

## **INTERVIEW OF J. PATRICK HICKEY**

**by Joel P. Bennett**  
**Second Interview, September 5, 2007**

Mr. Bennett: This is Joel Bennett. It's September 5, 2007. I'm continuing the oral history of J. Patrick Hickey. We're doing this by telephone speakerphone and we're testing the tape right now. Pat, would you say a few words to be sure you're coming in clear?

Mr. Hickey: Yes. This is my effort to make sure that the tape is able to pick up my voice off the speakerphone.

Mr. Bennett: Pat, when we left off last, you mentioned in an e-mail that you thought of some cases or you had a few thoughts about the development of the criminal justice system in D.C. during the '60s and '70s that might be worth discussing.

Mr. Hickey: Yes. One of the things that came to my mind after we spoke the last time was that I recall in the '60s in what became the Court of General Sessions in the latter part of the '60s, before 1970 when it changed into the D.C. Superior Court, but as General Sessions, it was the primary avenue for criminal defendants who were being arrested and then prosecuted in the federal court because they would go through General Sessions for a preliminary hearing to determine if there was probable cause to hold them on a felony case and also for a bail-setting proceeding. And in those days, as I think we talked about briefly, Joel, the last time, there was a practicing bar known as the "Fifth Street Bar" that handled a great number of the cases at the preliminary stages that went through that court. And then ultimately when they were held for grand jury action, they were indicted by a United States District Court grand jury, and their indictments were set for trial in the District Court and, typically, new counsel would be appointed to represent them. The Fifth Street lawyers from the Court of General Sessions did not follow the case across to the trial stage in the District Court. That caused a lot of problems.

One, there was a problem with continuity of counsel. Two, there was a significant concern about the caliber of representation that was provided by some of these attorneys, or perhaps by most of them. And I do remember when I was starting to practice in the '63-'64 time frame, in General Sessions Court, it was in the days before the Bail Reform Act, and so the typical felony resulted in a surety bond being set by the General Sessions judge sitting as a committing magistrate. And it required you to obtain a professional bail bondsman to post the bond in order for the defendant to be released pending trial. A lot of them were not released. There was no statutory procedure for payment of the attorneys who were appointed to represent them, and I remember the common knowledge and the comments that were made by the local lawyers were that they always had to keep their eye on Rule 1 of the Court of General Sessions rules. Well, there was no Rule 1 such as they conceived it, but that meant to them that you get a fee out of the defendant as fast as you can. And it was not unheard of for lawyers to go before a judge in General Sessions Court when the matter was called for a preliminary hearing and ask to have the hearing postponed based on Rule 1, which was a coded way of saying that "the defendant or his family have not yet come up with my fee. And so until that happens and to increase the pressure on him to do it, I don't want to go forward, he can sit in jail." That was just one of the really unfortunate aspects of the system as it existed in those days. There was also a kind of an idea that since you were going to handle the matter, since the Fifth Street lawyer was only going to handle the matter on a preliminary basis, he didn't really have any obligation to do any investigation or to do anything else. The most you might get would be some effort to help obtain a bondsman if the defendant's family could come up with the premium for the bond. And if they had that in addition to an amount that the lawyer thought was appropriate for his fee. So it was all in all a very unsatisfactory system. Lawyers from the Georgetown Prettyman program, in

which I was then participating, took some of the cases, but a very small proportion, and the rest of them were divided up among the regular bar there.

Mr. Bennett: In those days, in the '60s, when you were in the Prettyman program, there was no Criminal Justice Act, is that correct?

Mr. Hickey: That's right.

Mr. Bennett: And so lawyers who took criminal cases could only look to the defendant for payment, is that correct?

Mr. Hickey: Right. The defendant and his family. And it was not uncommon that the pressure point they used was that the defendant was going to sit in jail until that happened. And because there was no Bail Reform Act, and because the traditional view was that a surety bond was required to ensure the presence of the defendant at trial, large numbers of people with what today would be called excellent community ties, in fact were locked up pretrial at the jail, adding to the crowding there and the hardship on the defendant as well as impairing his ability to prepare his case.

