Oral History of Roger M. 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 September 10, 2008, at the offices of Goodwin Procter LLP, 901 New York Avenue, N.W., Washington, D.C. 20001. This is the second interview.

Mr. Pollak: Good afternoon, Roger.

Mr. Adelman: Good afternoon. Good to see you again.

Mr. Pollak: When we concluded last time, you had reviewed your own personal history, family history, and education, and carried yourself up to joining the office of the United States Attorney in the District of Columbia. So we're going to start there. Why don't you give us an overview and tell us the period of time that you were in that office, the positions you held, and generally what it was like being an Assistant United States Attorney in that period.

Mr. Adelman: I was very honored to have been hired in 1969 by Tom Flannery. Tom later became a U.S. District Judge, but he was the United States Attorney from 1969 to 1971. I served as an Assistant U.S. Attorney for 18 years, which was a long tenure in that era. And it turns out it was a wonderful time to be an Assistant United States Attorney. Typically, in the 1970s, people would serve a few years and go on into private practice or other government service. But I found this was the work that I wanted to do – trying cases in an atmosphere as professional as the District Court, and with very interesting colleagues.

I left the Office in December of 1987 and joined the D.C. office of Kirkpatrick & Lockhart, a large Pittsburgh-based firm. I was a litigator with that firm, handling criminal cases, white-collar cases, and some grand jury

work. In 1997, I started my own practice, which I maintain today here in Washington. On the criminal side I was a prosecutor for 18 years, and then from late 1997 to now, I have been a defense attorney. I have, of course, also done a great deal of civil work. So I have worked on both sides of the fence. I think it was good for me to have been a prosecutor and then a defense attorney. It's helpful to conceptualize what the other side is doing.

Mr. Pollak: Do you think as a prosecutor pretty much out of law school – actually you'd had a bit of private practice which you've described – do you think as a prosecutor you had the same sensitivities then before you became a defense counsel?

Mr. Adelman: No. As a prosecutor I didn't talk to a defendant, never talked to the family of a defendant, never had any interaction with them, and I don't think I should have, for a variety of reasons. So I had no sense of their side of the case. As a young prosecutor you have a somewhat idealistic view about what you do. But my experience as a defense attorney – and also teaching law at Georgetown Law School for twenty-four years – also helped me to think about the other side.

Mr. Pollak: Do you think prosecutors should actually have some sensitivity training as part of coming into the office? Or would that limit them in their doing their job?

Mr. Adelman: No. What I think they should do though is work for both defense and prosecution. When I started in the U.S. Attorney's Office in 1969, there were several very talented prosecutors, like Jim Lyons, Dick Hibey and Vince Alto, who had previously been public defenders. It would be ideal to work both as a public defender and as a prosecutor. In England, as I understand it, barristers sometimes do that. They prosecute one case and then defend other cases. I

should add that in the late 1960s early 1970s, we prosecutors were friends with the public defenders. We socialized with them, we talked with them, and even drank beer with some of them on Friday nights. There is a great line in Shakespeare, from *The Taming of the Shrew*: "Let us be like lawyers, let us strive mightily in court, and then drink as friends." I didn't suppose at that time we realized that we were effectively following that dictum. And I think it was a good tradition. I hope it carries on.

Mr. Pollak: And were they the defense lawyers in the cases you were prosecuting?

Mr. Adelman: Yes. People like Stu Stiller, John Perazich, Fred Bennett, Paul Chertoff. All of these lawyers were with the Public Defender Service at that time. Many of those people now are defense lawyers and judges and many became friends.

Mr. Pollak: Let me ask you something more about the U.S. Attorney's Office to set some of the stage on which you were a major actor. What was the size of the office when you joined and during the period you served? And what was the structure and leadership beyond the U.S. Attorney himself?

Mr. Adelman: I was number 79, meaning there were 78 other people before I joined. That included the Civil Division which probably had 10 or 12 people. That included Special Proceedings, which had about six people, that also included the General Sessions Division. So it was a rather small office and you got to know your colleagues. The small numbers of Assistants and camaraderie created what I call the "osmotic effect" of learning the trial trade. Most of the people that I dealt with were in the Trial Division, either in General Sessions or the District Court. And if you wanted to know how to cross examine an expert, you didn't

have to read a book – you just went next door and talked to an Assistant who had done that a lot. If you wanted to see somebody put on a direct examination, you walked down the hall, into a court, and watched one of your colleagues doing that. You learned a lot that way. I even learned from war stories that my colleagues told. They were great learning vehicles. The only people who don't approve of war stories are people who don't have any war stories to tell. We all became friends. And that group of Assistants have maintained social contact. Most of them are in the city and most of them are defense lawyers or premier civil litigators.

