Oral History of STEPHEN J. POLLAK
Thirteenth Interview-November 22, 2010

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 Stephen J. Pollak, and the interviewer is William Schultz. The interview took place at the Goodwin Procter law firm at 901 New York Avenue, N.W., in the District of Columbia on November 22, 2010. This is the thirteenth interview.

Mr. Schultz: We're going to continue on talking about some of the committees and some of your pro bono activities. The first one I want to ask you about is the Washington Housing Association and Housing Development Corporation.

Mr. Pollak: When I came to Washington in 1956, at Covington & Burling, I met Charles Horsky. My history to date reflects that my life and activities intertwined with his over the years. I had come from Chicago where my family was involved with housing and indeed had founded the Metropolitan Housing and Planning Council. I had a tradition of being concerned with housing for the disadvantaged, and Horsky was president of the Washington Housing Association. I volunteered to be active with that group and joined its board and probably spent twelve or more active years serving on the board and then becoming president, continuing into the period in which I was in the federal government. It was originally concerned with public housing and worked with Eleanor Roosevelt in supporting public housing here in Washington, D.C. In the late 1950s and 1960s, the Association, under my leadership, expanded its focus beyond housing to planning, and changed its name to the Washington Planning and Housing Association. One of my close colleagues in the work was Reuben Clark who became a partner in

Wilmer Cutler & Pickering. Reuben and I led the Urban Renewal Committee and favored urban renewal which had its opponents who often were concerned that it was not urban renewal but urban removal of the disadvantaged and minorities. I learned there was some truth in that. There were redevelopment plans for Adams Morgan drawn to use urban renewal funding to tear down some of the dilapidated buildings in that area and replace them with modern structures. We in the Housing Association were supportive of those plans as we were supportive of urban renewal. The chair of the National Capital Planning Commission, Elizabeth Rowe, known as Libby Rowe, opposed the plans. She carried the day. I concluded at the time or relatively soon thereafter that she had been right about saving the Adams Morgan neighborhood and commercial areas. Later on, the Planning and Housing Association spawned a nonprofit corporation headed by the Reverend Channing Phillips, a black man. I served on its board along with several capable, public spirited attorneys, Donald Brown, C. Everett Shorey, and Bruce Terris. We worked to obtain federal money to renovate Clifton Terrace which was a big slum property on 13th Street. We did other good things to try to secure better housing for the disadvantaged.

Mr. Schultz: Was WPHA a private organization?

Mr. Pollak: Wholly private.

Mr. Schultz: How was it funded?

Mr. Pollak: It was funded by raising money from donors and foundations. We had a small budget. The organization spawned the Housing Development Corporation, but it

didn't fund the Housing Development Corporation, which sought funding from HUD for renovation of Clifton Terrace and other projects.

Mr. Schultz: Did it have a staff?

Mr. Pollak: The Planning and Housing Association had one in staff, Anna Miller. Anna was expert in all manner of housing for the poor and disadvantaged and urban renewal. I recall her as a power for good.

Mr. Schultz: So the principal mission was to work on housing for the poor and disadvantaged?

Mr. Pollak: Exactly. And for enlightened planning. And I think the organization had a great tradition and accomplished significant actions for betterment of housing for the poor and disadvantaged.

Mr. Schultz: Does it still exist?

Mr. Pollak: I'm not sure. I still have bulky files of projects and programs that we worked on.

Mr. Schultz: Were those who were active with the Association mostly members of the board?

Mr. Pollak: Yes, and committees. I gained a relatively wide acquaintance through my work with the Washington Planning and Housing Association. One of the people I worked with was Carl Moultrie, a black lawyer who became a Superior Court judge and later chief judge. The building at 500 Indiana is named after Carl. He was on our board. And another member of our board was George E.C. Hayes who was head of the Public Utilities Commission in the District of Columbia. He was one of the active lawyers on the briefs in *Bolling v. Sharpe/Brown v. Board of Education*. I look at the activities with the Washington Housing Association as

having launched me into a broader range of activities with nonprofit organizations in the District of Columbia.

Mr. Schultz: Tell me about Charlie Horsky.

