Oral History of Roger Adelman

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Stephen J. Pollak. The interview took place on October 29, 2008 at the offices of Goodwin Procter LLP, 901 New York Avenue NW, Washington, D.C. 20001. This is the fourth interview.

Mr. Pollak: Good afternoon, Roger. This is our fourth interview.

Mr. Adelman: We're getting to be good friends.

Mr. Pollak: Yes. Absolutely. My first question is, you've talked about Mr. Caputy as one of the people that you referred to as legends of the trial bar in the 1950s to the 1980s, and I'd be interested for you to say anything further about Vic Caputy and then speak about the others.

Mr. Adelman: Vic started his private practice here, I believe, in 1949. He then became a federal prosecutor a year or so later. He was the leading prosecutor in the U.S. Attorney's Office in the 1950s and 1960s. He retired from trying cases in the late 1960s. Fortunately for me and my colleagues in the office, he became a mentor and teacher for us.

He epitomized the pound-the-table school of trial advocacy. He was a great orator. He was a stump orator as a young man. He came from Buffalo, New York. In the 1930s, people like Vic would give political speeches on stages, without public address systems. So he advocated sonorous oral advocacy. He was also a powerful cross examiner. He was not a big man, but he had a huge voice and was a great presence. In the District Court, the walls between the courtrooms are maybe two feet thick, and the story goes that Judge Gasch was sitting in the adjoining court and sent a note over to the judge next to him saying please tell "Mr. Caputy to turn it down a little bit." But he was a

lovable guy and very devout guy. A very important part of his life was his family and his religion. I worked under him for many years. He was a true mentor. He would watch you try cases and give you advice, often vocal, often in public, and you learned from the master. He was widely known in the courthouse community. He died in 1992, and the outpouring of grief among former Assistants for him was tremendous.

Mr. Pollak: Didn't he hold at a later age a training position actually in the United States District Court?

Mr. Adelman: He did. From 1969 to the 1980s, he trained Assistant U.S. Attorneys how to try cases. And the training was not formal. He would watch us in court or help us prepare a cross examination of an important witness, or help prepare for closing argument. He was on the scene in the courtroom. All the judges knew him. The story goes that one day he was sitting in the audience and the prosecutor didn't object, so Vic Caputy stood up to object in the audience, and the judge said, "Objection sustained." The prosecutor looked around and saw Vic Caputy was there so he realized what had happened. He documented everybody's work in his notebooks. He would sit down with you afterward, go over his notes and give a critique. He was stern. He also was a very well-educated man. He went to Canisius College in Buffalo and then Georgetown Law. I believe he graduated in the same Georgetown class as Edward Bennett Williams, who had great respect for him by the way. I recall Vic reciting Greek poetry that he memorized. He was an avid reader. A very interesting guy and when you got to know him, not at all the image that was portrayed of him. He has three

wonderful sons, all of whom are my friends. But he was a great and modest guy. Some prosecutors make their reputation in big trials, and Vic never sought that. What he wanted to be was a very skilled and feared adversary. He was that. And a very meticulous lawyer too. He read all the appellate opinions and knew the law.

Mr. Pollak: And made it a lifetime career?

Mr. Adelman: He did. He had a private practice in the 1940s. Then he joined the U.S. Attorney's Office in 1950, and he spent 37 years there. And as I say, his approach was to blow down the walls, blow back the witness and orate strongly to the jury. He was a strong advocate of that. He was a model in many ways. He was a model for two generations of Assistant U.S. Attorneys. Every one of them felt Vic's touch, if you will. He was great.

Mr. Pollak: You commented just a moment ago about how others on your list of legends had different styles. Would you comment generally on your feeling whether there's a preferred style for prosecutors. Is it eclectic? What determines a prosecutor's style?

Mr. Adelman: The list of people would include several defense attorneys. So it's not a matter of styles of prosecutors so much as a trial lawyer. I don't think there's a preferred style for a prosecutor. For instance, Tom Flannery, who was an Assistant U.S. Attorney before he became a federal judge and before that a United States Attorney, had a very low-key approach. Vic Caputy used to say, "Tom whispered 'em into jail." The basic point about any prosecutor, or any trial lawyer for that matter, is you must stay within your own personality. If you

look phony to the jury they will pick it up. If you are naturally a quiet person and you get up and scream and shout, it looks phony. The same if you're an aggressive person and you talk deliberately. But you have to be true to your personality because the jury is perceptive. Many of us follow the Caputy method to this day.