Mr. Pollak: These were colleagues in the U.S. Attorney's Office and in the trial side of the office?

Mr. Adelman: Yes, trial side of the office was probably about half of the Assistants. Tom Flannery was appointed as the U.S. Attorney in the summer of 1969. Tom's First Assistant was Hal Titus, a career prosecutor. Tom reorganized the office. He established the Fraud Section. It was headed by Seymour Glanzer. Fraud was the precursor of what we now call the white-collar practice. The Fraud Section and Sy Glanzer pioneered a lot of things in terms of prosecution of cases, the breadth of what they did, the techniques they used, and most importantly the use of the grand jury as an investigative tool.

Tom Flannery recognized that there was criminal activity here even in Washington of an organized nature or high visibility nature that had to be investigated separately from reactive-type cases. He appointed Harold Sullivan to be the head of the Major Crimes Division. Major Crimes and Fraud were

investigative units. Before 1969, the Office really didn't have independent investigative units, it took the cases brought to them by the investigators, by the police, by FBI. Tom Flannery revolutionized the process.

Harold Sullivan was a great trial lawyer. He had tried cases for 13 years as an AUSA, and my understanding was that he had lost very few. The legend is that in his 13 years as a prosecutor, he struck only three jurors from the jury panel in all of his trials. He was that confident in his cases and his abilities. He believed that he could convince any 12 people. I'm told that after he tried a case and the jury had returned a guilty verdict and the defendant was remanded to custody, he would go into the cell block and ask the defendant whether he thought he had gotten a fair trial. Harry Sullivan unfortunately died in 1975. He was a very religious man, and I think that carried over into his approach to being a prosecutor. So Harry set very high standards for us.

Mr. Pollak: I think you distinguished between the investigative units in Fraud and Major Crimes that Flannery established, but you also used the term "investigative materials" that were given to prosecutors before the establishment of those two offices. So there must be a distinction between the investigative materials that came available regularly for prosecutors before those units?

Mr. Adelman: Before those units were set up, the Office would receive a package from the FBI of interviews, their documentary and physical evidence, and a summary of what the case was about, and that was about it. The police in Washington basically were dealing with reactive crimes like robbery, kidnapping or murder. The late 1960s was the dawning of widespread drug distribution in Washington and that

required organization and some sophistication on the part of the drug dealer. To deal with that, in 1969, Harold Sullivan, put into place, with court authorization, the first federal wiretap ever conducted here in Washington. The principal defendant was a large drug distributor, Lawrence Jackson. His nickname was "Slippery." He eventually was convicted and he served many years in jail. Later, in the 1970s, Mr. Jackson got out of jail. He again was arrested and convicted, and he went back to jail in the early 1980s. Then he did still another crime while in jail – marketing drugs while in jail – and I worked on his prosecution for that. When he was finally released from jail a few years ago, his lawyer called me up and said "Mr. Jackson is out. He says tell Mr. Adelman 'Hello.'" I don't know if that's a tribute or not.

Harry Sullivan was the guy who started investigations whereby police just wouldn't simply arrest the people who sold the drugs at street level but he tried to get the higher ups. The wiretap for the first time enabled law enforcement to identify the higher ups. The wiretap led to Mr. Jackson and his New York suppliers. Several of the people, notably Enrico Tantillo and Bobby Verdaroso, were ultimately charged in District Court along with Jackson. They were all convicted in 1970. Tom Flannery himself was the lead trial lawyer in the trial along with some younger prosecutors, Roger Zuckerman, Jim Lyons and Ted Weisman.

In the Fraud Division, Sy Glanzer had come from the U.S. Attorney's Office in New York and the Department of Justice. He developed techniques to get documents to build white-collar fraud cases with documents and insider

witnesses. The documents were obtained by grand jury subpoenas and through other legitimate sources. The idea was that they would build the cases for the Trial Division to try them.

Mr. Pollak: Do you want to go back still to the organization? You had come from Flannery to Titus to Sullivan.