Mr. Bennett: And as I understand it, this had nothing to do with the risk of flight. It was purely a monetary issue.

Mr. Hickey: That's right. I mean the argument was, or the pretension was, that it was necessary to ensure his attendance at trial, but in fact it really had nothing to do with that. And about that time, there was a project in Washington in the early '60s, run by a man named Dan Freed, who later became a very prominent professor at Yale Law School, that was funded, as I recall, by the Vera Institute of Justice. It was a precursor of the bail reform legislation that followed shortly thereafter because it demonstrated through a process of interviewing defendants in the cellblock at the time of their arrest and before their presentment in court, and then verifying before the defendant went before the judge certain aspects of the defendant's

community ties, for example, his address, his employment if he had it, his family contacts in the area, and so on. They were able to persuade judges to release accused defendants without surety bonds on their personal recognizance and had an exemplary rate of those defendants showing up as required for their trial and not becoming fugitives. And so with appropriate scholarly backup, they documented the fact that other factors that you could identify in the criminal accused population could give significant assurance that the person was not a flight risk. And so they developed these questionnaires and scoring tables, and so on. And then in about, as I recall, '66, got Congress to pass the Bail Reform Act, which was a really revolutionary change in the way the system operated because large numbers of accused defendants were now released pretrial simply on their promise to come back with the court having information about their community ties and other factors that were thought to help guarantee their presence. So it made a big difference in your ability to prepare your cases for trial and eased the crowding at the jail and the burden on defendants and their families of having to post surety bonds. Didn't do much for the bail bond business, however.

Mr. Bennett: Sure. And when did the Criminal Justice Act come about, do you recall?

Mr. Hickey: That was about the same time, but as I recall, a couple years later.

Mr. Bennett: And how did that impact the criminal defense system from your perspective?

Mr. Hickey: Well, it brought in some new attorneys who decided, or recognized, that it would be possible, although difficult, to make a living handling Criminal Justice Act cases. Initially, it did not do, as some of us hoped it might, cause the judges to be more rigorous in deciding who they would appoint under the Criminal Justice Act, and in weeding out members of the bar whose past conduct and performance records made it clear that they were not living up to their obligations as counsel. For a while it went on just as it had in the past, except that now

there was a government fee payable at the end of it, at the end of the case, to the attorney. But at first it didn't result in a real oversight. We attempted in about 1970 to establish through the Public Defender Service and the local bar a review panel that would deal with complaints by clients against Criminal Justice Act counsel. In those days, the bar—first of all, we didn't have a mandatory unified bar until the early part of the '70s. And when we did, it did not start off with a full-blown, rigorous disciplinary procedure like we have today. Far from it. And so because the bar had little authority at first, and then when it got the authority, little in the way of resources to deal with the constant flow of complaints against appointed counsel, we tried to create a panel that would do that through the Criminal Justice Act and would not affect the ability of the accused lawyer to practice law, but would preclude him or her from receiving appointments under the Criminal Justice Act. But that was a very slow process and, in fact, there was, as you might expect, a real reluctance on the part of lawyers to be overly judgmental of other lawyers' handling of the case. And so it continued to limp along, I would say, for quite a while until the bar finally got into the rigorous enforcement of the Rules of Professional Conduct.

Mr. Bennett: And before that happened, before the Office of Bar Counsel really geared up to investigate and prosecute complaints, did the court, through judges or the clerk's office or any other entity, do any of that in a systematic matter, or was it pretty much judge-by-judge, "I'm not going to appoint so-and-so any more"?

Mr. Hickey: It was really the latter. There wasn't any system to it. I mean, there were attorneys practicing regularly in the Court of General Sessions and the early days of the Superior Court who had alcohol problems, and some thought drug problems. There were attorneys who were suffering from conditions either physical or mental that made them really inappropriate for appointment to represent indigent criminal defendants. Some judges I think exercised good

judgment not to give them cases, or not to give them what they viewed as serious cases, but only misdemeanors or less serious felonies. Other judges didn't seem to be bothered by it or felt that they didn't really have any alternative because when they were responsible for appointing counsel, they had to move the calendar through the court that day, and they couldn't do it without lawyers being appointed. And if the only lawyers there were lawyers who may be less than your first choice, or best counsel in town, that was just too bad.