Mr. Pollak: Charlie was a brilliant lawyer at Covington & Burling. He was an excellent brief writer. He had been in the Solicitor General's Office. He wrote a book early in his career called *Washington Lawyer*. He lived to be quite elderly. When I was at Covington & Burling, the U.S. Reports were in the 400s. Charlie had argued a case I remember that was in the 311th volume of those reports. I had written my comment at Yale Law School on the Expatriation Act of 1964 which, among other things, provided for taking citizenship away from persons who were convicted of Smith Act seditious crimes, rendering them stateless. My comment took that sanction on and considered its constitutionality. The conclusion of the comment was that this provision of the statute was unconstitutional as a cruel and unusual punishment. When I arrived at Covington & Burling, Charlie was preparing a brief in behalf of a petitioner to the Supreme Court whose citizenship, the United States contended, had been forfeited pursuant to provisions of the Nationality Act of 1940 [Section 401(e) and (j)] when he voted in a Mexican political election and remained outside the U.S. in wartime to avoid military service. The case was *Perez v. Brownell* [356 U.S. 44 (1958)]. I threw in with Charlie in briefing the case. While the Court denied relief in Charlie's case, on the same day it ruled in *Trop v. Dulles* [356 U.S. 86] that another provision of the Nationality Act [Section 401(g) providing that a citizen shall lose his nationality

by "deserting the military or naval forces of the United States in time of war, provided he is convicted thereof by court martial and as a result of such conviction is dismissed or dishonorably discharged from the service" was unconstitutional under the Eighth Amendment as a cruel and unusual punishment. The Court said it believed, "as did Chief Judge Clark in the court below, that use of denationalization as a punishment is barred by the Eighth Amendment," quoting the Judge's dissenting opinion citing and relying on my comment:

> "Plaintiff-appellant has cited to us and obviously relied on the masterful analysis of expatriation legislation set forth in the Comment, The Expatriation Act of 1954, 64 Yale L. J. 1164, 1189-1199. I agree with the author's documented conclusions therein that punitive expatriation of persons with no other nationality constitutes cruel and unusual punishment and is invalid as such. Since I doubt if I can add to the persuasive arguments there made, I shall merely incorporate by reference. In my faith, the American concept of man's dignity does not comport with making even those we would punish completely 'stateless' – fair game for the despoiler at home and the oppressor abroad, if indeed there is any place which will tolerate them at all.'" [356 U.S. at 101 n.33 quoting 239 F.2d 527, 530 (2d Cir. 1956)].

Heady stuff for a second-year lawyer.

I met Charlie in those ways and was active with Charlie, who preceded me in the White House as the President's Advisor on the National Capital Affairs. As I've said earlier in this history, as chance would have it, I ran against Charlie for president of the D.C. Bar. I considered him not only a friend, but really the best that could come of Washington lawyers. He was an example of that. Charlie was the founding force for the Council on Court Excellence. During his term in the

White House, he spawned the President's Commission on Crime in the District of Columbia which led to many major reforms in the criminal justice system here. He was a major force in creation of the Federal City College, now the University of the District of Columbia. He had a great sway for good in the District.

Mr. Schultz: That's tremendous. And he died about 5-10 years ago?

Mr. Pollak: Yes.

Mr. Schultz: So now I want to ask you about some of the committees that you're on for the Judicial Conference. But first of all, what is the Judicial Conference?

Mr. Pollak: Under federal statutes, each circuit, of which there are twelve in the United States, has a Judicial Conference of the judges of the courts of the circuit. The federal statutes now mandate the conference of judges to meet every other year with members of the bar who practice before the courts of the circuit. There is also a Judicial Conference of the United States chaired by the Chief Justice that is composed of selected judges of all the circuits, including the chief judges of the federal district courts and the federal circuit courts. Our Circuit Judicial Conference has a few committees, including a standing committee on pro bono services. From time to time, the Conference establishes special committees such as the committee I chaired in the early 1970s on the administration of justice under emergency conditions.

Mr. Schultz: So there are three Judicial Conference committees you've served on and chaired. Let's just talk about each of them briefly. The first one is the Committee on the

Administration of Justice Under Emergency Conditions. Why don't you just tell me a little bit about that.

Mr. Pollak: In the late 1960s and early 1970s, there were many mass protests in the District of Columbia and at the Pentagon over the war in Vietnam. There were arrests of thousands of people. There were difficulties that mass protests raised for those charged with maintaining civil order. The arrests and charges came into the federal courts, and challenges were raised by the defendants. The Judicial Conference in 1971 resolved that the chair of the Conference, Chief Judge David Bazelon, appoint a committee "to report on actions taken to implement the findings and recommendations of the 1968 Committee on the Administration of Justice Under Emergency Conditions." In carrying out that resolution, Chief Judge Bazelon in August 1971 announced the appointment of an 18-member committee, of which I was the chair, a distinguished committee, to look into the administration of justice under emergency conditions. We obtained a Ford Foundation grant of $40,000, had a small staff, co-directors and an executive director, and volunteer lawyers, young, capable, energetic lawyers, who worked with us. The Committee included Patricia M. Wald, later member and then Chief Judge of the D.C. Circuit Court; H. Carl Moultrie, later Chief Judge of the D.C. Superior Court; the dean of Georgetown Law School Adrian Fisher, later professor at Georgetown Samuel Dash; Frederick Ballard, a leader in the D.C. Bar; Gilbert Hahn, who became chair of the D.C. City Council; Norm Lefstein, who was a leader of the public defender; Dan Mayers;

