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 October 9, 2008, at the offices of Goodwin Procter LLP, 901 New York Avenue NW, Washington, D.C. 20001. This is the third interview.

Mr. Pollak: Good afternoon. We were discussing last time your legal work during the period 1969 to 1974. I think you finished the prosecution of a person charged with shooting Senator Stennis.

Mr. Adelman: That's right.

Mr. Pollak: Where would you like to go from there?

Mr. Adelman: The period 1969 to 1974 was a busy time for me. I was in court trying cases regularly. In 1974, I was lead prosecutor in a case that the newspapers called the "Freeway Phantom" case.

In 1971, several young women had been found murdered along the freeways outside of DC. The police couldn't find the perpetrator. The *Washington Post* linked several of the murders together and called them the "Freeway Phantom" murders, speculating that there was one person who did them. The investigation went cold in 1973. In early 1974, the *Washington Post* reran its 1971 story on the case. As it turns out, one of the murders had been committed in Washington by two D.C. police officers. The former wife of one of the police officers read the 1974 *Washington Post* article and contacted the authorities. She told them that she had witnessed things in 1971 that suggested that her former husband was involved in the murder of one victim. The police set up a monitored telephone conversation between her and her former husband in which she said things like, "I've been to see the police." And he said,

"Don't. Don't tell them anything," and he made admissions. The police swooped down, arrested him, and eventually arrested the other police officer. These fellows were Tommy Simmons and Eddy Sellman. They had been D.C. police officers when the murder happened. They had left the force by 1974. One of the murders was the killing of a 13-year-old girl, Angela Barnes. She had been walking on the sidewalk at night. Mr. Simmons and Mr. Sellman drove up, said they were police officers, and told her, "We want to escort you home." She resisted, and they killed her. They were arrested in March 1974 and were indicted shortly thereafter. It became a cause célèbre. The *Post* played it up – two police officers involved in the "Freeway Phantom" murders. I tried that case in front of Judge John Lewis Smith.

Mr. Pollak: The United States District Judge?

Mr. Adelman: Yes. Both defendants raised the defense of insanity. In other words, two police officers were saying that they were insane at the time they were serving in the police department. Their specific defense was something called *folie a dieu*, basically that the two of them, when together, acted in an insane way. We litigated that in front of a jury, and eventually the jury convicted them. But it was a landmark case, and as it turns out --

Mr. Pollak: Why do you say it was a landmark case?

Mr. Adelman: The notoriety of the crime, and because you have two police officers being tried for a homicide, that is unusual in itself. And they both raised an insanity defense claiming each of them suffered from a debilitating mental disorder when they were members of the police department. The police later arrested

other men for other murders. Those cases were tried in Superior Court, and he was convicted. Mr. Simmons and Mr. Sellman were both sentenced to life imprisonment. Under D.C. law that meant 20 years to life. One of them, Mr. Sellman, was involved in a separate sexual assault, and I prosecuted that case in the Superior Court. The Simmons and Sellman case was the first time that I had a chance to work with a task force of police officers, led by a great detective, Bob Chaney. They were assigned from the D.C. Police Department Homicide Squad.

Mr. Pollak: Roger, let me ask one or two questions about this prosecution of the two police officers. Was it presented to a grand jury and an indictment rendered by the grand jury?

Mr. Adelman: Yes.

Mr. Pollak: And were you the presenter, or was someone else?

Mr. Adelman: In the Simmons and Stillman case, I did that with the assistance of Assistant U.S. Attorney John Drury.

Mr. Pollak And what was the time frame in that case between arresting the police officers and the trial?

Mr. Adelman: The arrests occurred in March 1974, and we tried the first of two cases in mid-June of 1974.

Mr. Pollak: You did?

Mr. Adelman: The judge severed it into two trials. We had one in June and one in July.

Mr. Pollak: That is, one defendant, one trial; the other defendant, the other trial?

Mr. Adelman: That was because one of the defendants had made a confession which was admissible against him but not against his co-defendant.

Mr. Pollak: What kind of time schedule did you maintain when you were trying this case?