Mr. Bennett: During the decade of the '70s, what percentage of criminal cases could PDS handle?

Mr. Hickey: Still a very small percentage. I think, my recollection is that it got up to around 10 to 15 percent.

Mr. Bennett: By the time you left at the end of the '70s?

Mr. Hickey: Yes. And I know that we frequently were called to task for that in our budget hearings on Capitol Hill. Our answer was, in part, and it was certainly true and I thought justified, that there was a tendency on the part of the judges to assign Public Defender lawyers to the most serious cases. And so our case load was not by any means a standard one. It was heavily skewed towards very serious felonies, which would be murder, rape, armed robbery, and so on. And those cases just took more time. But from the court's point of view, and from society's point of view, it really required that the cases be skillfully handled unless you wanted to have a lot of post-conviction proceedings about ineffective assistance of counsel. That would just mean you'd be spinning your wheels and doing the case a second time. And so I think the judges recognized the skills and ability and the support that Public Defender Service lawyers had and did appoint them to very serious cases.

Mr. Bennett: Have you been on the board of PDS since you left?

Mr. Hickey: No, I have not.

Mr. Bennett: I happened to notice on the Internet an excerpt from Charles Ogletree's book, *All Deliberate Speed*. Are you familiar with the book?

Mr. Hickey: Yes, I haven't read it, but I am familiar with it.

Mr. Bennett: There are a few pages that I accessed by putting your name in Google where Charles talked about a problem with Judge Fauntleroy in the 1970s where Judge Fauntleroy was critical of PDS in terms of the racial makeup of its attorneys, do you recall that?

Mr. Hickey: I do, but not very clearly. I mean, that was an accusation or a concern. I think it was a legitimate concern that was voiced on more than one occasion by a variety of people—judges, members of the bar, members of our board of trustees—and it was something that we worked very diligently at to try to improve our minority representation in hiring. But yes, I have a fuzzy recollection that he was one of the people who expressed concern about that.

Mr. Bennett: Okay, I'm going to move on to a few other topics now. During your career as a lawyer, what would you say your main outside interests or hobbies have been, if any?

Mr. Hickey: Oh, boy. Well, that's tough. I have always given a lot of my life to my work. I have a—my family now is grown, but I have four children, and keeping up with them took up what kind of spare time I had, I think. I don't have a real hobby or avocation. I'm not a golfer, I'm not a fisherman. I like to read, I like to get some exercise, but that's about it. Now I do a lot more traveling because I'm able to do that.

Mr. Bennett: Separating your career into the criminal defense part and the part since you've resumed at Shaw Pittman, looking back what would you say the major cases are that you've worked on that are public?

Mr. Hickey: Um, well, the easiest one is and probably the biggest in my career in terms of just how many hours it consumed was the litigation about conditions at the District of Columbia Jail. I can't remember if we referred to this last time—

Mr. Bennett: I think we did, and my recollection is that when it started, you were not the line attorney, so to speak, but eventually you were drawn into it.

Mr. Hickey: Yes, it was filed by a couple of lawyers at the Public Defender Service who had clients incarcerated at the jail, and I kind of gave some advice and counsel on it. But then, as is often the case at the Public Defender Service, lawyers frequently move on after several years there. It's a demanding job and so as the case which was filed in '71 moved on into early '72, '73, I got more involved. We had trial—there were preliminary injunction motions and a lot of

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Mr. Bennett: This is Joel Bennett. I'm interviewing J. Patrick Hickey for the oral history for the D.C. Circuit Historical Society and this is tape number 2.

Mr. Bennett: We're back on the tape. You were talking about the case involving the D.C. Jail conditions and you were at the point where you had to step in because of turnover in your staff, and you were getting to the point of hearings in the case.