Herbert "Jack" Miller, who was head of the Criminal Division of the Kennedy Department of Justice; Fred Vinson, who later headed the Criminal Division of the Department of Justice. A great committee. The committee issued an outstanding report, in my view, which was presented to the Judicial Conference in the summer of 1973. Judge Charles Fahey was the liaison from the Court of Appeals to the Committee. There grew to be a concern on the part of some of the judges of the Court of Appeals that the pendency in the court of cases arising out of the mass arrests might render consideration of the report and implementation of its recommendations somehow at odds with the judges' Article III responsibilities to see to the trial and the correct outcome of appeals of these pending cases. In the end, the Committee, even with the help of Judge Fahey and Judge McGowan, was unable to work out a modus vivendi for its report of several hundred pages. All I was permitted to do, and no more, was to rise at the Judicial Conference in the summer of 1973 at the Homestead and offer to submit the report to the Conference. The judge who had the gavel received the report for the Conference, and that was the end of it. We were unable to work out any implementation committee or any formal use of its recommendations which was unfortunate as I think they were well-considered, insightful and useful recommendations.

Mr. Schultz: Do you know anything about the dynamics on the court?

Mr. Pollak: There were reports of tensions between then-Chief Judge Bazelon and Circuit Judge Burger and of differences among some of the judges on the court seen by some to align with Bazelon or with Burger. I don't mean to say that those

differences were influenced one way or another by this report, but that the report got caught up in some of those differences and tensions. There had been differences over whether a committee should have been named in the first place.

Mr. Schultz: So Bazelon was just not able to get a majority or consensus on the court to adopt the report?

Mr. Pollak: Getting a consensus would have found a way for the report to be received and for a committee, perhaps of the judges, to implement or use the report in ways that would not pose any threat to the Article III responsibilities of the court which were primary. It was unable to be worked out even though Judge Fahey worked hard at it and I know had the help of Judge McGowan.

Mr. Schultz: Did you get to know Judge Fahey during this process?

Mr. Pollak: I did. And we benefited from his counsel greatly.

Mr. Schultz: Tell me about Judge Fahey.

Mr. Pollak: Judge Fahey was one of the great judges of the Court of Appeals. He was in the finest tradition of a United States jurist. He was wholly dedicated to the fair administration of justice. He came to the Court with a marvelous background, having been in the Solicitor General's Office and Solicitor General. He had argued many cases in the Supreme Court. He was brilliant. He drew outstanding clerks. He was deeply committed to the Bill of Rights and its place in constitutional decision making. He was particularly concerned with Fourth and Fifth Amendment rights, as well as First Amendment rights. He was a very soft-spoken man, but he also had a very short fuse. One of my partners,

Richard Sharp, had clerked for Judge Fahey. He said that every clerk was always fired by the judge several times during the year but always re-hired with tenderness and care the next day.

Mr. Schultz: The next committee is the Program Committee for the 50th Conference in 1989.

Mr. Pollak: In 1989, the Chief Judge was Pat Wald and she was a co-chair of the Conference along with a district judge. I was asked to be the Chair of the Program Committee, or at least the non-judge chair of the Program Committee. It fell to me to work with the Court Executive, then Linda Ferren, to identify for the Committee the subjects for the Conference program and then the participants for each panel. I devoted a large amount of time to doing that, and we had a great lineup of both subjects for the panels and participants in the panels. Working through that assignment outfitted me for work on the programs the Historical Society now presents in the Ceremonial Courtroom. One of those Ceremonial Courtroom programs is like one of the panels presented at the Judicial Conference. All I can remember about the substance of the program in 1989 was that one of the panels was on ways to promote better protection of the environment, and we had a leading professor at Harvard Law who favored cap-and-trade. That part of the panel was probably well ahead of its time.

Mr. Schultz: I think we're still before its time.

And then the third one is the Standing Committee on Pro Bono Legal Services which was a long-time committee of the Judicial Conference I believe.

Mr. Pollak: Right. It's a Standing Committee of the Conference. I think it's the only Standing Committee of the Conference. I chaired it for five or six years. It's populated by members of the bar. During my tenure, we had two significant accomplishments. The first was that we updated a rule of the Judicial Conference that calls on lawyers who are members of the Bar of the Federal Court in the District of Columbia to devote a certain amount of time, and if not time, to contribute money, representing or funding representation of the poor and the disadvantaged in access to justice. So we reviewed that rule, considered that the time amount was too low and the dollar amount was comparably low. We proposed increasing those minimums, and the Judicial Conference adopted our proposal, which at least up to now, remains in the Federal Rules governing the practice of law in the federal courts of the District of Columbia. The second activity that we promoted was the fostering of more pro bono services across the length and the breadth of the bar which was a traditional purpose, but we turned for the first time to facilitation of pro bono services by lawyers employed by the federal government. There needed to be facilitation by the leadership of the various federal departments and agencies because government lawyers were by rule not permitted to use telephones or time to represent persons other than the federal government. There needed to be accommodating regulations and changes in those regulations. We promoted that and drew together a committee of federal government generals counsel and comparable officials across a broad spectrum.