Mr. Adelman: I must mention Earl Silbert. He joined the Department of Justice, I believe in 1960, immediately out of Harvard Law School. He was a tax lawyer at the Department of Justice for a couple of years and then he became interested in criminal law. He became an Assistant U.S. Attorney in Washington. If there is one great lawyer in this city, it's Earl Silbert. He's now practicing on the defense side and on the civil side. During Tom Flannery's tenure, Earl was the No. 3 man in the Office, but I think it's fair to say he was the driving spirit. He was the new breed – the intellectual prosecutor. You could sit down with Earl if you had a problem. He'd always have an answer. He'd say, "Well there's a case that says this. . ." or "Have you thought of that?" He was unfailingly supportive. When you won a case, he sent you a note. When you lost a case, he sent you a note. And to this day he is still that way. He was the standard of professionalism for the people in the Office. He became the U.S. Attorney in 1974. He handled the Watergate case when it was in the Office in 1972 for over a year along with Sy Glanzer and Dan Campbell, who also were Assistant U.S. Attorneys. They conducted the initial investigation and also the first Watergate trial. He left the Office in 1979, when he went into private practice.

There are two other people whom I should mention. One is John Terry, who was made head of the Appeals Division in 1969 by Tom Flannery. He worked in the 1950s for the Senate Rackets Committee with Bobby Kennedy. And then he joined the U.S. Attorney's Office and tried cases from 1962 through the middle of 1960s. He served as chief of Appeals Division from 1969 until 1982. John Terry was and still is a literal walking book of the law. If you asked John a question, he knew the case, the cite, and he provided quotes from it. He was also a gifted writer and mentor. He had a critical reviewing eye. One of the most feared instruments in the U.S. Attorney's Office was John Terry's red pen. I served in Appeals for fifteen months working under his tutelage. It was a great experience because I submitted my briefs to John, I got them back with red markings all over them, and every one of them improved what I had submitted. John was held in great respect by the Court of Appeals judges. When he argued in the Appeals Court himself, the judges just listened to him, basically asking no questions. He trained two generations of lawyers in Washington how to write a brief and argue it. The government briefs that are filed here even now in the District Court, U.S. Court of Appeals, and D.C. Courts are basically John Terry briefs: the John Terry-style, the John-Terry voice, the John-Terry thoroughness. By John Terry-voice, I mean not bombastic, but professional, low key. John has been a great influence on me too. John Terry is now a judge on the D.C. Court of Appeals. He left the office in 1982 when he was appointed by the President to the D.C. Court of Appeals where he still sits.

Tom Flannery also established a requirement that before an Assistant went to the Felony Trial Division in the federal court, he must first serve in the Appellate Division so you would learn the law before you tried a felony. So John Terry in a real sense trained a large number of people who later became the core of the D.C. trial bar – both appellate lawyers and trial lawyers.

John Terry made me into a good lawyer. He is an extremely decent, low-key, quiet, professional person, devoted. A real man of the law. He is not a publicity-seeking person, but he has quietly mentored two generations of lawyers.

Mr. Pollak: Roger, it's interesting that there, unlike lots of institutions, in the United States Attorney's Office, the title "Assistant United States Attorney" can apply to a brand new lawyer and can apply alike to yourself – after you served 18 years, you were an Assistant United States Attorney, you aren't called a Senior Assistant U.S. Attorney or something else.

Mr. Adelman: Well, there's the position of Principal Assistant U.S. Attorney, that's the No. 2 job. That's what Hal Titus was in 1969. And at that time, Earl Silbert was the Executive Assistant U.S. Attorney. But you're right. If you're in the trenches, so to speak, you're always called an Assistant U.S. Attorney. But that's a pretty good title to have. And one of the watchwords everywhere around the United States is when you hear of a lawyer from another city, one of the questions I ask is, "Was he ever an Assistant?" If the answer is "yes," then I can assume I can trust him. It is an important credential. There's skill and professionalism there.

Being an Assistant U.S. Attorney, and standing up in court and representing the United States, is the greatest honor you'll ever have as a lawyer.

One other person who stood out in the Flannery era of the Office was Luke Moore. Luke Moore had been an Assistant U.S. Attorney, then he became the United States Marshal in Washington. Tom Flannery appointed him to be the Director of the Court of General Sessions unit. He then served on the Superior Court for some years. He was an extremely engaging man, a great people-person, and a person that everybody liked. He eventually became a Superior Court judge.

Mr. Pollak: When you joined the Office, and as you motored through 18 years there, were there women lawyers among the assistants, and what was the minority makeup, and did it change over time?

