timothy McGee in New York City. He was a jazz musician. A short powerfully built powerful personality who eventually fell out with Elijah Muhammad.

MR. COHEN: Why don't you spell out Hamaas Khalis?

MR. SCHUELKE: HAM double ASKHALIS. Hamaas increasingly adopted views not terribly dissimilar from Malcolm X, which were divergent with the views of Elijah Muhammad and the organization in general. Hamaas left the organization altogether and founded a Muslim sect known as the Hanafi Muslims. One of his early adherents was Abdul-Jabbar, Kareem Abdul-Jabbar, the Los Angeles Lakers all-star center, who purchased for the group a home at 7600 16<sup>th</sup> Street, Northwest, which was both the Khalis family home and the religious center of the group. Hamaas, in my own judgment, became increasingly unbalanced, mentally unbalanced. And by late 1972 he decided to go semipublic with a series of criticisms that he

had of Elijah Muhammad. When I say semipublic, I mean he sent a letter describing his criticisms to every one of the Nation of Islam mosques in the country. He got no response, which made him all the more angry. And so in either late December of '72 or early January of '73 he penned and posted to all the mosques another letter. This one reiterated his criticisms but took the gloves off in terms of personal attacks on Elijah Muhammad. He called him a creep, faggot and a number of other not so endearing terms. This one got a response, when a group from the Philadelphia mosque invaded their home on 16<sup>th</sup> Street and murdered seven people.

MR. SCHUELKE: The Philadelphia mosque, by I don't know, '70, '71, as had been pretty well documented in the Philadelphia press, included a number of hard, violent criminals who had been involved in most anything that criminals are involved in a big city – drug trafficking, enforcement of the drug business, protection rackets, who had – who got religion, so to speak. Either because they sincerely got religion or because it was convenient to their, the operation of their activities and I couldn't tell you which of the two is accurate, to tell you the truth. But there was a guy whose name was Ronald Harvey. There was a guy whose name was John Griffin. There was a kid, pretty young, named Theodore Moody. There was a guy whose name was William Christian, who had long been involved in various sorts of violent criminal activity in Philadelphia. When I said the protection racket, they were like old time mob activities. They were, they were

demanding protection money from small businesses, bars and restaurants in northeast Philadelphia, and in order to enforce it on at least one occasion, which I recall, beheaded somebody and left the head on the doorstep of the saloon, just to send a message. And they paid. Well, as we ultimately established, after the second of Hamaas' letters was received, this group of thugs from the Philadelphia mosque was assembled. We were never able to establish at whose authority. We were never able to prove a direct link to Chicago. We had some evidence of the involvement of Louis Farrakhan later in the process. But they put together this hit squad. They traveled by automobile from Philadelphia. They stayed the night before the murders in a little motel on New York Avenue, just up by the northeast market. I can't remember what street that is, a couple of blocks east of North Capital Street. And Hamaas Khalis had two wives. Khadija, KHADIJA, was the elder of his two wives. Rather a tall, striking, regal appearing woman. Bibi was the name of his younger wife. He had an adult daughter whose name was Amina, who was at that time in her late 20s. He had a son who was about 30, and by his second wife he had two children, one of whom at the time of these events on the 18<sup>th</sup> of January, 1973 was nine days old. Amina, the daughter, had a nine year old son. Her husband was in the house and murdered as well. Hamaas and Khadija were not at home when the hit squad arrived. They had left and gone shopping at the Giant which is up in Silver Spring, which is only half a mile away. And as we were able to reconstruct it

because Amina, the daughter, survived and testified. There came a knock at the door. They had a young guy there who was a big, burly, he wasn't a relative, but he was a member of the Hanafi sect and kind of played guard at the place. He went to the door. They had sent this one kid, Theodore Moody, up to the door, feigning an interest in selling some kind of literature. And this, the guard character smelled a rat, tried to close the door, one of the others emerged from the bushes and they managed to push their way into the house and the rest of them all came in. They drowned the baby, the nine day old baby in the bathtub in the basement. And they took the nine year old boy, marched him upstairs, shot him twice in the head. They shot the younger wife, Bibi, several times in the head. She survived physically. She remains wheelchair bound to this day, and was not a competent witness as a result of her injuries. They shot the two adult males and killed them. And eight, eight were shot altogether, seven died. Amina quite miraculously survived. She testified that one of them, whom we later, whom she later identified as Ronald Harvey, was marching her up the stairs from the first to the second floor and she knew by that time that they had drowned the baby. And she asked them why the baby. And he said, because he has the seed of the hypocrite in him, Hamaas. Amina was shot three times in the head. Aside from, I guess what we now call posttraumatic stress syndrome, in a matter of months she bore no evidence of physical injury. As a matter of fact, at the hospital one of the slugs completely flattened fell out of her hair onto the