Mr. Adelman: Seven days a week.

Mr. Pollak: And how long was the first trial?

Mr. Adelman: About a week.

Mr. Pollak: So tell us what that week was like. You go to court Monday, select a jury?

Mr. Adelman: Select a jury. That took a couple of days. Because of the publicity, a lot of potential jurors had heard about this case and we had to interview all those people. Judge Smith sat in the Ceremonial Courtroom of the District Court. But on the off hours, before trial and afterward, we had to interview witnesses, prepare them, go over legal issues. Inevitably there are legal issues and motions. So it's a 7:00 a.m. to 9:00 p.m. day when you are in trial. You have to throw all of yourself into it. I'm intrigued by R*umple at the Bailey*, the wonderful series of short stories by John Mortimer about Rumple, an English barrister who is in court until 4:30 p.m. and goes home and has a few toddies. It's just remarkable the difference between a Rumple-type and what most lawyers here do when they are in trial.

Mr. Pollak: Are there many motions during the trial?

Mr. Adelman: A trial is more often a legal contest than a factual contest. You've got to be sure you get your critical evidence in and overcome objections, be sure the court is ruling the right way. One of the prosecutor's jobs is to protect the record for appeal.

Mr. Pollak: Were you assisted by a colleague or by a paralegal or someone?

Mr. Adelman: Yes, an Assistant U.S. Attorney, John Drury. He was co-counsel. He helped prepare and try the case. John and I remain very close friends. John left the Office in the mid-1970s. Ironically, I later tried a case against him when he was a defense counsel.

Mr. Pollak: What of police corruption in and around this particular time, and I trust it goes beyond the misdeeds of the two police officers.

Mr. Adelman: In one case in the early 1970s, I was asked to assist one of my colleagues, my very close friend Steve Grafman, an Assistant U.S. Attorney. He was the lead prosecutor. The case involved several Metropolitan Police Department vice officers who were alleged to have made illegal arrests. We tried the case to a jury in front of Judge Oliver Gasch. He sat through the Christmas holidays in 1973. The jury acquitted the defendants. Significantly, the U.S. Attorney's Office, not only in these cases, would, if necessary, bring charges against police officers.

Mr. Pollak: My experience is that prosecutions of police for violating procedures are often difficult to make or are often difficult to secure a jury verdict.

Mr. Adelman: The police protect us, and I'm sure the juries think about that. But in this multi-defendant case, the jury didn't see that there was enough evidence that required the defendants to be found guilty.

Mr. Pollak: The District Court jurisdiction and the local courts jurisdiction were significantly altered in 1972, I believe. I think the legislation was in 1972?

Mr. Adelman: Congress passed a statute stating that beginning in 1971, D.C. Code criminal jurisdiction would be shifted from the U.S. District Court to a new court, the Superior Court for the District of Columbia. Previously, there had been two courts, the U.S. District Court and the Court of General Sessions.

Mr. Pollak: Two trial courts?

Mr. Adelman: The Court of General Sessions previously had jurisdiction only in certain misdemeanor criminal cases. All felony cases – D.C. and federal – were tried in the U.S. District Court.

Mr. Pollak: I might make the point, or we could share the point, that there was really no way that the Congress was going to expand United States District judges in the District of Columbia to the level that we know today, 59 Superior Court judges, much expanded since 1970. And the Corporation Counsel didn't prosecute in General Sessions?

Mr. Adelman: Yes, but that office only handled certain misdemeanor and traffic cases. The other crimes were handled by the U.S. Attorney. Court reorganization effectively created two felony divisions of the U.S. Attorney's Office – District Court and Superior Court. The U.S. Attorney for the District of Columbia is both a federal and local prosecutor. And that's unique in the United States. So lawyers who serve as Assistant U.S. Attorneys in D.C. get unusual experience because they have the opportunity to try cases in the federal court and the local court as well. I think that is one reason why people come to Washington to become Assistant U.S. Attorneys.