Mr. Pollak: And the Caputy method is what?

Mr. Adelman: Vigorous, aggressive. "You did this!" "You did that!" I was going to mention some of the defense people.

Mr. Pollak Yes. Please do.

Mr. Adelman: John Shorter. John Shorter graduated from Georgetown Law School in the mid-1940s. He practiced as a defense attorney from then until the late 1980s representing many people in criminal cases. In the courtroom John was very low key, very meticulous, almost quiet. He related very well to the juries. He was a very thorough cross examiner. This was an era when the judges allowed, at least experienced lawyers, to take time doing an examination. He practiced in an era when there was not a large amount of criminal discovery provided to a criminal defense lawyer. Basically the defense lawyer would find out what the case was about during courtroom accounts of witnesses. I tried many cases against John. He was a gentleman and was very effective, particularly at whittling down at a witness on cross. He would quietly ask a question, and then another question, and still another question on the same point. He never was confrontational. The judges respected him. And his style as a gentlemanly professional was conveyed to the jury. He epitomized another dynamic, the

jury will say to themselves, "Gee, if someone of this caliber is representing this defendant, the defendant may not be such a bad guy after all."

Mr. Pollak: Is Shorter alive?

Mr. Adelman: No. John died some years ago.

Bill Garber is still practicing. He started in Washington in the 1950s. He was a clerk for a famous trial lawyer, Charlie Ford and that's how he learned the art. Charlie Ford was an old-time "Fifth Street" lawyer. Bill surely has tried more cases to a jury than anybody in the District of Columbia.

Mr. Pollak: Including in the Federal Court?

Mr. Adelman: Absolutely. He is often in the federal court. Bill is a repository of the history of the D.C. trial practice. He was fascinating to the juries because he didn't have a great pretense. He usually wears a sport coat, sort of shuffles around the courtroom and asks questions in a very low-key, folksy, informal way. But the jury saw that he was quite sharp. Naturally the judges listened very carefully to him because of his experience and knowledge of the law. He took a lot of court-appointed cases over the years because the judges respected him and knew he would do a great job.

Mr. Pollak: How did these trial lawyers, particularly the defense lawyers you're talking about, get trained?

Mr. Adelman: By doing. Bill's a good example. As I said, he worked at the side of Charlie Ford. In the 1950s in D.C., the criminal clientele were largely gamblers, bootleggers, robbers and drug dealers. Bill and Charlie Ford and the other Fifth Streeters represented these clients. Bill watched Ford try cases, then he began

to try cases himself. Trial work is an art, it's not a science. If you ask me how does somebody become a great potter, a great painter, or any of the great artists, and the answer is that they did the task many, many times until they got it right. In the 1950s, Bill saw Charlie Ford, the young John Shorter, the young Bill Bryant, the young Jake Stein, and lots of other lawyers try cases, and he learned their tricks. He is one of the few people who bridge the earlier era of D.C. trial practice and the modern era. He's still trying cases.

Mr. Pollak: He's trying cases?

Mr. Adelman: Yes sir.

Mr. Pollak: You also have on your list Ed Brown and Bob Higgins.

Mr. Adelman: Bob Higgins was a contemporary of mine in the U.S. Attorney's Office. He started the same time I did. When I saw him, both in misdemeanor and felony trials, I quickly realized that he had a great presence in the court. Bob had been a debater in college. He was very much a well-spoken, up-front, aggressive guy. Like many of us, he was a disciple of Vic Caputy. He left the office in 1973. He's now at Dickstein Shapiro. Of our group, Bob, I think, had the best natural trial skills. He liked to try cases, and he was very successful. We would watch our colleagues try cases. That in itself was a real learning experience. Bob was always very well prepared. He worked well with the police. I thought that he had a skill level above the level of other Assistants in our group. I believe he still tries civil cases.

Ed Brown had been an Assistant U.S. Attorney here in the early 1960s, but when I encountered him in the 1970s, he was a defense attorney. He did a lot of

civil work too. His dad, Ed Brown, Sr., was a well-known civil lawyer. But, Ed Brown, Jr., had a marvelous oratorical style – a clear sonorous voice – and was a very good cross examiner. And I remember trying cases against him, and when he was arguing to the jury – he was that good – I'd sit there and take notes and silently say to myself, "Please, please sit down, please sit down" – he was making so many good points. And he represented some tough customers. As a former prosecutor, he saw a case from the prosecution perspective and the defense perspective. And he was a very honorable guy and a straight shooter. The good trial advocates like him had the ability to speak to the jury without notes. Young lawyers now think they've got to have everything written out in front of them when they argue, but in the era I'm talking about, lawyers like Ed Brown, Vic Caputy, Bob Higgins and Harry Sullivan spoke eye-to-eye to the jury rather than to read notes or an outline. If they had notes, they may have been a page or half a page with just several points on them. They'd get up and look the jury in the eye.