gurney. It never penetrated her skull. Now this case was investigated by the Metropolitan Police Department, with some assistance from the FBI. A great deal of assistance from the Philadelphia Police Major Crimes Division, and painstaking forensic work. Fortunately, the crew left a lot of evidence. At some point while these events were going on, Hamaas and Khadija came home. And he couldn't get in the house. Either he didn't have a key with him because there is supposed to be somebody there guarding the door, and he's banging away at the door, nothing. And at that the group of them fled out the back of the house. Ran across the neighbor's lawn. Had parked their cars about a block up the street on the other side of 16<sup>th</sup> Street and discarded along the way –

MR. COHEN: Even though the intended target had just come home?

MR. SCHUELKE: Right.

MR. COHEN: Okay.

MR. SCHUELKE: They discarded a number of things that were weighing them down as they were trying to escape, including a suitcase which had a sawed off shotgun in it. That morning's Philadelphia Daily News, which bore a couple of fingerprints. Some credit card receipts, which were receipts from the use of a credit card, both for gasoline purchase on I95 in Delaware, and a motel up on New York Avenue in the name, a credit card in the name of a victim of a home invasion in Philadelphia, that had occurred several months earlier. And so through the efforts of our investigation that case was closed. And John Clark, who was one of the principal perpetrators

here along with Ronald Harvey, was identified as one of the home invaders in that case. That's why I say this group was – was the thug contingent of this Philadelphia mosque because that home invasion, and there were a couple of others that we discovered as well, had nothing to do with Hamaas Khalis or the Black Muslims at all. It was just a crime spree. And so, ultimately, seven of them were indicted. There were actually eight who were identified as coconspirators. The eighth died of leukemia very shortly before the indictments were returned. The case went to trial the first time before Leonard Braman of the Superior Court. The case was tried by the late Bob Shuker, who later became a Superior Court judge, and the late John Evans, who was a fine trial lawyer in the U.S. Attorneys' Office as well, assisted by a third assistant whose name was Percy Russell. All seven were found guilty by the jury. Judge Braman granted a Rule 29 motion for judgment of acquittal as to the seventh on the basis of what he perceived to be insufficient evidence. And they were, in due course, sentenced, each of them, to seven consecutive life terms. There was no death penalty in the District of Columbia at the time. There was no life without parole at the time. The penalty for first degree murder was a minimum of 20 years without parole. And so he sentenced them to seven consecutive terms. There's a postscript. One, two, three of them have since died. The remainder continue to serve in several different federal penitentiaries. No, I'm mistaken. I said that seven of them went to, the surviving seven went to trial. No. Six did. Because Ronald Harvey, who

was actually, in my judgment, the lead bandit in this group, escaped capture. See, this is a great story. He was under surveillance in Philadelphia by the FBI. It was to be precisely coordinated and choreographed that when the indictment was returned, communication would go out and they could arrest whoever they had under surveillance. Ronald Harvey was driving through downtown Philadelphia tailed by the FBI. He went through a red light. The FBI didn't. Ronald Harvey was arrested in Chicago a year later. And so that's when I was asked to try this case. So I tried the Ronald Harvey case.

MR. COHEN: Had you been involved in the –

MR. SCHUELKE: No.

MR. COHEN: case at all? Okay.