Mr. Pollak: What was the reaction of the District Court bench, and if you have knowledge or views, of the Court of Appeals bench? Because both courts were affected because the cases that percolated to the Court of Appeals came from a different bed of litigation.

Mr. Adelman: The District Court judges were pleased because it took pressure off their calendars and they could also try more civil cases and more complicated federal criminal cases.

Mr. Pollak: What was the impact, as you saw it, of the Warren Court rulings on criminal law in the 1969 to 1980 timeframe?

Mr. Adelman: The Warren Court revolutionized the criminal law and practice and procedure in many areas. I saw the application of these decisions at ground level. I came to the court system when the Warren Court opinions were having significant impact starting in the late 1960s. Miranda, for instance, had been decided in 1966 and for some years after, the courts – the Circuit Courts and the Supreme Court – were still dealing with its implications. The same with search and seizure. This led to a more extensive motion practice in federal criminal cases. It is my understanding that before the mid-1960s there were few motions filed in criminal cases. But because the Warren Court created new rights, criminal lawyers were compelled to litigate legal issues as well as the facts. You could prevail in a case by winning on legal issues. If you can exclude the evidence or if you can suppress certain evidence, you can advance your case and maybe win. So, particularly in the D.C. Circuit, it was very important to know the law. The Warren Court also had a great impact on the practices of the police. The

police had learned to advise people of their rights, which they had never done before. They had to pay attention to new search and seizure rules. This was one of the forces that made prosecutors and law enforcement work together. The police were aware that they had to be careful about what they did. For instance, the D.C. police had to get approval from the U.S. Attorney's Office for a search warrant or an arrest warrant. So this interjected the prosecutor into an investigation at an early phase.

Another impact of the Warren Court decisions that was very important was on legal education. Sam Dash and Bill Greenhalgh were at Georgetown Law Center in the mid-1960s. Sam taught criminal law, and Bill Greenhalgh developed the Criminal Justice Clinic and the Prettyman Program. The Prettyman Program trained young lawyers right out of law school to become criminal defense attorneys. The Clinic trained law students to go to court and serve either as student prosecutors or student defense attorneys. I taught in that Criminal Justice Clinic for many years.

Mr. Pollak: You weren't a prosecutor until 1969 or so, but some Warren Court decisions probably came down in your era when you were being a prosecutor, and did you consider that the Court had reached out to make those decisions, had turned over eons of years in which the law had been different, or did you consider that lawyers were presenting frontier issues to the Court to decide with arguments that had previously not been presented?

Mr. Adelman: I think by the time I got to the Office the big issues – right to counsel, identification and search and seizure – had been decided by the Supreme Court.

During my tenure, there was a refinement process of these cases going on in the Circuit Courts, including ours. For instance, in the areas of eye witness identification and right to counsel.

Mr. Pollak: What was the Criminal Justice Act of 1964?

Mr. Adelman: The Criminal Justice Act of 1964 was enacted by Congress because of a decision by the Supreme Court holding that a criminal defendant had a right to counsel in a wide range of criminal cases. The Criminal Justice Act enabled lawyers to be appointed by the court and paid by the court to represent indigent people. Prior to that, my understanding was that, particularly in our local court, many people went without lawyers and there were lawyers who congregated along the hall in the court and informally picked up cases there.

Mr. Pollak: Was it discernable that there were sort of two routes to private criminal defense work, one route was graduates of the United States Attorney's Office. Was there another route that was graduates of the Public Defender Office?

Mr. Adelman: That certainly was another route. Many of the prominent private defense attorneys in town were previously PDS attorneys.

Mr. Pollak: It took an awful beating, the Warren Court.

Mr. Adelman: Some politicians have claimed those judges were easy on crime. I don't think it has turned out that way. Some of the judges who were on the Warren Court had seen the operation of the criminal law at ground level and had a real sense of how things operated, particularly in state court. Chief Justice Warren was a prosecutor in Oakland for many years; Justice Black had been a state police

court judge; and Justice Frankfurter was an Assistant U.S. Attorney early in his career.

Mr. Pollak: What was the influence of the Georgetown University Law Center?