Mr. Hickey: Yes. We had a trial before Judge Bryant. Bill Taylor, who's now at Zuckerman Spaeder, who was one of the founding partners at Zuckerman Spaeder, had been involved in the case from the start, and he and I basically took care of the trial effort with assistance from a member of the private bar, Ron Goldfarb, who still practices here in Washington; he does a lot of literary work, as a literary agent or a lawyer for authors. But I can't remember the details. He got involved in the jail case at an early stage, and we had been very successful in attracting experts in a variety of fields to help us in preparing the case for trial, although we were not able to pay them. So, for example, we had an architect who did a study of the existing hundred-year-old D.C. Jail from an architectural viewpoint to be able to give expert testimony about how it was really unfit as a living facility and talked about noise factors and

inadequate ventilation, and so on and so on. Ron Goldfarb helped us because some of his contacts lined up some other prominent experts who either testified or provided affidavits at the trial. I remember that Dr. Karl Menninger, who was then kind of the great-grandfather of American psychiatry, made a tour of the jail and provided testimony that was very gripping. He said that, I remember it vividly, he said that as he watched the visiting process at the jail, which then consisted of a family member talking over a telephone through a glass partition to the inmate inside without being able to touch the person, that he thought it was one of the cruelest things he'd ever seen, and that it was for human beings who had been deprived of any physical contact with a loved one since their incarceration, that it was really like, as he put it, "dangling red meat before a starving dog" because of the sensitivity that these individuals had to being deprived of being able to touch their family members or spouses. Ron Goldfarb got also Robert Ardrey, I don't know if that's a name that is familiar to you, but in the '60s and the '70s, he was kind of the first, uh, what do you call it, cultural anthropologist, or whatever. He did early studies of human behavior, including a pioneering book called, *The Territorial Imperative*, which addressed how man going back in ancient history had a need for a certain amount of space and how he attempted to exercise control and dominion over it. I can't take you through all the science, but he addressed the overcrowding problem at the jail and how it impacted psychologically the prisoners who were subjected to it. We had a research doctor from NIH who had spent his career doing behavioral analyses of rats as he subjected them to various kinds of crowding, initially being prompted to investigate it because of tenement conditions in metropolitan areas like New York City and inner city sections of other large cities and how crowded some of the spaces were. He testified at the trial in *Campbell against Magruder*, which was the name of the jail case, and talked about what his research findings were, that much happened when you took a living thing, in his case an animal, and subjected them to severe

overcrowding, and how it led to faulty behavior, and aggressive behavior, and cannibalism, and homosexual rape, and so on and so on. And what you could draw from that about conditions at the jail. So it was all a very exciting and compelling proceeding. The Department of Corrections to some extent didn't try to justify the conditions there. By that time, there were plans, and it may even have been that construction had commenced, to build a new jail. But I remember we had testimony from the department that they did not feel the old jail was really fit for human habitation. Well, unfortunately, there were, you know, a couple of thousand human beings who were being confined there. I think just before the trial, there was a riot at the jail, there were a number of them in those days. This one involved taking of some correctional officer hostages and, as I recall, injuries. I don't remember deaths, but there were certainly serious injuries to some of the guards. At a time when the riot was still ongoing, although it had been now controlled to the extent that the inmates and the guard hostages were confined in one cellblock, the inmates decided that they wanted to get before Judge Bryant in the United States District Court because they knew he was handling this lawsuit about conditions at the D.C. Jail, and they wanted to be heard about what they felt were unconscionable conditions. The Director of the Department of Corrections, Mr. Hardy, to his credit, very courageously offered to substitute himself as a hostage for the corrections officers and obtained their release if he would surrender himself into the hands of the inmates. We were called to Judge Bryant's courtroom at about 10:00 P.M. on a weekday evening, and there was enormous security all over the courthouse and in the courtroom because these rebellious inmates, with the Department of Corrections head as their hostage, were being brought to the courthouse and brought to Judge Bryant's courtroom. So they came up, we had a hearing, a brief hearing before Judge Bryant in which the complaints were primarily about the overcrowding at the jail and how that impacted everything else from medical care to sanitation to food to recreation to visiting rights and so on.