Mr. Adelman: At the beginning, in the first few years, there were very few women in any of the divisions. Ann DuRoss and Lee Cross were two women who worked with us in the Criminal Division. Sylvia Bacon was in the management of the office when I got there. Mary Weisman, Ellen Lee Park and Pat Frohman were in the Civil Division. The number of women increased as time went on, particularly in the 1980s.

Mr. Pollak: Is there any more on the overview of the United States Attorney's Office in your period of service that you'd like to enter into our record?

Mr. Adelman: A couple of things. A significant expansion of the Office occurred from 1970 to 1987 and when I left. In 1987 the Office had probably 350 lawyers. With more lawyers, it became much more bureaucratized, with formal management, formal

chains of command and multi-level review processes. In the 1960s and 1970s, when I first started, the line Assistant made the operative decisions such as whether to sever a case or take a plea. In a few major cases, of course, the management made such decisions. Starting in the mid-1980s, an organizational structure was created whereby the line Assistant had relatively little ultimate responsibility and Assistants had to get most important issues approved by the Chief and Deputy Chief or even by committee. This is what I would call the Department of Justice management model. The Department of Justice has to review and analyze cases and investigations from all over the country and apply uniform standards. That's the primary change in the Office from then to now.

The other change is, as the U.S. Attorneys came and went, there were new personnel hired to serve in the Office. Tom Flannery and Hal Titus had hired my group in the 1969-1971 period. We now call ourselves "the Flannery Group." We still meet together. These are people like Bob Bennett, John Aldock, Bob Higgins, Earl Silbert, Dick Hibey, Steve Grafman, Jim Sharp – who are now the centerpiece of the trial litigation bar in Washington, particularly white-collar bar.

Mr. Pollak: I had another general question about the U.S. Attorney's practice in your day. When you handled a case and tried it, what was your team? Was it you? Was it you and a secretary? Was it you and a paralegal, or whatever the title might be? Were there cases that were so demanding that there were teams?

Mr. Adelman: In the beginning, from 1969 through the early 1970s, it was just usually you. You were by yourself in trial. I liked that because the case was on your

shoulders. I still have a clear image of a really fine Assistant, John Evans, trying a case in 1972. He was the only lawyer at the government table, and there were six defendants and six lawyers at the defense table. I thought, that's David versus Goliath and I wanted to be David in that situation. The ethos in the office then was you tried the case yourself. We started in the Court of General Sessions. There, a new Assistant went to Court with another Assistant – who might have had a few weeks' experience himself – and after watching him try several trials, that Assistant would turn to you and say, "This next one is yours." And away you went. It was sink or swim. That's the way you learn to try cases – by doing on your own. There were a few big cases in District Court where a team of Assistants prosecuted the case.

The first cases that I can remember when I was on a trial team were the prosecution of the men who robbed and shot Senator John Stennis in 1973 and then the Freeway Phantom trial in 1974. The Freeway Phantom cases involved two police officers charged with murder of a young girl. But those were unusual. Generally, in the U.S. Attorney's Office at the time, you had to stand up in court and do it on your own. Individual responsibility, one of the things I liked about trial work in the office. You win or lose on your own.

Mr. Pollak: So you had a case going along and as points of law might arise, you had to spend time after the day's trial to prepare a motion for the court the next day?

Mr. Adelman: And that was a part I liked. I always liked the intellectual part of criminal law. And knowing the law well became important when the Warren Court became active in the area of the criminal law. I tried to prepare the case beforehand and

look at the legal issues and prepare pleadings. You couldn't file a 20-page brief in trial, but I developed the "pocket memo," a short memo on a particular point. I might use only two of the memos of seven or eight that I prepared. But writing up these memos makes you think through the case, it makes you anticipate what will happen, and also you develop the discipline to visualize the case in your mind before the trial. You try it from your perspective, and then you have to try it in your mind from the point of view of the defense; you think, "What will the defense do?" And if you're in court with attorneys like Bill Garber, John Shorter or the public defenders, you can anticipate the objections they're going to make. A good trial lawyer should be able to anticipate what objections are going to be made and when they'll be made. I think that nothing should happen at your trial that you haven't anticipated. That's a tall order to fill. In the felony court, the U.S. District Court, you have time to prepare, and as time went on, I handled cases that allowed me time to prepare. You were expected to do that. It's important to prepare on the law to guide the case properly and also keep appealable issues out of the case. Another benefit was to get the acknowledgment from the judge that you're the person in the court to look to on legal issues, like search and seizure, confessions and evidence issues. Rulings on evidence often sharply change the direction of a trial.