That effort is continuing to bear greater and greater fruit as more and more federal lawyers contribute their time.

Mr. Schultz: And this is mostly to what kind of legal services?

Mr. Pollak: It's primarily to represent disadvantaged persons in civil proceedings involving, for example, child abuse or adoption or Social Security denials or landlord/tenant problems, a range of issues that are faced by the poor and disadvantaged.

Mr. Schultz: That's terrific.

Mr. Pollak: At every judicial conference, the committee makes a report to the conference. As a matter of the history of pro bono services in the District of Columbia, those reports are a good chronology.

Mr. Schultz: Was Charlie Horsky the head of this committee?

Mr. Pollak: I can't recall who my predecessor was. I know my successor, Katherine Garrett, was selected by me and proposed to the chief judge. She now is the director of the D.C. Bar Foundation.

Mr. Schultz: All right. So a couple of others. I guess the next one is the D.C. Bar Foundation. Let's talk about that. That's another 12-year project it looks like.

Mr. Pollak: It actually was a 6-year project. The D.C. Bar Foundation is a 501(c)(3) organization in the District of Columbia. The purpose of the Foundation is to raise money and select providers of legal services to the poor and disadvantaged to receive funding from those monies. You say it was a 12-year project. It was actually longer than six years because prior to being named to the Board – the

Board is named by the District of Columbia Bar Board of Directors – probably in the early 2000s, I had served actively as a member of a Study Committee of the D.C. Bar on the Bar Foundation. The Study Committee made a panoply of recommendations aimed at bringing the Bar Foundation forward.

The Bar Foundation was created in about 1977. Its three-person Board for a long period was composed of former D.C. Bar presidents, and it had a very limited budget for staff. Its staff during that period was a fine attorney and contributor to the public good, Zona Hostetler. By the time the Study Committee looked at it, the scope and rules of the Foundation needed updating to meet the challenges of a later era. The Study Committee presented recommendations to the Bar Board which were adopted. The Foundation's Board was expanded, its staff augmented. It was put in a posture that enabled it to do its job better. Subsequently, I was named to the Board, and I served as a Board member first with Andrew Marks as president and Emily Spitzer as the Executive Director. When Emily left to work on her brother's campaign for governor of New York or for other reasons of her own, she was well-regarded as Director, she was succeeded, in part due to my support, by Katherine (Katia) Garrett. I had known Katia in several capacities, in part as my successor as chair of the D.C. Circuit Judicial Conference Pro Bono Committee. Then I served with Rob Weiner as president and succeeded Rob as president. I served a year as president, vacating the office when I reached the six-year term limit. I spent a large amount of my time as a member of the Bar

Foundation Board as chair of a committee on IOLTA, "Interest on Lawyers' Trust Accounts," a significant source of funding for the Bar Foundation. We worked on bringing the IOLTA Rules governing members of the D.C. Bar up to the high standards of some other jurisdictions that required banks to pay "comparable rates" on IOLTA funds and made IOLTA mandatory for members of their bars.

Mr. Schultz: Tell us what IOLTA stands for.

Mr. Pollak: Interest on Lawyers' Trust Accounts. In this period in which interest rates are virtually zero, IOLTA raises annually something under a half million dollars for the Bar Foundation, but when interest rates are higher, it can raise $2 million or more. It's a great engine for funding. The Bar Foundation has a really significant mission to support legal services for the poor and disadvantaged.

Mr. Schultz: What organizations does it give back money to?

Mr. Pollak: It funds about 26 nonprofit legal services organizations in the District of Columbia. One of them is Legal Aid Society of the District of Columbia. Another is the Washington Lawyers' Committee for Civil Rights and Urban Affairs. Women Empowered Against Violence – WEAVE – is another. AYUDA. I say 26, and they depend heavily on funding from the Bar Foundation as well as fundraising of their own. Another organization supported is the Neighborhood Legal Services Program which is funded primarily by the Legal Services Corporation of the United States. I considered service on the Bar Foundation Board to be well worthwhile. I think my tenure as president was productive, but challenged by the decline in IOLTA revenues which dropped in

one year from $2 million to under $1 million because of the decline in interest rates associated with the current recession.

Mr. Schultz: Then there is the Historical Society of the District of Columbia Circuit.