Mr. Pollak: Would these lawyers have others who helped with memoranda and briefs, or would they handle that themselves?

Mr. Adelman: John Shorter did the briefing of legal issues himself, as did – and still does – Bill Garber. It was not until the early 1970s that defense lawyers filed a large number of motions. In earlier times, they didn't litigate on paper, they were expected to make verbal, not written, objections during the trial. They mostly were solo or small firm practitioners. They effectively were like English barristers who, as I understand it, practice by themselves, do the research and

writing themselves. By the 1970s and 1980s, you really had to litigate – suppression motions, evidence motions, things of that sort. The Federal Rules of Evidence came into effect in 1974, codifying common law rules of evidence. That alone introduced a lot pretrial evidence litigation. In an earlier time you'd make the evidence objections on the spot in trial, the judge would rule or not, you'd go on.

Mr. Pollak: You think it's antithetical to being in a law firm?

Mr. Adelman: The big firms now do white-collar defense which requires teams, committees and review. These firms have to have people who only do research. For the most part, they do litigation, not jury trial work. The people I talked about before were the old-time stand-up-and-argue trial lawyers. There are still folks like that in Washington, but I suspect more so now in other parts of the country, for example, Texas.

Mr. Pollak: A lot of your focus here is on the period from the 1960s to the time you left the U.S. Attorney's Office. I think that you might comment on both civility and ethics in that era.

Mr. Adelman: I think when you're firing motions back and forth and you don't know each other that well, as in a big civil case, there's a tendency to be less cordial. In criminal cases where you regularly try cases against the same lawyers, there develops a degree of trust based on familiarity. Civility issues are acute in big stakes civil litigation. The difference is the presence of a judge. A lawyer in criminal cases eventually appears in front the judge, so they are sensitive to that. They will have to account at some point to the judge. In civil cases many

lawyers may have no contact with the judge or ever expect to. If the judge is involved with the case in some way, the lawyers will behave better.

Mr. Pollak: It's been my experience in several litigations that you may litigate the case in a preparatory way with adversary depositions, documentary discovery, for long, long periods and never see the judge at all.

Mr. Adelman: In line with that, one useful development is videotaping of depositions. That has resulted in much better behavior by lawyers at depositions because their behavior is recorded on the videotape and can be reviewed by the judge.

Mr. Pollak: Was Chuck Ruff a full-time professor?

Mr. Adelman: Yes. Chuck, after graduating from law school, taught law in Africa. Then he came back and taught at Georgetown. He served in the in the Criminal Division at the Justice Department, eventually became an Independent Counsel, then some time later became the United States Attorney for the District of Columbia.

Mr. Pollak: He had a very distinguished career.

Mr. Adelman: Yes, a fine guy. He was a most persuasive writer. Chuck was schooled in the Department of Justice sort of bureaucratic approach to case management, but also he was the United States Attorney here from late 1979 to early 1982. When he was a United States Attorney, I worked very closely with him on some cases, particularly *ABSCAM* and *Hinckley*. Chuck once described me to the *New York Times* as a good guy with two faults, being a jogger and a Phillies fan. I don't hold either part of that description against him.

Mr. Pollak: I was very fond of Chuck personally and had great regard for him professionally. How did the prosecutors interact with the police?

Mr. Adelman: In Washington, D.C., the U.S. Attorney's Office was very strong on developing cases, the investigative part of the cases, working with the police and the FBI. The idea was not to wait for the police come in with a case with a little red bow and say, here it is. So, when a crime occurred, a serious crime where there had been no arrest, or a series of crimes, or what appeared to be organized criminal activity, the U.S. Attorney's Office became involved. The Assistants met with the police or the FBI or the DEA, they would give advice to the investigators. But most importantly was the development of the grand jury as an investigative tool. If the investigators need to get documents and other evidence, they'd get a grand jury subpoena. Besides that, some people need to be interviewed in the grand jury under oath. The U.S. Attorney's Office, for as long as I am aware, has been involved with the approval of search and arrest warrants. This means an Assistant U.S. Attorney reviews all warrant applications before they are submitted to a judge. That's very important, because then you are assured that a lawyer has reviewed the warrant application. In many jurisdictions the police are not required to get prosecutor approval for a warrant, and sometimes that can cause problems.