Mr. Pollak: Did your attitude change much as, I mean you've spoken to it a bit, but as you came out of being a prosecutor, how did you see your role?

Mr. Adelman: As defense counsel you have a broader role. I used to tell students, if you want to be an idealist, be a prosecutor; if you want to be a realist, be a defense

attorney. Later I made the transition. As defense attorney, you see the people charged, they've done some things wrong. You also get to know their families and friends. You get that depth of knowledge of the defense side of the case that you can't get as a prosecutor. Sure it sensitizes you. Could I be a prosecutor today? Sure. No question. And I have been. I worked briefly for Ken Starr in the mid-1990s as an Assistant Prosecutor in the Office of Independent Counsel.

Mr. Pollak: Would you speak any differently about what you thought the role of yourself as a lawyer was? Is being a lawyer, is there some standard that you're meeting or some role that you're playing that sort of goes beyond being a prosecutor or being a defense counsel?

Mr. Adelman: I'll frame it this way: In terms of representing a clients. Prosecutors have no clients. You're representing the government, not individuals, and you must do the fair thing. As a defense attorney, you do what you ethically can for the client. The legal skills as a trial lawyer are basically the same, thinking ahead, don't get trapped, don't make mistakes, plan out the legal issues.

Mr. Pollak: I'm interested in why, or how, United States Attorney Tom Flannery, who you've described as having at a maximum, perhaps three years, as U.S. Attorney, had as extensive an influence as he had. Is that a long tenure in our United States Attorney's Office?

Mr. Adelman: No. Customarily, U.S. Attorneys serve a four-year tenure. Tom was appointed to the District Court in September 1971. I think one reason that he made prompt and profound changes was because he himself had been an Assistant

U.S. Attorney in the Office in the 1950s for a long time and he quickly realized that the Office needed to be modernized.

Mr. Pollak: I think you also had noted that the group that you've referred to as the Tom Flannery Group was a little broader than some of the leaders that were under Tom Flannery, and you've spoken about most of them except Hibey, Sharp, and Grafman.

Mr. Adelman: Dick Hibey. Dick co-prosecuted the *Billy Austin Bryant* case, a notorious case in which Mr. Bryant had killed two FBI agents, and Dick and Hal Titus prosecuted the case before Judge Gesell and got a conviction.

Steve Grafman and I are very close friends. Steve Grafman had spent some years in the Navy as a prosecutor in Vietnam, and then came to the Office. He was immediately sent to the District Court Trial Division because he was so competent and experienced. In 1973, he asked me to help him try, as second chair, a police corruption case. We lost. The jury acquitted all of the defendants. We also worked together to try the case involving the shooting of Senator John Stennis. Steve and Jim Sharp now practice together here in Washington. Jim Sharp is truly a great trial lawyer.

In the U.S. Attorney's Office in the 1960s and 1970s, we were fortunate in having a group of young lawyers from all over the country with different backgrounds and styles. Bob Bennett was from New York; Earl Silbert from Massachusetts; Dick Hibey from New York; Jim Sharp from Oklahoma; Roger Zuckerman and John Aldock from Maryland; Bob Higgins and I from Pennsylvania; Steve Grafman from Alabama; Kenny Robinson from South

Carolina, Carl Rauh from Washington, D.C., and Dick Stuckey and Greg Brady from Nebraska. We had a national group in the Office. There developed a camaraderie that still continues. The "Flannery Group" now probably has 100 members. It includes everybody who was hired by Tom Flannery. Roger Zuckerman is the leader of the Flannery Group, and we occasionally get together and socialize. It also, under Roger Zuckerman's leadership, sponsors the Flannery Lecture each year.

Mr. Pollak: Well, you wanted to talk about something that is a very important milestone in the administration of justice here in the District which you were undoubtedly a witness to from its beginning to its implementation and that is the change in the jurisdiction between the United States District Court and the Court of General Sessions which, with the change, became the Superior Court.

Mr. Adelman: When I started in 1969, there were two trial courts – the U.S. District Court and the Court of General Sessions. The Court of General Sessions had misdemeanor jurisdiction and minor civil case jurisdiction. On the criminal side, it was basically a police court. The District Court handled federal criminal offenses and complex civil cases. The United States Attorney prosecuted in both courts.

Mr. Pollak: Were there prosecutions then by what for many years was known as the Corporation Counsel, the top lawyer for the District of Columbia government?