Judge Bryant was, as was usually his reaction, a good listener and made some comments about what was needed to address these issues, including particularly the fact that many of the residents of the jail in his judgment should not be there because of the Bail Reform Act. And that if better lawyers had been representing them in pursuing their client's rights under the Bail Reform Act, many of them would be out. Well, in the course of the evening's hearing, Mr. Hardy began to be ill and was suffering what they felt was a heart attack in the jury room behind the court where he was with his inmate captors. That put some more pressure on the proceeding, and ultimately it led to, with promises of no retribution, the inmates agreed to release Mr. Hardy so he could be taken to the hospital for medical treatment and they would return to the jail and to their cells, which they did. Judge Bryant directed that the Public Defender Service coordinate some method of getting lawyers to the jail the next day to review the situations of individuals who were there on a pretrial basis, because in those days the jail was almost exclusively pretrial residents and a few sentenced misdemeanants. So we did that, we put together kind of a crash team. We went over to the jail and interviewed lots of the residents. Unfortunately, many of them officially had appointed counsel, and so we had to deal with the problem of since it says in the court record that Inmate Jones is represented by Lawyer Smith, how do we go about filing a motion, since we're not Lawyer Smith, and even if we draft the motion, we can't be sure that Lawyer Smith will file it, so how do we deal with that? Ultimately, we got the Superior Court to agree that we could submit these motions, and it led to a number of the residents being released on pretrial conditions and bringing some relief to the situation there. But it was not until Judge Bryant really wrote his opinion finding that conditions at the jail were unconstitutional, focusing on a lot of things but primarily I would say on the overcrowding and on the terrible conditions involving the mentally ill in the jail, where they really had no treatment capability but where they had a number of seriously mentally ill residents who were just treated in terrible ways by

untrained corrections officers who didn't have any medical ability to deal with them in an appropriate fashion and found them simply threats or problems to their control of the cellblock, which undoubtedly they were.

Mr. Bennett: So what was the status of that case when you left PDS in '79?

Mr. Hickey: It had been appealed by the District to the D.C. Circuit. I remember that one particular part of the order—because Judge Bryant had imposed a population cap on the jail and said because that's the heart of the problem, and because he had testimony from the Corrections Department about how many they could realistically hold, he said the jail will not hold more than that number and if you start getting admissions that exceed that number, you will start releasing people, and I think he even provided, if my memory serves, that the releases would be of pretrial inmates, starting with those held on the smallest cash bonds. Well, there were emergency appeals. At one point I remember a stay was issued by, Circuit Judge, no wait—I remember going to the Supreme Court at one point before the final appeal was decided on the issue of this population cap and the release order. But it ultimately came down to a decision by the D.C. Circuit in 1978 affirming to the greatest extent Judge Bryant's factual findings by recognizing that now there was a new jail and there were some other issues about the remedy, and so it was remanded for further proceedings dealing with the appropriate remedy for these unconstitutional conditions. Well that grew into a litigation with a life of its own. When I left the Public Defender Service in 1979, I was really the only one still there who was familiar with the case and had been intimately involved in it. And so I agreed to take the case with me to Shaw Pittman and to continue to provide representation to the inmate clients.

Mr. Bennett: How long did that continue at Shaw Pittman?

Mr. Hickey: Uh, I finally ended my service in January of 2004.

Mr. Bennett: Wow.

Mr. Hickey: And in between we had, you know, numerous fights. Ultimately what happened—well, I guess not "ultimately"—in 1985, after many contempt proceedings and efforts to get the District to meet their obligations to remedy conditions at the jail, we finally reached a negotiated settlement with the District where they agreed to do a number of things because at that point, either we had a contempt finding or we were about to get one. Yes, we had an order from the judge that required them to do a bunch of things. And that finding brought them to the negotiating table and we negotiated a stipulation and a stay basically of the proceeding and then continued to have difficulties getting them to live up to that agreement. So that in 1995, Judge Bryant appointed not a receiver, but a special officer who served very much like a receiver, and a receiver actually over the medical and mental health services of the jail because that was an ongoing and extremely serious deficiency that affected the inmates' lives there. So the jail litigation continued with quite a bit of vigor and lots of court appearances really into the new century, until finally we were left with issues primarily about environmental conditions at the jail. Again, the population count kept increasing from time to time and that exacerbated those situations. But Judge Bryant eventually found in 2003 that there was no longer a constitutional violation in the conditions at the jail. In the interim, Congress had passed the Prison Litigation Reform Act in the early '90s, which undercut a lot of the legal bases for our ability to address the jail's problems in the courts, which is just what Congress had intended.