One of the most important parts of the criminal process in D.C. is what happens in the U.S. Attorneys' office early in the morning, between 7:00 a.m. and 10:00 a.m. That's when the exclusionary rule is applied. Between 7 a.m. and 10 a.m., the prosecutors review the cases brought in by the police and the federal agencies. The exclusionary rule is applied – not by a judge or the defense counsel, but by the prosecutor. There are certain cases that are rejected

at the outset because of what the prosecutor believes is an unconstitutional search or a *Miranda*-bad statement or other constitutional defects or is insufficient. These cases are rejected. They do not get filed in court.

The public never sees that. Scholars, particularly, really don't appreciate this because most of them have never worked as prosecutors. As a consequence, some academics have promoted very distorted analyses of how the exclusionary rule works. The exclusionary rule is not only a weapon of the defense, it is in the first instance a screen employed by the prosecutors who are simply following the law. There are always borderline cases or close cases, and those cases might be brought or the investigators are told to get more evidence. But what the Assistant U.S. Attorneys do in the initial case review each morning is a very important control on the quality of justice in Washington, D.C., and probably results in more cases being thrown out because of its application by the prosecutor before the case even gets to court.

I worked a lot, extensively, with the FBI, with DEA, and with the police. I never went out on the street with them, but I would work closely with them, and sometimes they'd call and ask for advice, which is what you want them to do.

Mr. Pollak: And what kind of advice would they be asking?

Mr. Adelman: Whether to conduct a search, whether to get any arrest warrant for a suspect. For example, in Washington, D.C., the court cut-off for presenting new arraignments in court was 4:00 p.m. If a person is arrested after 4:00 p.m. and can't post bond at the station house, they stay in jail until the morning. The police are most often interested in what to do in search and seizure situations.

Mr. Pollak: Would you make written investigative requests to the Bureau?

Mr. Adelman: Customarily, no. There often isn't time to write something out. I did develop a practice of making my own "to do" lists in cases we were preparing for trial. I shared them with the agents. Their reaction was always: "Oh no, more work." So I spent a lot of time talking to these guys about the law, and why we needed to get certain evidence in order to bring the case to court or to win it. I worked closely with the police, FBI and other federal agents. Many of them have become friends and still are. I have many close personal relationships with a lot of former policemen and FBI agents.

Mr. Pollak: And how did you identify the FBI agents who would investigate a particular case that you had?

Mr. Adelman: The FBI would assign them to a case. We had nothing to do with their selection.

Mr. Pollak: Would you use specialized resources? Did you have experience with that? Like fingerprints, or lie detector tests, or did you ever seek wiretapping orders and so forth?

Mr. Adelman: I didn't do any of those things. The investigators do that. They'll customarily have the lab do fingerprints and blood work and other technical things. Wiretaps are a special situation, and there is a strong work relationship between the prosecutors and the agents. The Federal Wiretap Statute was created in 1969. It requires judicial approval before federal agents can conduct a wiretap. At least in D.C., the government has to brief the authorizing judge every five days in review as to the progress of the wiretap. The statute requires careful

monitoring. The affidavit to get the original wiretap is the joint product of the federal investigators and is reviewed by prosecutors working with them. The affidavit has to establish probable cause to tap a specific phone. You also had to show that this was the only means that the government could use to get certain meaningful evidence. Once the wiretap order was signed by the judge and became operational, the prosecutor had to report to the judge *ex parte* every five days in chambers and explain that probable cause still existed for the wiretap. In other words, that evidence of criminal activity was still being heard on the wiretap. I worked on several wiretap cases, most significantly was *United States v. Scott, et al.* in the 1970s. The *Scott* case was the second large-scale wiretap in D.C. It involved drug dealers. Later, in court, the defense contended that the agents didn't minimize the interception of non-relevant conversations as the federal statute required. The case went to the Supreme Court and the Court found in the government's favor, that the minimization requirement had been met. I had nothing to do with the Supreme Court argument. I did argue the case in the Circuit Court of Appeals and I handled part of it in the District Court.