Mr. Adelman: Yes, but the D.C. Corporation Counsel then handled traffic offenses and minor criminal offenses. The other criminal cases, including more serious misdemeanors, were handled by the United States Attorney.

The Court of General Sessions was a rip-roaring place. Many judges there were unique. It was very informal. That's where I cut my teeth. The file would be brought in to court, often by a police officer, then you'd review it briefly, stand up, make a brief opening statement and then say, "Is Officer Jones here?", and Officer Jones would take the stand, take the oath and then you'd ask: "Were you at such a place on a certain day at a certain time?" and then "Did something unusual happen?", and he'd tell you and away you went. This is hardly the model for trying cases that you would find in a trial practice manual. You usually had no idea what the defense was. But whatever you say about this experience, it taught an invaluable lesson for trial lawyers, and that is how to think on your feet. There's nobody there with you. You are alone. You don't know what's going to happen. The judge, of course, put pressure on in his own way to move the case along, and you had to deal with him too. But you had to think on your feet and react instantly. That is an essential skill for a trial lawyer. Things happen in court so quickly that you can't call "time out" and sit down and figure out what to do.

In complex civil cases these days, the attorneys have everything written out in books, all of their arguments, all the deposition cuts and memoranda of law. That's good, it's professional, but it's really not the techniques the trial lawyer should develop by instinct. That's what the Court of General Sessions did for me. Most of the cases we tried were assaults, unlawful entries, drug possession, or weapons cases.

There were a number of reasons why we needed a second felony court,

and so Congress enacted legislation effective in July of 1970 to create the D.C. Superior Court as a court of general jurisdiction over all D.C. Code offenses, felonies and misdemeanors and to also hear a wide range of civil cases. We continued to bring certain D.C. felony cases in the federal court where there was a related federal violation, a stolen car, a weapon involved, or a conspiracy. But the most significant thing for the Office was a large number of people who were in the Office in the District Court Felony Trial Division left the Office for private practice.

Mr. Pollak: I'd like to hear what you have to say about the United States District Court I suppose up to the time of the change in jurisdiction, and you noted that you might speak of the judges, the marshals, the staff, and "the regulars," whatever that was.

Mr. Adelman: We were very fortunate to have a very interesting group of folks on the bench. There was Judge Gerhard Gesell, who was a masterful man and ran his courtroom his way, and Judge William Bryant, Judge John Pratt, Judge Howard Corcoran, Judge George Hart, Judge Joseph Waddy, and Judge Oliver Gasch.

But there were interesting people besides the judges and lawyers at the District Court – the courtroom "regulars." The "regulars" were elderly people, mostly retired, who watched the trials. They were trial experts in their own way. It was their hobby. They're interesting people. They're also wonderful resources because they have seen more trials than any trial lawyer. You could talk to them during a recess and ask, "What do you think the jury will think about that witness?" And they might say to you, "They're not going to believe

him." These people are part of the pleasure of doing courtroom work. During the recess they might say to you "Why don't you ask him this," or whatever. They had also seen the judges who were presiding when they were younger lawyers trying cases themselves. So they were great sources of insight. I don't know whether they come to D.C. courts now. There are "regulars" elsewhere. In the Eastern District of New York there's a group of old-timers who watch trials, and there was also such a group in Federal Court in Chicago.

Mr. Pollak: What about the Marshals? What's the role of the marshal that you saw them play?

Mr. Adelman: The Marshals keep order in the courtroom. They also do the bidding of the judge. They take him in and out of court and keep order, and they have an organizational role. And I don't think it violates any rights here to tell you that while the jury was deliberating, the Marshals would say, these people are going to convict him for this, and so on, because they have a sense of the deliberations.

Mr. Pollak: Like the "regulars," you're saying that the Marshals see a lot of trials?

Mr. Adelman: Absolutely. But they can't give direct comments. The other interesting group of courtroom personnel were the court reporters. Most court reporters used the hand typing system. They had been doing trials for a long time, of course, so they knew the law. They'd be silently typing along and a question would be asked and it would be improper, and some of them would turn to you and stare at you and say nothing, expecting you to object because they knew the law and they expected you to make an objection. They wouldn't say a word. I used to

tell law students, if you don't know what to do when an issue pops up that might be objected to, glance at the court reporter.

Mr. Pollak: I was a lawyer, as an associate, worked for Judge Gesell when he was practicing, and he always wanted to have good relations with the courtroom staff.