MR. SCHUELKE: I did a lot of sort of reinvestigating aspects of it. But Shuker and Evans, Russell, Percy Russell was their colleague on that trial team, had no stomach to do this anymore. And Shuker recommended to Earl that I do it. So he asked me if I'd do it, and I said I would. I got to know Hamaas Khalis pretty well in the process. I got to know Amina Khalis pretty well. Hamaas was getting nuttier and nuttier. The protocol was, if I wanted to talk to Amina to prepare her, I had to go up to the house, I had to meet Hamaas and then Hamaas would decide if she was going to be made available. He didn't trust us. He believed that this whole process was preposterous. They all should have been executed immediately and buried under the courthouse. That would be the only value of the courthouse as

far as he was concerned. And he saw conspiracies most everywhere. For example, on the day, the very day that the indictments were first returned, President Nixon hosted Mohammed Ali at the White House. And the front page of the Washington Post had a picture of Mohammed Ali and the president. Mohammed Ali was an adherent of the Nation of Islam. This was a complete and utter insult to Hamaas Khalis. And that – that was indicative to him of the fact that the government really didn't care about the worst crime that had ever occurred in history, as far as he was concerned. So, Joe O'Brien who was the commander of the homicide division, who had worked this case from the beginning, had earned Hamaas Khalis' respect. I think he was the only one. Joe was a terrific guy. A great detective, great cop, great person. So Joe would always take me up to the house. And we'd sit there cooling our heels for 45 minutes until Hamaas came in. We would stand, of course, you know, as a polite person does when he entered the room. We were never invited to sit and so we would stand for 45 minutes while he railed about whatever. And so I became accustomed to this and eventually we'd get to talk to Amina. In the course of the Harvey trial I introduced evidence of the participation of each of the conspirators, which one would have to do because evidence of Harvey's association with Clark was critical to establishing Harvey's involvement in one aspect of this or another and we had direct evidence with respect to Harvey as well because they'd lifted his palm print from above a urinal in the hotel where they stayed the night before the murders.

And when he was finally arrested in Chicago and was told by one of the agents that he was being arrested for the Hanafi murders in Washington, he conveniently said, I've never been in Washington, which is a very useful –

MR. COHEN: Lie.

MR. SCHUELKE: – lie. So, in the course of that, I presented the identification evidence as well. Amina Khalis had identified from photographs and ultimately a lineup. John Griffin was a tall, slender, dark skinned African American man with close cropped hair. I cannot remember at the moment which one of them, but another of them fit that description practically precisely. They could have been twins, except that Griffin was about six feet tall and the other was about five foot nine. As a part of the efforts to comply with Supreme Court guidance on avoiding subjectivity in identification procedures, it had long been the practice of the Metropolitan Police Department to homogenize lineups so that if you had somebody, let's say the suspect in the case was five foot nine, and they had a bunch of fillers who were six feet tall, they'd have them sit or stand on a box, so they all looked to be about roughly the same height. Which I always thought was really stupid since height is a salient part of a description and the witness ought to be able to discern relative heights. In any case, I showed her a, in the course of trial preparation, a photograph of the lineup. And she said, that's the one who did, yada ya, which she had always described as the conduct of John Griffin, but the one she was pointing to was the other one.

And so I, talk about *Brady* obligations, I wrote a detailed memo of exactly what had transpired in my office on that day. Gave it to the defense, gave a copy to the judge. I was called as a witness in the course of their motion to suppress his identification and testified as to what had happened. And her testimony was admitted, in fact, in the course of that trial. But, Judge Braman granted a new trial to the one whom she had misidentified in the course of this trial preparation which I had conducted. So I got to try John Griffin again the next time. We got through maybe two minutes of the cross examination of Amina Khalis in the Griffin trial when she refused to answer any further questions put to her by this “lawyer, so called, for this murdering whatever.” So Judge Braman called a halt to the proceedings and met with Amina and the lawyers in chambers in an effort to explain to her that she was under subpoena and compulsion and he was going to adjourn the proceedings for the day but that she had to be back tomorrow morning, and I knew she wasn’t coming back. In the interim, between the Harvey trial and the Griffin retrial –

MR. COHEN: Harvey had already been convicted?

MR. SCHUELKE: Harvey was convicted. Harvey was convicted, was out in the federal penitentiary in Marion where they have this underground facility for the worst of the worst until he died of a heart attack. I don’t think he served more than several years before he died, but yeah, he had been convicted. In the interspace between the Harvey trial and Griffin two, as you may remember, Hamaas Khalis and a band of his adherents invaded and took

over, simultaneously, the District Building, the Islamic Center on Mass. Avenue and the B’Nai B’rith at Rhode Island and 17<sup>th</sup> Street and held everyone hostage for several days, demanding who knows what. It wasn’t entirely coherent. But at the District Building a Washington Post reporter was shot and killed when one of these characters fired a shotgun blast. I don’t think it was actually aimed at the guy but a pellet or two happened to hit him in a lethal spot. A couple of pellets from that same blast hit Marion Barry. At the Islamic Center several people were seriously injured from machete blows. I don’t think anyone was injured at the Islamic Center. And so, Joe O’Brien and I were tasked –

MR. COHEN: Was it at the B’Nai B’rith where people were injured?