Mr. Pollak: You said the judge suppressed the case. He threw out the case?

Mr. Adelman: He threw out all of the evidence derived from the wiretap, which effectively amounted to the whole case. The wiretap was the source of most of our evidence, because from the wiretap you get information that led to search warrants, arrest warrants, and other evidence the judge decided to suppress. We thought that was too broad a remedy, and that was one challenge to his ruling

we made on appeal.

Mr. Pollak: I see. Well for this history record, when you bring a case, a prosecution, here before the judge, and the main evidence of the prosecution is a wiretap, then the judge denied admissibility of the wiretap, and so was there a motion then to dismiss the case, or what happened? But once the evidence was suppressed did the government appeal the suppression?

Mr. Adelman: Yes.

Mr. Pollak: I see. So the case remained --

Mr. Adelman: Eventually after the Supreme Court ruled in our favor, it went back to the District Court and the defendants pled guilty. That was the *Scott* wiretap case.

Mr. Pollak: I'd like to just have you pursue a little further the relationship with the police. To the public, the police are sort of a monolithic group, they're just police. I suppose that you were dealing with police that had particular assignments, like investigative police or the homicide bureau, or whatever. Who were you dealing with, and what was their expertise in accomplishing what you needed from them?

Mr. Adelman: That was evolutionary for me. When I first came to the Office, with simple cases, you dealt with uniformed police officers, street officers. They'd bring the case in, the prosecutor would decide what to charge. So I got to know those uniform officers.

Mr. Pollak: They were just foot patrolmen or whatever, they were on the beat?

Mr. Adelman: Yes. They were the arresting officer on the beat or in the scout car. In the late 1960s, the D.C. Police Department had a policy that if a person had been to

Vietnam, if they agreed to become a D.C. policeman, they would be let out the rest of their active duty obligation. So you had some MPD officers with a background in Vietnam. We also had some interesting folks in the Police Department. Also, there was a husband and wife, the husband had gone to Yale, and the wife had gone to Mount Holyoke, Gary Albrecht and Mary Ellen Albrecht. Gary became a high-ranking police officer and Mary Ellen became a Superior Court judge. Gary is retired now.

Mr. Pollak: Well, I think the publisher of the *Washington Post* was a police officer.

Mr. Adelman: Don Graham. He was a uniformed police officer. I was and am close to his one-time partner, a great policeman, Bob Chaney. But I dealt with all of these officers as uniform men. As I progressed in the Office, they progressed in the Police Department. Bob Chaney, for instance, whom I first dealt with as a detective, became an important senior investigator in the Homicide Squad. We did many of the big cases together like the "Freeway Phantom" and *Hinckley* cases. And many other people: Otis Fickling, Ron Irvin, Al McMasters, Ray Gonzalez, Dave Brown, Lou Hennessy, and Nelson Grillo. I first dealt with some of these guys when they were uniform officers or plain clothes officers, but as time went on, they became senior investigators in the various parts of the Police Department. We had this ongoing relationship. And that creates trust between the police and the prosecution, especially in giving them advice and having it followed. In the 1970s, the D.C. Homicide Squad, was I think, without peer in the United States. They were excellent. Detectives like Bob Chaney, Otis Fickling, Ron Irvin, Roy Lamb, Jim Greenwell, and Stan

Alexander. Joe O'Brien was the Captain of D.C. Homicide then. Joe said the two most important things he achieved in his life were being a Marine and being a D.C. Homicide detective. The Homicide squad people were really dedicated to what they did. There were many homicides in the 1970s and '80s, and I was impressed that no matter who the victim was or what the circumstances of the death were, they worked just as hard to catch the guy who did the murder. They were totally dedicated professionals. I remain close to a number of them to this day. I have other long-time FBI agent friends, particularly the FBI's bank robbery squad. Some of them became FBI supervisors. I worked on cases with them and the agents they supervised.

When I first came in the Office, the undercover police work was largely in drug cases, where a police officer posing as a bad guy would buy drugs from a dealer. They were relatively simple cases, but dangerous because they would buy drugs, turn the drugs in, point the guy out, they would arrest him, or they'd buy more drugs, you know, continue that process. And it was successful. Trials of those cases depended largely on the credibility of the officer because he might have made ten drug buys from ten people, or ten drug buys from one person, and then come to court and testify. Usually their activities were monitored by other police officers who were watching. The undercover officers do very dangerous work, and not only police but FBI and the DEA.