Mr. Adelman: Absolutely. The first thing you do is say hello to the court clerk and the court reporter, give them your card. Before trial, I would write out a list of any odd phrases or words that might be used by the witnesses so the reporter could make a correct transcript. You don't want to have the court reporter interrupt you in the middle of an examination and say, "What did he say?" So there are ways to do that. They were good friends.

Mr. Pollak: You have a note here under the Court of General Sessions, "practice the old-school."

Mr. Adelman: The "old school" meaning no textbook learning. You often tried the case by the seat of your pants. When I first got to General Sessions, there were a number of defense lawyers who basically would just pick up cases or be appointed by the court. Now that has died out. But I got to see in later phases the careers of these people, "old-timers" of the trial bar.

Mr. Pollak: How did they get paid?

Mr. Adelman: From 1964 on, they were paid under the Criminal Justice Act. Before then, it was whatever they could get from the client. It was a rough-and-tumble defense practice.

Mr. Pollak: They were sometimes referred to as "Fifth Streeters."

Mr. Adelman: "Fifth Streeters" was the term because they had offices mostly on Fifth Street near the courts and they knew each other. But it was a unique Bar. Unfortunately, we don't have the "Fifth Street Bar" anymore. There are individuals who do court-appointed cases, and those appointments are made by the public defender.

Mr. Pollak: I see. And is this both a federal public defender and a local?

Mr. Adelman: The local public defender's office was created in the 1960s and is still a preeminent public defender's office. The Federal Public Defender was created about 15 years ago as part of a movement around the country to provide a public defender system for federal courts. Federal Public Defenders were needed. The D.C. Public Defenders really had their hands full representing all the people they could in the Superior Court and federal criminal law became much more different and much more complex. So the Federal Public Defenders are experienced in doing those kinds of cases – white-collar and complex cases. And the local public defender does the so-called D.C. Code offenses. The complicated ones, like conspiracies or fraud or drugs are generally brought under federal law in the federal court.

Mr. Pollak: Do I understand that you'd have witnesses on the stand that you had never talked to?

Mr. Adelman: Yes. In General Sessions.

Mr. Pollak: And how would you know what to ask them? Did you have a police report?

Mr. Adelman: All the cases ready for trial would be sent out to trial courts, and their witnesses, to a room outside the assignment court. The assignment judge would send a

case to a particular courtroom where you as prosecutor assigned to that court, might say "*U.S. v. Jones*," and you'd have a police report and perhaps a follow-up report, and you'd see that the paperwork said that the defendant possessed drugs at a particular location at a particular time and had been arrested by Officer Brown. So you'd call Officer Brown, and he'd come to the court.

Mr. Pollak: The judge empaneling the jury – would that take long, in that system?

Mr. Adelman: No. Not there. Now remember, not all of these cases are jury cases either. But a good many of them were.

Mr. Pollak: And if they were jury cases, was it a 12-person jury?

Mr. Adelman: Yes, 12. And then you would get going, and my jury opening statement would be something like, "I'm going to show you with these witnesses that the defendant was found in possession of drugs. Officer Brown arrested him," and so on. The defense attorney might give an opening statement. You then called Officer Brown, put on all of the witnesses, and you rested your case. There was an argument to dismiss, then the defense might put on the defense. You often had no idea what the defense was going to be. And so defense witnesses came on and they'd tell stories that you obviously hadn't anticipated. And then you'd argue the case to the jury. And the court would instruct. Now that's rough-and-tumble, but it's a wonderful way to learn the trial profession. You learn how to listen carefully to what the witness says – to think on your feet. One of the things I was told in the beginning, if there's something that a defense witness should logically say and leaves it out, as part of your cross should explore that area.

Mr. Pollak: How did you form up your closing when you're busy all the time, both putting on your witnesses then redirecting and then cross-examining your opponent's?

Mr. Adelman: In General Sessions you just went right to closing argument. The judge would take a few minutes' recess, and I'd get up and argue, and the defense would argue, and I'd rebut.

Mr. Pollak: No? So the judge took a few minutes' recess and you made a few cryptic notes?

Mr. Adelman: The judge had other cases waiting for trial. Often when you completed one case, he sent the jury out, and the judge would call the next case, and you'd start the second case while the jury was deliberating in the first case. And in the middle of the second trial, the jury in the first trial might have a verdict. We took that verdict and then went on with the second case. So we tried them back-to-back. When I went to the District Court, things were different, more orderly. You prepared your witnesses over there.