MR. SCHUELKE: Yes. O’Brien and I were tasked to negotiate and get them to surrender. We enlisted the services of the then Iranian ambassador to the United States. A quite colorful character who used to squire Elizabeth Taylor around among others. The Kuwaiti ambassador and I forget, another Middle Eastern ambassador, all of whom –

MR. COHEN: Egypt, I think?

MR. SCHUELKE: It may have been Egypt. All of whom were Muslim and all of whom were well equipped to talk the holy Koran with Hamaas if that’s what he wanted to talk about and preach about peace and harmony. And actually, they were quite effective. And indefatigable. We did this for three days straight. Night and day. And my role –

MR. COHEN: So they’re holding hostages all this time?

MR. SCHUELKE: Yeah. My role and, and Joe O'Brien's was sort of to advise this trio of ambassadors on what we thought, based on what we knew about him, might be effective. I never engaged in any direct discussions with Hamaas. Joe probably did and eventually they surrendered. And they were all prosecuted. Hamaas was still serving life in prison at the FCI in Chicago. And...

MR. COHEN: For the murder? For felony murder?

MR. SCHUELKE: Yeah maybe I don't remember. They were certainly charged with armed kidnapping and armed assault, and whether or not they were charged with the Post reporter's homicide, whether he was, I don't remember. I declined the invitation to try that case and everybody understood why. I still think that as crazy as Hamaas was and is, that's one of the saddest footnotes to this whole story, he was driven completely batty by what happened to his family.

MR. SCHUELKE: He spends the rest of his life in prison. I'm not saying he, he didn't deserve to be locked up...

MR. COHEN: Yeah.

MR. SCHUELKE: But it's one of those sad ironies of life. So, when during the course of the second Griffin trial, Amina Khalis said that's it. I knew she wasn't coming back.

MR. SCHUELKE: The takeover of the District Building, and the B'Nai B'rith and the Islamic Center occurred subsequent to the second Griffin trial. She did fail to appear as ordered on the following day during the Griffin trial. Judge

Braman issued a bench warrant for her arrest. I, with the advice and consent of my office, told him that the executive branch was not going to execute this bench warrant. I am not going to have more bloodshed in that house. Now I'm telling you that's what's going to happen. Well, he was so pissed off at me and at Earl and he actually told me Bob Shuker was still in the office at that time. He told me at one point in this that if Bob Shuker agreed with me then he was as much as of a dolt as I am. He and I did not get on well throughout a lot of this. And there's a very interesting postscript to that as well. And so, I proposed to go to trial on the basis of her unavailability and relying on her previous testimony, yada, yada, yada, yada, ya which we ultimately did and Griffin was acquitted. No, no, yeah, no not right. In a third, in a third trial Griffin was eventually acquitted.

After all of this was over, Judge Braman and I had... Judge Braman and I had some long heart-to-hearts at the conclusion of these of this series of trials after which we became very dear friends. He has been a terrific supporter of mine over the years and his brother, Norman Braman is a very wealthy businessman and who once owned the Philadelphia Eagles. I've done business for him as a result of referrals from his brother, Leonard. I represent Leonard's son and there have been any number of other matters which he, which he has referred to me or recommended and we remain very good friends.

MR. SCHUELKE: Leonard Braman is a very smart, very hard working trial judge. You will not find a better trial judge anywhere in the world in my judgment but he's

very difficult to work before. He thinks, as he told me in one of these subsequent conversations, that all he ever attempts to do is, "If somebody comes into my courtroom wearing a sign that says lawyer that you know he'd better be a good lawyer." And I said well that's nice and you're entitled to that expectation but I'm here to tell you that there are an awful lot of my colleagues in this office who have worked before you who feel like every time they set foot in that courtroom they have to walk on eggshells because for good reason or not, you're gonna jump down their throat and he knew that...