Mr. Pollak: I'm not going to spend a long time on that. The District of Columbia Circuit's Historical Society has a website, www.dcchs.org, and history is available there. The Society was founded at the suggestion and support of Chief Judge Patricia M. Wald, and the founding chair was now-Justice Ruth Bader Ginsburg. It was founded in 1990 to support the writing of a book on the history of the District of Columbia Circuit Courts, that is, the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit and their predecessors. That book has now been written by Professor Jeffrey Brandon Morris. It's entitled, *Calmly to Poise the Scales of Justice*. The Society went on from there to support and promote the taking of oral histories of judges and lawyers; to put on programs on historic cases and personages in our courts; to run a mock court for area high school students arguing before federal judges; to help judges preserve their private papers; to put on exhibitions in the Courthouse as we have done. It's an active society, it now has a 36-person Board. I was recruited in the early 1990s to be an oral history interviewer and began that way and have served since then and am now the president. It's a labor of love.

Mr. Schultz: So now we're going to talk about Shea & Gardner, which has morphed into Goodwin Procter. What year did you come to Shea & Gardner?

Mr. Pollak: I came to Shea & Gardner in March 1969, hired by Frank Shea on the recommendation of Bill Dempsey, who was a year ahead of me at Yale Law School.

Mr. Schultz: How big was the firm then?

Mr. Pollak: It was 19 or 20 lawyers.

Mr. Schultz: I think you've already talked about how you got hired and why you chose Shea & Gardner, but I'd like to ask you just some questions about law practice and how it has changed. I guess before I do that, you were at one point the chair of the firm, of the management committee of the firm. Is that right? Why don't you first talk a little bit about the firm and its philosophy, how it was managed, and your role as chair of the management committee.

Mr. Pollak: Warner W. Gardner, who was a name partner and founded the firm with Francis M. Shea, has written a book, a small book, on the firm entitled, *Shea & Gardner 1947-1994 As Seen by Warner W. Gardner*. Anyone who wants to know about the firm should scout out Warner's book, which perhaps would be available on the web in this day and age. In any event, Shea & Gardner was reflective of its three senior partners, Francis Shea, Warner Gardner, and Lawrence J. Latto, all of whom were very capable, broadly experienced, and committed to the highest standards of the practice of law and the highest standards of ethics. The firm, taking the leadership of Francis Shea, reached out for the best young lawyers who were coming down the pike. When I joined, there were five or six former Supreme Court law clerks, or more, and probably everybody else, although not

me, had been an appellate law clerk. The firm was a litigation firm, mostly in the federal courts around the United States and the District of Columbia. The firm had a stable of clients who came in and never left. In the practice of administrative law, Warner Gardner represented American President Lines and was practicing before the Federal Maritime Commission, and that was the focus rather than the federal courts. Of course, some APL matters landed in the federal courts. The firm, as was more typical then, made, or had a policy of making, every young person who made the grade a partner and then advancing the partners by seniority up the pay scale. That was not particularly unusual in that day, but those were policies to which the firm was deeply and unreservedly committed.

Mr. Schultz: When you say made the grade, you mean in terms of work ethic and legal ability, not business development. Is that right?

Mr. Pollak: Right. Business development wasn't taken into account. The most senior people received the largest pay, but all the others could anticipate moving up the line as they became more senior.

Mr. Schultz: They moved up with their class?

Mr. Pollak: Right. There were classes. A small number in each class, but there were classes. Soon after I got to the firm, I was named to the Executive Committee, and I served when Frank Shea was chair of the firm, was chair for a long period, and then sort of like breaking with precedent, Larry Latto succeeded him, then Bob Basseches, one of my more senior partners, succeeded Larry, and I succeeded Bob. And then John Aldock succeeded me, and the firm, after a period

of time of John's tenure, merged with Goodwin Procter, and John has been, since the merger five years ago, the chair of Goodwin Procter's Washington office. My tenure as chair of the firm was significant in at least one respect, a committee to review the compensation system was constituted.

Mr. Schultz: What year was this?

Mr. Pollak: In the period 1993-1996. The outcome of that was a modest move, not as much as some favored, away from the straight seniority system for compensation and partnership toward taking more elements of the practice of law into account, including business generation, steepening the income rise among partners and providing for capping some partners who ended up not generating business.

Mr. Schultz: Was that in line with the prevailing compensation systems in other firms, or were you behind them, or ahead of them? It's all obviously gone in this direction in recent years.

Mr. Pollak: I think that we probably made those moves later than many other firms.

Mr. Schultz: At this point, Frank Shea had died? And Warner Gardner was senior?

Mr. Pollak: Frank had died. Warner Gardner was certainly senior and didn't participate. The major participants were the senior partners of the firm at that time. We were not all of one mind, so it was contentious.

Mr. Schultz: Did it change the firm?