Mr. Pollak: I think you've spoken both today and earlier about use of the grand jury. I have this general understanding that in the recent past there's been a grand jury unit of the U.S. Attorney, and I draw from your comments that when you had a case,

you were not part of the grand jury unit, but you used the grand jury to investigate a case. I suppose that it would be interesting to have your comments about the grand jury as a vehicle and the role of citizens in the grand jury that you observed. It seems to me that it's quite different than the role of the citizens on the petit juries.

Mr. Adelman: I'm restricted in talking about that because of the grand jury secrecy rule. All I can say is the grand jurors in D.C. are drawn from the same pool as the trial jurors and that they're very diligent in their work. They sit for some significantly longer terms than trial jurors. Because the cases, some of the cases, are protracted.

Mr. Pollak: Are you permitted to answer the question whether in your experience you had questions often from members of the grand jury.

Mr. Adelman: I really don't think I should talk about that. The department requires secrecy there.

Mr. Pollak: And I respect all of the guidelines that you follow, Roger, of course.

I guess in these major cases that you wanted to talk about, ABSCAM and *Hinckley*, you had a close relationship with the Bureau in terms of the investigation.

Mr. Adelman: Correct. *ABSCAM*. Are we now there? That case was the most well-known FBI undercover investigation into political corruption.

Mr. Pollak: And what gives it its name? What is its name?

Mr. Adelman: The FBI gives acronyms to some of its major investigations and cases, and ABSCAM was the name the Bureau gave it.

J. Edger Hoover passed away in 1972. He was not a supporter of undercover investigations. After he died, the FBI management began to use undercover investigations, particularly with the aid of the then new technology of videotaping. The most important development leading up to *ABSCAM* was a case called the "D.C. Sting." That took place in 1975 and 1976. It involved a combined FBI and police task force. They set up a sham fencing operation where agents posed as people who would buy stolen property. The building was completely wired for video and audio. The FBI and the police posed as gangster-type people at a counter in the building and people would come in who stole property. They were "fences." The word got out that you could sell stolen property to them. The name of the operation was PFF, Inc., which really stood for "Police FBI Incognito." PFF ran from 1975 until March 1976. From this case, the FBI learned much that they used in *ABSCAM*. During that period of time, the police, FBI, a sting, had several hundred people come in and they would bring them various stolen items. They didn't know who the sellers were, so in their conversations they'd try to get them to identify themselves. Nor did they know where a particular item of property came from or how and where they got it. And they had to be very careful because they couldn't encourage them to go out and commit a crime, that's an illegal inducement. On the other hand, a lot of these sellers would like to talk about, look, I can get you . . . they had people come in with stolen cars, tires, wheels, all kinds of things, because they paid well. All of the transactions were videotaped. The undercover officers tried to get information from the seller to find out who they were. They

may not give their proper name, but they'd give a nickname. The police had a nickname file. And the FBI probably did too. And, they had Styrofoam cups there. They would give the guy a cup of water to drink, and he would put his fingerprints on it as he drank from it. They ran this operation until March 1976. In late February they put out the word. They said, "We're going to have a party" because one of the agents, nicknamed Pasquale LaRocca, is moving up in the "organization," "So we're going to have a farewell party and you're invited." It was on a Saturday night. They actually on that night had an FBI agent from New York, Dick Genova, who was one of the real fine FBI agents I ever worked with, came in a limo wearing a tuxedo posing as the "Don." The people who were invited came in, they let them come in one at a time, and they'd say, "Welcome to the party," and they'd pull out their badges and arrest them.

The DC Sting was the first use of electronic surveillance and videotape in this District, and the Bureau and the police learned how to conduct undercover operations using video and audiotape. The sting cases were brought in both the U.S. District Court and the Superior Court. The defense often raised entrapment but that didn't work. Entrapment does not mean it is improper for law enforcement to set a trap. It prohibits putting the criminal intent in somebody's mind, creating the crime. In the undercover fencing situation, the people had already perpetrated the crime – robbery or theft – and they came in to the fencing operation to dispose of the proceeds.