MR. COHEN: Does he have a temper?

MR. SCHUELKE: No, no, no, but he's just cutting merciless. "Mr. Cohen, you're not aware of the case of the United States versus ....."?

MR. COHEN: Yes, okay.

MR. SCHUELKE: Okay. No, he knew that I didn't feel like that, that's why he and I were at odds the whole time cause I would fight with him. I wasn't afraid of him but, and he makes you a good lawyer. There's no two ways about it, "Ya know you, you damn well better be prepared." And that, and that certainly motivated me working in front of him as well. But trial lawyers ought to, good trial lawyers ought to have a pleasant experience in the courtroom. If you're good and you know what you're doing, you ought to enjoy it you ought not to feel like you know any second now somebody's gonna come down on your head for no apparent reason. And there were a lot of little things with him, little anecdotes looking back on them they're pretty

funny. Like for example, my partner all these years, Larry Wechsler, tried the Griffin case with me, I enlisted him. A couple of funny stories about that ... have we exhausted our...

MR. COHEN: Well, we would be exhausting you. I was gonna say when we get to the end of this sequence we can stop.

MR. SHUELKE: Well, you know I may have told you this the first time, but my mother once said that one would think that I had been vaccinated with a phonograph needle. So, I understand that I can yack and yack and yack so but ...

MR. SHUELKE: On one of the occasions I described to you when we went up to the house on 16<sup>th</sup> Street to prep Amina Khalis, Larry Wechsler was with me. So it was Larry and me facing Hamaas who was ranting and raving, Joe O'Brien was behind him and Joe was sort of making faces and I'm trying my level best to keep a straight face. But Hamaas Khalis was a rabid anti=Semite among other things. And so Judge Braman, he would always call "that your *yehudi* judge" and all manner of Jewish banking conspiracy and that had you know nothing to do with anything that I could discern but Larry is Jewish. This guy frightened Larry. Larry didn't really want any part of this. And so at one point, we're standing there, he's to my right, Hamaas is in front of us and all of a sudden Larry grabs me and basically but for hanging onto me has fallen to the floor. That's weird. Get him up and what the hell's the matter with you? Oh my knee gave out is what he said. Knowing truthfully he had fainted in the, in the face of Hamaas's

diatribe Larry has never lived that one down. O'Brien, rest his soul, and I ragged Larry about that for years. And another occasion that Larry loves to tell, we were in court one day and there was a defense witness on the stand. And I was sitting at counsel table apparently like this.

MR. COHEN: You mean with your knee crossed and up against the table.

MR. SCHUELKE: Yes, with my hands clamped around my knee and I'm focused on the witness cause the witness was standing over here the judge is here. I'm not paying any attention to the judge, I'm focusing on the witness's testimony. Larry starts poking me. I look at him and he gestures toward Judge Braman was motioning with his hand.

MR. COHEN: What is he doing? He's motioning keep it down or ...

MR. SHUELKE: So I thought nothing of it. I focused back on the witness. Larry pokes me again. Now Braman has this agitated look on his face and...

MR. COHEN: He's waving his hand down, I'm just trying to get it on the transcript what you're doing.

MR. SCHUELKE: Right.

MR. COHEN: Trying to get it on my transcript

MR. SSHUELKE: Oh yes, I'm sorry.

MR. COHEN: What you're doing

MR. SCHUELKE: What the record should reflect is that he was waving his hand down and as Larry loves to tell this story, I'm not sure I believe that this actually happened, but Larry says so \_\_\_\_\_ "Hank thinks he's waving to him. So, he waved back." At some point whether that actually happened

or not I don't know, Judge Braman got very irritated COME TO THE BENCH. We go up to the bench and he said "Mr. Shuelke have you not seen me trying to get your attention". "Well, actually your honor I was listening to the witness and sorry if I failed to notice that." "Your knee is above the table." I'm thinking what is he talking about. "Your knee was above the table." "Ok, your honor, I'll make sure that doesn't happen again." So that's ...

MR. COHEN: That's it.

MR. SCHUELKE: This, this violated the Braman rule of decorum at counsel table one of my many sins in the course of the trials of those cases. So, I think that basically wraps up the story of the Hanafi saga.

MR. COHEN: Why don't we stop there for today.