Mr. Pollak: It made changes that were significant to the partners, but the directions of movement and the steps taken were limited, and I don't think the emotional ties within the firm suffered very much. It represented a change in direction that

ultimately led to changes in the firm and led some people to leave the firm, not because they weren't successful, but because they weren't committed to being in the firm any longer. I've always thought that for lawyers, much of the ego gratification comes from gaining their own clients and having the pleasures of somebody wanting the lawyer to be the client's lawyer, and secondly, by the amount of income awarded to the lawyer by his or her peers. So as judgments were made by the law firm that some people, although partners, weren't performing sufficiently to move up the ladder and gain higher incomes, they felt unappreciated or dissed by the firm. That reduced their commitment to the firm, and some took themselves away because they wanted not to feel that they had not quite made the grade. I spent endless amounts of time arguing or debating the pros and cons of these changes with partners, and obviously we had to reach some kind of consensus. I think that the consensus we reached was for many of the partners, more so the younger ones, only a way station. We didn't go far enough in directions of a system reactive to generation of business that some wanted and the movement continued after I was no longer chair. To some extent, that drove an interest in the merger, and at the time the merger was considered, the older partners, of whom I was one, senior partners, didn't participate in the vote on the merger. We thought – I thought – I think others thought, it was a decision for the partners whose futures would be tied up in the merged firm. I never changed my mind about that. The merger worked out well for the partners who wanted it, and Goodwin Procter has been a good home for me.

Mr. Schultz: How does the firm differ now from when you first came and even 10 or 20 years later?

Mr. Pollak: When I first came, and during all the time up until the merger, I was the only lateral partner other than Henry Ruth who joined for a few years and then departed for Philadelphia. We incubated all of the partners from associates who had come to the firm. That's not the way the firms operate today. Practice groups come in and go out. I don't know that practice groups have gone out from Goodwin, but practice groups have come in. At Shea & Gardner, everyone knew all the partners because we'd lived with them for six, seven, eight years before they became partners. We had only one office in Shea & Gardner, that was 1800 Massachusetts Avenue, Northwest, preceded by 734 15th Street, Northwest.

Mr. Schultz: How big was Shea & Gardner when it merged with Goodwin Procter?

Mr. Pollak: About 65 attorneys. There were reasons that commended themselves to the younger partners that made the merger look good.

Mr. Schultz: Which were what?

Mr. Pollak: Stability and assurance of a flow of clients and the fact that major corporations were wanting a full "bench" well experienced in the areas of representation, whereas at Shea & Gardner, we were litigation generalists. So the practice was changing in that respect.

Mr. Shultz: Do you think Shea & Gardner could have survived by itself?

Mr. Pollak: I think so, but in an economy of greater and greater incomes for lawyers, I don't know that Shea & Gardner would have provided the same income growth that

could be had inside a large firm. I believe the younger partners wondered just exactly what the future would be if we didn't merge.

Mr. Schultz: That's a common story.

Mr. Pollak: I don't think there was a lot of broken china due to the process. The process was handled well. Those who really favored the merger, that is it was their decision, feel they made the right decision. I don't count myself in that group because I didn't participate in making that decision. I consider myself a generalist in the practice of law. The considerations that were motivating the merger were not factors that were motivating me were I making a decision whether to favor it. It's just a different group of considerations for me than for the younger people.

Mr. Schultz: I assume a lot really had to do with security.

Mr. Pollak: I think so.

Mr. Schultz: Let's see. Anything more about the firm?

Mr. Pollak: One of the disappointments that I had over the years was that we never really established a good base of minority lawyers. We had some very capable minority lawyers including Steve Carter, who was here and whom I recruited with the advice of Owen Fiss, a professor at Yale. But Steve's wife was hired to work in New York, and Steve Carter, after about eight months, left us to go to New York. Of course, he then became an academic of superior accomplishment. Steve's father, Lisle Carter, had been a colleague of mine in the government, and we hired Steve before I knew of his relation to Lisle.

Mr. Schultz: How has having women as colleagues affected the atmosphere of the firm, or has it made any differences that come to mind?

Mr. Pollak: It made it better.

Mr. Schultz: How?

Mr. Pollak: If you're going to deal with a range of clients and a range of decision makers, having a diverse group of lawyers is a better way to face the public and the decision makers. I don't totally generalize, but women have different experiences often in their lives. Bringing those points of view to the table makes for stronger decisions. Men left to their own have a more narrow vision than do men and women together.

Mr. Schultz: Do you think it has made this firm and other firms more flexible in terms of their attitudes toward family and those kinds of things?

Mr. Pollak: Sometimes. It doesn't necessarily run just from women to be more flexible. Some women don't favor flexibility; they express a view, "Well, I made it without flexibility, others should." But there will be women more than men that will say, "Look, we need that flexibility." I happen to feel that it's vastly in the interests of the law firm to have that flexibility, let women take several years off and then come back. If they're good, they're good. Those are large subjects.