Mr. Adelman: But I would just say that it still operates today to turn out local criminal lawyers. It's a credit to Bill Greenhalgh largely who pushed that and who pioneered the idea of practical training for law students.

Mr. Pollak: Why don't we spend some time and speak to your teaching at Georgetown. When did it occur? How did it come about that you did it at all?

Mr. Adelman: They needed a prosecutor to teach in the Criminal Justice Clinic, and Bill Greenhalgh asked me if I would do it. I did it, and I loved it. I liked the idea of being with young people and of imparting my experience.

Mr. Pollak: What did it mean that you did? What was the time element?

Mr. Adelman: I taught a two-hour seminar on Friday afternoons covering an entire trial from preparation through opening statement to direct examination, cross-examination, expert testimony, and closing argument. We had about 15-20 students in the prosecution side and an equal number on the defense side. At the end of the term they switched sides. The students were interned in prosecutors' offices and actually got to try cases. One thing I told them: We are giving you a great opportunity, not only to go to court, but to make mistakes. Because you learn from the mistakes, but only make a mistake once. Part of our Friday afternoon session would be a discussion of issues that came up in court, what to do and what was done right and what was done wrong. It is the osmotic effect of learning the practice of trial law. That is to say, put

yourself with somebody who tries cases and you learn. The Clinic is akin to medical school teaching where the students then begin rounds with the doctors, and the doctors will explain to them what they're doing. The clinical program led me to then teach evidence at the Law Center. I taught evidence at Georgetown for about 15 years. That too is energizing. The classes were very large and many students were not interested in being trial lawyers, so I tried to make it interesting. But I liked a big class, especially the evening division with people of different backgrounds and life experiences.

Mr. Pollak: Evidence is not necessarily intuitive?

Mr. Adelman: No. The rules of evidence are specific. You have to understand the reason for the rule and its history. You've got to be able to say to the judge, even maybe from your own memory, "Your Honor, there's a case that says this and this is inadmissible under that rule." It underscores the ability to think on your feet. Courts now encourage motions in limine, in other words, pretrial briefs on evidentiary issues, because evidence is now complicated and the motion gives the court time to review and research these questions. My approach to evidence was to teach it from a pragmatic point of view. In other words, you can read the book and it'll tell you about character evidence, but I explain it that character witnesses may win or lose a case depending on who they are. As I explain to the students, character witnesses don't necessarily impress the jury as to *what* they say, but as to *who* they are.

Mr. Pollak: You were handling full U.S. Attorney responsibilities. Did you use an evidence case book?

Mr. Adelman: I did.

Mr. Pollak: How did you keep yourself up to date on the evidentiary points that you were teaching?

Mr. Adelman: I'd read up a lot on evidence and tried to keep track of new opinions. You've got to keep up with developments. Courts constantly evolve new rules, new interpretations, so it's a dynamic area of law. For every hour you spend in class, you have to spend many more hours in your office preparing for class and keeping up. I had as many as 140 students in some classes and there would be a lot of questions. My policy was, I'm not going to leave the room until every question is answered. Before exams, students had the opportunity to fax me questions or inquiries, and I'd fax the answers back. It was a lot of work, it was a lot of time. It was very rewarding. I taught one 2-hour evening session during the week, and then on Saturday mornings, I taught a second 2-hour session. And the Saturday class was better because everybody was relaxed.

Mr. Pollak: Did you have much to do with the general faculty?

Mr. Adelman: No. I knew some of them, but I was in the evening division, and the regular professors taught in the day division. The Criminal Justice Clinic actually met during the day, but it was not really considered part of the regular academic regime, if you will.

Mr. Pollak: But Evidence was?

Mr. Adelman: Evidence was a core course. But I regret not being able to teach now. The reason for that is I travel so much. Someday I'll get back in the academic world.

Mr. Pollak: Well, that's a great credit to you. Georgetown doesn't have anybody off the street teaching courses. They're very selective.