Mr. Bennett: Can you give me any examples of what you think some of the best results of that litigation were, in terms of improved conditions in the jail?

Mr. Hickey: Uh, yes, well they did build a new jail. I think they're on the verge of having to build another one because, although it's only been—'85—it's been about 30 years, I guess, that the new one has been in use, it's gotten some very hard wear and some very poor maintenance, and I wouldn't be surprised that before much longer, we'll be talking about another

jail. But, the tearing down of the old jail, which was a real, you know, pre-Civil War, Bastille-type facility, was a significant achievement. Also, through the good work of the medical and psychiatric care receiver, they did set up medical services at the jail that, for a time at least, were really, I think, kind of a model for the country in terms of correctional medical services. I don't think they've been able to maintain that, but they are still a whole lot better than they were, and there is a recognition that whether the inmate suffers from a physical illness or a mental illness, that it is a constitutional requirement that the state that decides to incarcerate him provide adequate medical care for those conditions. And that was something that was not happening in the past. I think there is, as the Corrections Department has become more professional, there is, and as they have gotten more used to oversight from the courts or supervisors or receivers, I think there is less brutality in the jails than there used to be. It's still not a nice place, not one where you'd want to spend any time, but it is, without a doubt, significantly better than what it was in the '70s.

Mr. Bennett: Good. And switching over to your career in private practice, are there any public matters that you would consider sort of the major cases of your career in private practice?

Mr. Hickey: Uh, no, I don't think there really are public ones. I mean, most—I do a lot of my work before administrative agencies. I've been involved in some other litigations but usually just in a role of being part of a team. I don't think I could really point to one big case that I tried in the civil area that would be responsive.

Mr. Bennett: Okay. Who would you say had been the major influences on you since you graduated from law school, mentors, people of that nature?

Mr. Hickey: Uh, well I think I told you last time that I had been very impressed by Edward Bennett Williams when I heard him speak when I was a law student. And continued to follow with interest his successes as he built his firm. He was not a mentor of mine, although I

knew lawyers who worked in his firm which in the early days was really quite small. I think that the people at the Prettyman program, including George Shadoan, who was the director just before I came, and Bill Greenhalgh, who was the director when I was in the program, were both very able attorneys who gave us a lot of guidance and help. But in those days, and particularly in the public sector, more than mentors there was kind of a peer support group, I guess I would say, where we each relied on each other for guidance and inspiration and emotional support and we certainly had that in the Prettyman program and at the Public Defender Service. Those were the people that I really grew up practicing law with, or grew up in the practice with.

Mr. Bennett: Are there any particular individuals you can recall who were particularly helpful to you?

Mr. Hickey: Gary Bellow, who was kind of my boss as the first—as the Deputy Director at the what was then the Legal Aid Agency, before it became the Public Defender Service, for sure would fit that bill. When I went back to the Public Defender Service, we had a lot of excellent lawyers, Charles Ogletree was a young lawyer who I hired in about—I would guess it was about '76 or '77 or '78, somewhere around that time frame that he came in. Bill Taylor was a peer and a very fine lawyer. Barbara Babcock when she was there was an excellent lawyer. Bill Schaeffer was another public defender and good friend who I spent a lot of time with. So they were all a good bunch. It was a great experience really.

Mr. Bennett: Shifting to another topic, you've been a member of the bar for almost 45 years now. What changes, if any, have you noticed in the profession during that period of time?