Mr. Schultz: Yes they are. Lots of factors. Let's talk a little bit about practicing law. Do you have any observations you'd like to make? Let's start with building a practice.

Mr. Pollak: When I came to Covington & Burling in 1956, right out of law school, the people at Covington & Burling – the partners who recruited me, and maybe it was

Gerry Gesell or Charlie Horsky or Eddie Burling, I can't remember – but they always said uniformly that it didn't make any difference whether I ever got any business, that the firm had plenty of business and that I could always count on having good work to do. Early on, I took that as a calming influence since I didn't have any idea where I'd get any business. Over time, I came to realize that I wanted business to come to me for three reasons. One, I wanted to control the work that I was doing, and if I had business coming, I could pick among the business, the roles, that were congenial to my likes and my talents. Second, I wanted, to be psychological about it, I wanted the gratification of having people want me to be their lawyer. After all, that was my profession, and it wasn't really enough to have some other lawyers want me to help with their work. Third, even if it wasn't going to make a difference in my income at Shea & Gardner, where income was really based on seniority for a long period of time, it was going to make a difference in the role that I would play in the firm because people who were controlling business were given a role on the executive committee and had a say in the firm, which was somewhat more than others. So there was good reason to want to generate your own clients, and I have always thought in the end that was one of the things that one wanted to do in a practice. So the real question for Washington lawyers is, "how do you do that?"

Mr. Schultz: Right. That was my next question.

Mr. Pollak: One of the ways is to inherit clients from partners that the lawyer assists in the firm, both because the people they assist get older and move on, which firms now

encourage, but secondly, sometimes the client becomes so pleased with the assistant that the client starts funneling business to the assistant. Another way, which is quite significant today, is to gain experience in a particular area where you become known, environmental law or antitrust law or tax law, choosing experiences along the way that will mark you as well-versed in the field. Joining the bar, ABA, antitrust section, tax section, business section, whatever, and gaining colleagues who may have a need for a lawyer outside their firm because of a conflict and send you business or send you business because you're located where they're not located. A third way that worked for me is to have lawyers you worked with or against in litigation or civic activities retain you or, when someone asks them to recommend a lawyer, recommended you. In my years as a practicing lawyer, I think my clients all came from other lawyers recommending me.

Mr. Schultz: Many of them were lawyers that you met when you were in the government?

Mr. Pollak: Many of them were lawyers I met in the government or met in some other way.

Mr. Schultz: After the government?

Mr. Pollak: Right. But mostly in the government or from Yale Law School. I didn't ever inherit any work. I didn't need it, I guess. I just did the next thing that came in the door.

Mr. Schultz: How long did it take you after you came to Shea & Gardner to get to the point where you had your own practice?

Mr. Pollak: Not very long. The first business that came my way was from a lawyer, David Rubin, who had been the Deputy Chief of the Appeals and Research Section of the Civil Rights Division, number two to Harold Greene, the same Harold Greene who became a District Court Judge here. David was Deputy General Counsel of the National Education Association, and he telephoned me in Fall 1969 or possibly early 1970 and said that an arm of the NEA, the DuShane Fund, wanted to be more active in relation to desegregation, particularly of faculties, and discrimination in the public schools and the effort to rid the public schools of it, and would I come and talk with this group. I went to Puerto Rico to meet them and this began a decade of representing the NEA in Supreme Court desegregation cases and teachers who were objects of discrimination and a whole panoply of great cases to work on.

Mr. Schultz: That's a great way to start a law practice.

Mr. Pollak: Yes. That was really marvelous. If I was to point to anything that may have recommended me, it was that I worked hard at fact development, depositions, documents, motions, and argument. People that opposed me or saw me thought that was something that I could bring to a case. That may have gotten me other representations. I want to attach to my oral history a list of points that I used for years in preparing my witnesses for deposition.

Mr. Schultz: We'll attach it, but why don't you talk about that for a minute.

Mr. Pollak: Most of the trials that I had were really in depositions. When my witnesses, my client's witnesses, or those that were related to my client's case, were going to be

deposed by the other side, I would talk to them about what they should have in mind as they answered the questions, and then one of my partners, John Rich, made a list of what I was telling them. I would work with that list and refine it. For example, I talked to the witness about what knowledge is, whether you knew something or whether somebody told you, or recall or listening carefully to the question or answering with a few words and letting the next question be posed, or not becoming angry or not trying to please me when testifying, just telling it like it was. I can remember saying to witnesses, "I can always live with the truth, whatever it is, just tell it and it will work out fine." I worked with my documents and got them in order so that I could take a deposition with a flow of documents that got me the kind of evidence that the documents would warrant.

Mr. Schultz: Any other sort of advice in terms of preparing to take a deposition?