Mr. Adelman: Georgetown Law is blessed because Washington has so many fine lawyers and they draw on them for the adjunct faculty. What I say about Georgetown certainly would apply to GW, Catholic, Howard and American University. We have great law schools here. I just happened to be fortunate enough to be at Georgetown.

Mr. Pollak: Does Georgetown have an unusual presence in the U.S. Attorney's Office?

Mr. Adelman: Not really. The D.C. U.S. Attorney's Office drew from around the country.

Mr. Pollak: It's hard to get into, the U.S. Attorney's Office?

Mr. Adelman: Yes. It's hard to get into because of the very reasons that I've talked about, which is it's a great training ground, it's a unique atmosphere, and you get the ability to be a federal prosecutor, covering the whole range of criminal activity. It's very difficult. But you come out of it with sort of a feeling that you can stand up on your feet and try a case.

Mr. Pollak: Can you tell as you go through a semester teaching Evidence whether the students are getting it?

Mr. Adelman: No. It often surprises me who gets the best grade. In a large class you can't really focus on any one student for a long period of time, and some students who say nothing in class have gotten the best grades, and some people who orate all the time don't do that particularly well.

Mr. Pollak: You started out with one of your earliest prosecutions, and you've stated that you went over to Justice to get, for some reason I think you revealed it in your

history, but you said you went to Justice. And I was just going to ask during the time that you were in the U.S. Attorney's Office, those 18 years, how often did you actually seek or go to the Department or bring them into what you were doing?

Mr. Adelman: Almost never. The most time I spent at the Department was during the *ABSCAM* cases that involved Congressmen and a Senator in an FBI bribery investigation. It was directed out of the Justice Department. The Assistant Attorney General was Phil Heymann and Irv Nathan was his deputy, and they had supervisory authority over the *ABSCAM* cases. The cases were brought here, primarily in the Eastern District of New York and some in New Jersey and Philadelphia.

Mr. Pollak: I think we'll get to those cases.

Mr. Adelman: The other occasions I was at the Department were usually on wiretap cases because the Department has overall supervision of all federal wiretaps in the country.

Mr. Pollak: Did you have mentors?

Mr. Adelman: I had two mentors, Judge William Bryant and Assistant U.S. Attorney Vic Caputy. I appeared in front of Judge Bryant for 16 years, and I represented the government. Judge Bryant clearly is the most compassionate member of the federal bench. He had been a defense attorney for many years, and before that an Assistant U.S. Attorney. He knew trial law and tactics inside and out, and he knew people inside and out. And he would, in his way, instruct. He would call you to the bench and say, "Why didn't you ask that question? Don't you know

if you ask that question, he's going to say this and that and then that would be objectionable." He was not just the judge in a case. He was really trying the case along with the lawyer. He would provide a critique of you after – you should have never made that argument or called that witness or asked this or that question. The combination of Vic Caputy teaching the prosecutor side with Judge Bryant teaching the defense side, that's unparalleled experience. That's why I feel an obligation to teach and pass on what I learned on my own and from them. Judge Bryant was an extremely astute analyst of trials. We've fought tooth-and-nail in court because I was representing the government and of course he didn't see a lot of things the way the government did, but we got along. He was a liberal by most people's standards. Judge Bryant had been a practitioner. He was a defense attorney in the late 1940s and then became a prosecutor in the U.S. Attorney's Office in the early 1950s and then still later became a defense attorney again. So he saw the practice of criminal law from both sides and from ground level. He had a fabulous memory. I recall trying a case in front of him and we got into an argument about whether a confession needed to be corroborated. Later that night I was in the courthouse library doing research on the issue, looking for a case to support me, and he's in the library too, looking for another case. He's also the only person I know who had no enemies. He was loved, revered. He was a great man.

Mr. Pollak: You must have been pleased when the Courthouse Annex was named for him.

Mr. Adelman: Delighted. It's a beautiful building. He was embarrassed by the naming of it after him. And at first didn't want to have the honor, but people talked with him

and he agreed. He's such a modest guy, another sign of true greatness. But my overarching privilege was having him critique and teach me in court for almost 16 years.