Mr. Hickey: Well, I would say one thing that is certainly an improvement is that there is a much heightened sensitivity to the professional responsibilities of the lawyers and their obligations under the Code of Professional Responsibility and the ethical guidelines to conduct themselves in an appropriate professional manner. That was something that was talked about,

but even legal ethics courses were not all that common in law school when I was going to law school. It was a very brief portion of the bar exam, but you just crammed in a few things for it and that was kind of the extent of it. But we've got a much heightened sensitivity to that, I think, these days. From my involvement with the criminal law, which goes back really as long as I've been practicing, I certainly can say that there has been a significant shift, that I'm not sure is a desirable one, into an increasingly pro-prosecution and anti-civil liberties slant in how that law is administered. I remember when the Bail Reform Act was passed, as a matter of fact, I even wrote an article about this for the *Georgetown Law Journal*, but we debated and discussed at length whether it was really feasible to conduct a preventive detention hearing at which the committing magistrate or judge was supposed to make a prediction about whether somebody was going to be dangerous if released. I continue to be skeptical that science has gotten to that level of perspicacity about human behavior, and I think what instead has happened is that society has grown comfortable with tolerating a very high incidence of false positives, that is, if you think anybody might be bad, lock them all up and guess what, you're never proven wrong. Because since they're locked up they haven't had the opportunity to do anything wrong. And if that's caused increased hardship to them or their families, that's just too bad. They shouldn't—they were in the wrong place at the wrong time. I think that's a very unfortunate attitude that has come on. I see, I see ramifications today when you look at the current Executive Branch and presidential administration and their cavalier attitude towards civil liberties and the need for legal justification for the ways in which they interrogate military combatants or people that are taken in connection with terrorist plots, they're feeling of entitlement to eavesdrop on U.S. citizens' conversations if there's a security, arguable security basis for it. That's a change that I have seen over the years that I think is unfortunate. It's not specifically related to the bar, but obviously the bar and the law, I think, have a great deal to do with it.

Mr. Bennett: Okay, have you been involved in politics at all during your career?

Mr. Hickey: Uh, no. No, I don't think I could say that I have. I vote, but that's about it.

Mr. Bennett: Okay. The next topic that I've got from our materials is what changes in court operations have you noticed during your career?

Mr. Hickey: That, I would say those are really revolutionary. I mean from the early days in the Court of General Sessions to the current Superior Court, and of course, the U.S. District Court, I would say the improvements have been marked. The Superior Court still struggles because of the volume of cases it has to process and the time constraints so that in the area of some of the more challenging jurisdictional portions that they are responsible for, for example, family law, juvenile, mental health, and so on, they are still struggling, still challenged, but they are much better off than they were. I think the bench in both instances—both the Superior Court and the District Court—have upgraded the quality of the judges significantly. I think both the appellate courts, the D.C. Court of Appeals and the D.C. Circuit, you can have your favorite or less-favorite judges, but I find very few instances where I would say that I think a judge is really not up to the job, not prepared and capable and doing what his task is as a judge. That was not always true in the past.

Mr. Bennett: Have you been involved in any bar associations during your career?

Mr. Hickey: No. I've done work, I sometimes have been involved in, when I was at the Public Defender Service, I was fairly involved with the bar because they were a real supporter and we kept our contacts with them as close as we could. Since going to private practice, I've done less of that. I've gotten involved in just a few things, separate project things.

Mr. Bennett: In our first session, I remember you speaking very highly of Judge Bryant from the District Court in D.C. In your career, are there any other judges who stand out to you as outstanding jurists?

Mr. Hickey: Uh. Yes, I would say that I thought very highly of Harold Greene, first as the Superior Court chief judge and then as a District Court judge. Besides Judge Bryant, I would say that there were other judges there who were very able, well, there were a lot of very able judges. The ones that I really had the most affection and respect for included Judge Penn and Judge Gesell, and on the Court of Appeals, of course, Judge Bazelon and Judge Leventhal, two of the, I think, really great judges of that court.

Mr. Bennett: How about adversaries? Are there any particular adversaries that you've had over the years who stand out as being particularly good as prosecutors or whatever the context was?