The FBI then began other undercover investigations around the country

using videotape. In 1978, they began an investigation on Long Island into stolen art. They set up an operation in a warehouse with an undercover FBI agent and an informant named Mel Weinberg. Mr. Weinberg had been caught by the FBI committing frauds and he pled guilty and agreed to cooperate. The operation to purchase stolen art was set up much in the same manner as the D.C. Sting. Along the way they met Bill Rosenberg. Mr. Rosenberg told them he needed political help. He told him that he needed help to have some Arab, Middle Eastern, people brought into the country. This was right around the time the Shah of Iran fell. And they needed green cards. They were told (I believe by Rosenberg) that he knew Congressmen who would sponsor legislation to cause green cards to be issued to these people. So somehow it evolved that they had a meeting with people who would do this, congressman, on a yacht in Florida. The yacht had been seized by the FBI in some other case, and they manned the yacht.

Mr. Pollak: "They" being who?

Mr. Adelman: The FBI. The FBI manned the yacht, all with FBI agents posing as crewmembers.

Mr. Pollak: I see. The FBI people being a continuation of the sting of the buying art group?

Mr. Adelman: Right. And remember the FBI is a national organization, so what they learned in Washington and New York, they also knew in Florida. They then had people on the yacht, or somebody on the yacht, but as they went up the intracoastal canal, they sailed by the yacht of then former-Dictator Somoza who had just been kicked out of Nicaragua, and they were talking about his problems of

coming into the country. And I think at that point, maybe that's when the issue came up, about sponsoring the legislation of getting people into the country, and then they said, well, do you know any congressmen who could do this. And I think Rosenberg was the person who said, yeah I do. And all this is being fed back to the FBI and Washington and the Justice Department, and as I told you before, this is a situation, again with the prosecutors you're involved directly, and in this case Phil Heyman who was head of the Criminal Division, and Irv Nathan who was his Deputy. They were monitoring this all along. So jointly they proceeded. The center of gravity of this case became Brooklyn, the Eastern District of New York. The federal prosecutor who ran the Eastern District Strike Force was Thomas Puccio, and as it evolved, the congressman to whom they referred, they put him on videotape. They had an undercover agent, Tony Amoroso, he was an FBI agent, and Weinberg and they would sit in these places and they had several congressmen come in and they offered them money in order to introduce legislation to have people get green cards for admission to the United States. Those people who agreed eventually got charged. Some of the undercover operation took place in Washington, at a townhouse in Northwest Washington that the FBI had rented. They wired it and put hidden video equipment in the house. Two congressmen, Richard Kelley and John Jenrette, visited the D.C. townhouse at different times and unbeknownst to each other. They agreed to accept money in exchange for their assistance in sponsoring legislation to enable certain people to immigrate to the United States. In Mr. Kelley's case, the undercover agent actually gave him the money

during the meeting. He put $25,000 in his pockets while being videotaped. And then in New York there were other Congressmen who were charged, Congressman Lederer, Congressman Ozzie Myers, Congressmen Thompson, and Senator Harrison Williams as well. They were all charged in the Eastern District of New York in Brooklyn.

We tried two *ABSCAM* cases here. Assistant U.S. Attorney John Kotelly was the chief prosecutor in the Congressmen John Jenrette case, and I was the chief prosecutor in the Congressman Richard Kelly case. There were convictions in all of these cases. There were just three *ABSCAM* venues – Washington, New York and Philadelphia. The whole group of cases took about a year-and-a-half to try, and the government was successful in all of them. There were motions attacking the nature of the investigation, entrapment and other techniques, most rejected at the trial court level. There was one exception. After the trial of Richard Kelly, Judge Bryant decided the FBI operation was an illegal investigation and he threw it out. And so the government appealed. And the D.C. Circuit reversed him and sent it back to trial court for sentencing. Judge Wald wrote the opinion.

Mr. Pollak: Did you try the full case before Judge Bryant?

Mr. Adelman: Yes, I was the chief trial lawyer and the jury returned a guilty verdict.

Mr. Pollak: How long of a trial?

Mr. Adelman: Several weeks. I remember, it started in December and we finished the end of January. But it went through the holiday period. In any event, I didn't argue the appeal. Assistant U.S. Attorney Michael Farrell, now Judge Farrell, was the

then-head of the Appeals Section, and he argued the appeal in the Circuit Court of Appeals. But Congressmen Kelly, Jenrette, all the people in New York were tried, convicted, and sentenced.

ABSCAM, at least for the FBI and other law enforcement agencies, then became the model for the FBI and local law enforcement to do undercover "stings" of various sorts. For instance, BRILAB in Louisiana; the Graylord investigation in Chicago involving public officials.

Mr. Pollak: But in my memory, ABSCAM was the biggest collection of federal legislators that was ever picked up for corruption.