Mr. Pollak: That's a great opportunity.

Mr. Adelman: I have mentioned "losing," which I think is very important because you're going to lose cases. I was told by Assistant U.S. Attorney Bill Collins and other trial lawyers in the Office, if you're going to try them, you're going to lose some. In a way, it's good to lose. You learn from your mistakes and you sit down and ask why did I lose. And you always blame yourself. Losing helps you become a better lawyer. There's a great aversion, particularly in the large firms, to losing anything. They've got clients paying a lot of money to get a winning result. I think that situation sometimes diverts your taking responsibility yourself. One of the things about the U.S. Attorney's Office was you were standing up in court alone. If you won, you won, but if you lost, you lost yourself.

Mr. Pollak: Of course the person on the other side, or persons, were doing their best to beat you.

Mr. Adelman: That's right. It's an adversary system.

Mr. Pollak: Do you think losing was tied more to the caliber of your opposing lawyer or to the facts of the case?

Mr. Adelman: The facts of the case. I've had trials against very fine lawyers, but I was fortunate to win some of them because the facts were strong. I've lost cases in situations where the lawyer was not first class.

Mr. Pollak: Did you follow that proverbial rule in your examinations of never asking a question to which you didn't know the answer?

Mr. Adelman: No. You couldn't do that. Particularly in the Court of General Sessions. There you didn't have a chance to interview all of your witnesses, so you put them on the stand and hope they live up to what you expect. Of course on cross examination in criminal, even in a complex case, you generally don't have a deposition or any prior statement from the witness. You have to be very careful. What you do is you listen very carefully to what the witness says on direct. You go into certain areas that you think will be profitable. One of the rules of the practice is never ask a "why" question of a hostile witness. Judge Bryant used to say if you ask "why," he's going to tell you "why," and you have to sit down and listen to the answer. If the witness does give an explanation that's ludicrous, you can just benefit from that.

Mr. Pollak: But are you trying all the time to place your witness in your mind as one which you can go far with or one that you have to be careful with?

Mr. Adelman: We're talking about adverse witnesses here. But with an adverse witness, you get a sense instinctively of what you want to do. One of Judge Bryant's lessons was to try to limit the scope of an adverse witness's testimony if you can. Judge Bryant said if you argue with the witness, you're going to lose the argument. A lawyer should ask questions that the jury would want to ask themselves.

Mr. Pollak: Possibly, Roger, I've asked you this question before, but the world that you've described almost without exception, all the way down to now, in your

courthouse experience, has been a male world. Is that a function of the era? If it is, has the era changed? What role, when you began this, did women have?

Mr. Adelman: I've seen a vast change. In my class in law school, we had 190 people, six were women. This was 1966. When I started in the U.S. Attorney's Office, there were very few women. Now I think it's equal male and female. Same on the bench. And then law school, I think in Georgetown now, there are more women students than there are males. So there's been a dramatic change.

Mr. Pollak: Edward Bennett Williams is someone that the bar considers a great defense counsel and there are people that you've referred to who are outstanding prosecutors. Is the U.S. Attorney's Office in Washington producing outstanding women prosecutors?

Mr. Adelman: Oh sure. Evelyn Queen and others. As I've said, though, I'm not down there so I don't know, but I suspect they are.

Mr. Pollak: Evelyn Queen went on to be a Superior Court Judge, didn't she?

Mr. Adelman: Right, and there are others too, but I really know relatively few Assistants now. I'm in different parts of the country, but also, they come and go. The prosecutors probably average 3-5 year tenures, and I've been out since 1988. So it's a whole new generation.

Mr. Pollak: I think I need to wind this up. Is there more on learning to try a case?

Mr. Adelman: No, except to say you've got to keep doing it. It's an art, not a science, and you have to keep persistently trying cases. We had a discussion at Inns of Court the other night, the William Bryant Inn of Court I might I add, about just that. The resolution was that there are only a few vehicles in which you're going to be

able to do that – in the prosecutor's office, the Public Defenders Service, or the private bar and the CJA.

Mr. Pollak: To another day.