Mr. Pollak: Did you try cases in the Court of General Sessions five days a week?

Mr. Adelman: Often. Because General Sessions had a full calendar because they basically had – not only did it have the regular misdemeanor cases, but because of a policy that existed at the time, there were some cases that would have been felonies under the D.C. Code that were brought in the Court of General Sessions as misdemeanors under the "break-down" policy.

We talked about working in the Appeals Division. I did mention John Terry ran that Division. *U.S. v. Raymond Moore* is the first time I got to argue an *en banc* case. It was in September 1971, and it was a very important case because a member of the U.S. Court of Appeals had hinted that a person could

be excused or exonerated from a crime such as robbery, burglary, or assault if the crime was somehow connected with the defendant's drug addiction. That's a radical proposition and that would have undercut the ability to prosecute cases because a lot of people commit crimes related to their drug addiction. *Raymond Moore* was the case that raised that issue. We argued it in 1971. Patricia Wald was the lawyer for Mr. Moore. The government won 5-4. Judge Harold Leventhal wrote the plurality opinion and held that narcotics addiction was not a defense to a crime. It was fun to do an *en banc* case. I had never stood up in front of nine judges before. I had done a lot of three-judge panel arguments. I did another *en banc* one seven years later, *U.S. v. Wood*, involving the insanity defense. But I argued a large number of cases in the U.S. Court of Appeals.

Mr. Pollak: And you argued the case against Pat Wald?

Mr. Adelman: Yes. In the *Moore* case. She did a very good job. She persuaded four of the nine judges. Judge Leventhal asked long and detailed questions. He would muse about something and turn his musing into a question, "What do you think about that?" As it turned out, he wrote the plurality opinion that carried the day.

Mr. Pollak: What about the shooting of John Stennis?

Mr. Adelman: John Stennis was a Senator from Mississippi. On the 30th of January, 1973, he was in front of his house in Northwest Washington. Three young men robbed and shot him. The robbery and shooting were entirely coincidental; the perpetrators had no knowledge of who they were robbing and shooting. And they asked him for his watch and he refused, they shot him in the stomach. At the time, Senator Stennis was the Chairman of the Senate Armed Services

Committee. It just so happened that that night was the monthly surgeons' meeting at Walter Reed. So when the ambulance came, Mr. Stennis said, "Take me to Walter Reed," which is just across Rock Creek from where he was shot, and they did. The Army surgeon operated on him and saved his life. He had a severe gunshot wound to the stomach. That happened in January 1973. In the spring of 1973, the FBI arrested three people who did it, the shooter and two other people. They were indicted. Steve Grafman was chief prosecutor. I assisted him. Before the trial, Steve was busy trying another case, so we worked through the grand jury process together. This was my first experience with grand jury work. We were able to subpoena through the grand jury documents that became important in the trial and gather evidence also to anticipate the alibi that we knew the defendants would put up. The case was tried in front of Judge Joseph Waddy in the fall of 1973 against the shooter, Tyrone Marshall. Ken Mundy was the defense attorney. Steve and I took turns with the witnesses. I called the Army surgeon who had conducted the surgery and saved the life of Senator Stennis. The trial took place nine months after the shooting. I believe he was a Captain at the time of the surgery. By the time of the trial, he had been made a Colonel. How did that come to be? Well, he saved the life of the Chairman of the Senate Armed Services Committee. Senator Stennis, in the course of his direct testimony, had not been able previously to identify Tyrone Marshall as the shooter, but he nonetheless pointed out to him in the court as the shooter. The defense objected, and we had a hearing. A witness who makes an in-court identification is supposed to

establish his ability to identify at a lineup or from pictures. That was not done here, but the judge ruled in our favor. The case ended with a mid-trial plea of guilty. John Stennis lived to a ripe old age, served for many years in the Senate, and then retired from the Senate. He was a great man. He had been a judge in Mississippi, and he was quite an intelligent fellow and turned out to be a very good witness.

Mr. Pollak: Was it a long trial?

Mr. Adelman I think we tried the case for several days, and then mid-trial Mr. Marshall pled guilty.

Mr. Pollak: Did the press seek to interview you in the Stennis case?

Mr. Adelman: Yes, they did, and I just don't talk to the press. I'm a disciple of Judge William Bryant. He said those who live by the press die by the press.

Mr. Pollak: Well, we'll stop and pick up again soon.