Mr. Hickey: Yes. When I was a—my first year as a lawyer, later Judge Tim Murphy was the Assistant United States Attorney in charge of the General Sessions branch. And I think I mentioned last time that I got involved in the middle of the night one night with representing an individual who had been arrested in a case involving the killing of a police officer during a foiled robbery attempt. And because of the sensitive nature of the case, Tim Murphy took over the prosecution at the Superior Court stage and opposed me before the—in those days we had coroner's inquests—and so I got to try my luck against Tim. He became, and was, a friend, and, of course, went on then to be a very able judge and since then, has continued to contribute to the Justice Department where he has worked. He's now deceased, but Vic Caputy was a long-time prosecutor, trial attorney in District Court. I tried a first-degree murder case against him. I think we developed a mutual respect for each other. We were very different, I mean, he was an old, I was going to say "old" but what I mean is a very experienced trial lawyer. I was a neophyte. He was, tended to be kind of a fiery, emotional trial lawyer. I was quite the opposite, but I think we both felt that we had represented our sides to the best of our ability, and we developed a friendship and respect that lasted beyond our trial. Earl Silbert was in the United States

Attorney's Office as a trial attorney in those days, but later as the United States Attorney, I always had a good relationship with him. I thought and think highly of his skills as a prosecutor. These are ones that come into my mind.

Mr. Bennett: Good. You mentioned that when you joined Shaw Pittman, it was quite small, when you joined it the first time, 12 attorneys, I believe.

Mr. Hickey: Yes.

Mr. Bennett: And now it's a little bit larger. Are there any particular people among the name partners—the original name partners—or others you could look back on as sort of "lions of the bar" who were responsible for the growth and prosperity, or is it pretty much spread around?

Mr. Hickey: I think it is diffuse, but both Ramsay Potts and Steuart Pittman, who were among the founding partners, stayed with the firm for a long, long time. Ramsay just passed away in the last, I guess it's now almost two years. Steuart Pittman still comes in from time to time, although he's in his upper eighties and basically retired. But they were both kind of, in some ways, the old-style lawyer. They came from careers of government service. Ramsay was one of the youngest commanding officers in the Army Air Corps during the Second World War, a recognized hero for his bravery during that conflict. Steuart Pittman had worked at Treasury and at the Department of Defense, and they continued to have contacts with the government where they were asked to contribute their experience and expertise. But their building of the firm really led them to, I think, create a very high standard of trying to do the best possible legal practice for their clients, and it was an atmosphere that I think they communicated successfully to a very, to a large, growing and quite diverse group of lawyers. I give them a lot of credit for that.

Mr. Bennett: The other two name partners were Shaw and Trowbridge. Were they active in the firm when you were there?

Mr. Hickey: Yes, they were. Shaw really in the earlier stages when I came back from the Public Defender Service, he was not as active as he had been at the start. But yes, when I first came in , he was very active. Trowbridge was really the father of the firm's nuclear energy practice and one of the first and I would say kind of the dean of the nuclear energy bar. He built that into a very significant part of this firm's practice. I never worked closely with him in it because as I kind of got into it in the '80s, he was starting to pull back a little bit because he was older. But yes, they were both involved when I was here.

Mr. Bennett: Apparently the founding partners were quite successful in grooming a second generation of people to lead the firm as they got older and transitioned out of the firm.

Mr. Hickey: Yes, I would say that's true. I think we've been very fortunate to have had a number of managing partners who have served their tour of duty with the best interests of the firm uppermost in their mind and have been skillful at helping it go through the inevitable pains that coming with growing from 12 lawyers to 800.

Mr. Bennett: I've exhausted my list of topics. Are there any other things that you'd like to discuss that we haven't discussed in our first or second session?

Mr. Hickey: No, I don't think so, Joel. I think you've, you actually have brought out from me more than I thought I would remember.

Mr. Bennett: (Laughs.) Then I've done my job. I'm going to stop the tape now. We can discuss some wrap-up points.

Mr. Hickey: All right, fine.