Mr. Pollak: My feeling about taking a deposition of an adverse witness is that you need to be sure you've collected every document that's related to the witness or that's related to what you want to talk to the witness about. I always presume that the witness will be doing the witness's best to favor the witness's side of the case.

With witnesses who have a commitment to a client who opposes your client, you must have documents to force the witness to face up to the facts that you are trying to develop because without them, there will be too many places for the witness to hide.

Mr. Schultz: What about trial preparation? Thoughts about that?

Mr. Pollak: Just the need to try to center on what are the major points that need to be made and keep your eye on the ball and not get diffused trying to do more than you need to do. Have a winning theory and winning witnesses.

Mr. Schultz: What about preparing for appellate argument?

Mr. Pollak: Well I've told in another place when I made my first argument in the Supreme Court as an assistant to the Solicitor General. Archibald Cox, Solicitor General, attended and gave me two pieces of advice after the argument. He said, "Always open with a statement of the issue as you see it, and secondly, don't discard the argument you've prepared because of what your opponent has argued, give the argument you've prepared." So I generally tried to prepare by identifying what the issue was and what I wanted to say about it. I always found that I prepared an argument that was too long. I would make an outline and then sometimes give a moot court alone, just to myself. Then I would give one to somebody, a colleague --

Mr. Schultz: Just to one colleague?

Mr. Pollak: Yes, or a couple of colleagues. Maybe I'd do it more than one time. The most successful arguments that I made were ones where my long outline got boiled down to a page or two of key phrases that would tickle my mind as to what were the main points I wanted to make and what were the subpoints within the main ones. I always articulated to myself that I would never get to make it in a run the way the outline was, but I tried to feed into my responses to the judges' questions

the points of my outline. ALI-ABA had me come and lecture on appellate argument. I liked arguing a lot. It was a real high to do it.

Mr. Schultz: How many times did you argue in the Supreme Court?

Mr. Pollak: Twelve times. I think I made good arguments. In private practice I'd argue my own cases. Most of the time I won, but not always.

Mr. Schultz: That's not always so easy in private practice.

Mr. Pollak: No. I always remembered the statement of J.W. Moore, Moore's Federal Practice and Moore on Bankruptcy, at Yale Law. He said, "If the facts that relate to the issue aren't winning facts, then redefine the issue and find more facts."

Mr. Schultz: Judge William Bryant used to always say, "Don't fight the facts." That's really the opposite.

Mr. Pollak: In the Civil Rights Division, we built our cases on the facts. We worked hard to find the facts that established our claim. We built the factual record that would determine the outcome where the law was applied. That's what we trained the young lawyers to do. Our leader, John Doar, derided "gee whiz" cases – "Gee whiz, your honor, our claim is right; we're entitled to win."

Judge Gesell, another mentor, felt the real determinant of cases was the facts, and I've been a fact person. I've always thought I was good with the facts, because I had a clear idea as to what they were.

Mr. Schultz: So looking back on it, do you think law was a good fit for you?

Mr. Pollak: I was terribly fortunate to become a lawyer because I knew no lawyers, had no lawyers in my family. It was just fortuitous I became a lawyer. It was the right

profession for me. When I came out of the federal government, I was flattered that Bill Gorham, who was then the president of the Urban Institute, wanted me to come be his deputy, and John Gardner, who had been the Secretary of Health, Education & Welfare, wanted me to come as his deputy. He was head of the Urban Coalition, which became Common Cause. Gardner withdrew his offer, and I then turned down Gorham. That was really the right decision. So law was the right place.

Mr. Schultz: What advice would you give somebody coming out of law school? What career advice would you give?

Mr. Pollak: If you want to be a litigator, get a clerkship and then get in a really good U.S. Attorneys' Office and learn the trial practice. Assistant United States Attorneys learn to be at ease in the courtroom. That's my perception. They learn the moves, and if you're in a big uptown practice, you don't get into court enough to learn that. The other thing I would advise is the advice that I got when I went to law school. My dad was in the real estate business in Illinois. The company's lawyer was a man named Bernard Nath, one of the founding partners of the Sonnenschein law firm in Chicago. Bernie, whose children I grew up with, was a graduate of the University of Chicago Law School. He didn't understand why I would want to go to Yale. He said, "If you go to law school, graduate in the top ten percent of your class." So I went to Yale and I saw all these wizards who were making theses fabulous records. I thought, "Darn Bernie, what do you mean be in the top ten percent?" I did, and he was right. That opened a lot of doors. If

you're in a lower percentage, you can have a great career, but getting started is harder.

Mr. Schultz: Anything else you want to add?

Mr. Pollak: I don't think so. Thank you, Bill. You're a great interviewer.

Mr. Schultz: Thank you, Steve. I really enjoyed it.