Mr. Adelman: I think that's right. And none of the Congressmen who were convicted in *ABSCAM* were re-elected.

Mr. Pollak: What did you think about, you became completely conversant with the facts involving Congressmen Kelly and what overall conclusions or thoughts did you have about the whole event?

Mr. Adelman: Well first of all, decisive evidence. Guilt from his own lips on videotape. Number two, clearly corrupt and illegal behavior on his part. Number three, the investigation, I didn't have any problem with because it was run by professionals and I'm satisfied that it was ultimately fair. With Kelly, one of the key moments was the undercover agent gave him the money, and said, "It's up to you" whether to take it. They gave him the choice and he took the money.

Mr. Pollak: So what was there to try?

Mr. Adelman: Well the government had to prove its case, and we had to prove the undercover methodology was fair and proper. I recall the agents testified, as well as

Weinberg. At the trial itself, Mr. Kelly testified. He called a number of character witnesses. His defense was that he, Kelly, was investigating them, the undercover agents, and that he took the money in order to turn them in to the FBI. Besides its basic incredibility, one of the flaws of his defense was he never turned the money into the FBI. He kept it. And the FBI, he was encountered, I believe, on January 8, and the investigation ended several weeks later. So Kelly on the day of his arrest when it was announced publicly that he would turn over $25,000 to the FBI. Unfortunately for him, the FBI Xeroxed each the bills he was given – they were all copied. Some of the bills that he later turned back in when the case became public were not the bills that the FBI had given him. The case became public in February 1980, he had run out and got some other $20 bills to replace the ones he had spent. So we introduced evidence of the discrepancy. So we introduced the copies of the original bills and the copies of the bills he returned. But his claim was that he was conducting an investigation of them, so naturally I asked him on cross, why didn't you report it to the FBI. He said he didn't want anything to be compromised. Mr. Kelly had been an Assistant U.S. Attorney in the 1950s and he was a friend with FBI people, so I asked him why he didn't report it to them, and he said he didn't want to compromise them. It just didn't fly.

Mr. Pollak: Who represented him?

Mr. Adelman: Mr. Anthony Battaglia. He was Mr. Kelly's friend and had been an Assistant U.S. Attorney with Mr. Kelly in Tampa in the 1950s. In the 1970s, Mr. Kelly was elected to Congress. He represented an area just north of Tampa. He

testified and gave this defense. There were two or three other people who were involved in the scheme and were charged as co-defendants, and their lawyers cross-examined Mr. Kelly too.

Mr. Pollak: So, when Judge Bryant threw out the convictions because he found the investigation, I guess, improper, in violation of the Constitution, or some law --

Mr. Adelman: What he said basically was the inducement was too great. But he was reversed in the Court of Appeals.

Mr. Pollak: So procedurally, what then happened? The Court of Appeals reversed? So the conviction stood. And all that remained then was sentencing?

Mr. Adelman: Yes.

Mr. Pollak: And what sentencing did he get?

Mr. Adelman: I think Mr. Kelly got 18 months. I'll have to check that. He filed post-trial motions and there was other litigation. I believe one of the co-defendants was re-tried and was convicted. Congressman Jenrette's conviction was affirmed as well.

Mr. Pollak: Did any of them plead in the Eastern District of New York?

Mr. Adelman: I don't think so. I'll check. Mr. Jenrette's defense was the incriminating statements he made on the videotape were because he was intoxicated. But when he testified, the cross-examination by my colleague, Assistant U.S. Attorney John Kotelly, that was beaten down. He didn't take money on tape, but he agreed to have his friend take the money. The same corrupt agreement, if you will.

Mr. Pollak: Well that must have been an exciting case to prosecute.

Mr. Adelman: Exciting. Fun. Judge Bryant gave the lawyers on both sides a chance to put everything in they wanted to. And Mr. Kelly's testimony was rather lengthy, and as I mentioned, there were at least three crosses of him, mine and the other defendants' attorneys. So it was quite a show.

Mr. Pollak: Well, I think that brings us probably up to a point where we should adjourn for today with the agenda for next time being the *Hinckley* case, and anything else you would want to say about the conclusion of your time in the United States Attorney's Office, and then we ought to turn to your private practice.

Mr. Adelman: Okay.

Mr. Pollak: Is there more you would say today?

Mr. Adelman: No.

Mr. Pollak: Okay. Thank you, Roger.