



J. PATRICK HICKEY, ESQUIRE

**Oral History Project
The Historical Society of the District of Columbia Circuit**

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The Historical Society of the
District of Columbia Circuit**

**United States Courts
District of Columbia Circuit**



J. PATRICK HICKEY, ESQUIRE

**Interviews conducted by:
Joel P. Bennett, Esquire
August 27 and September 5, 2007**

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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Interviews are conducted by volunteers, trained by the Society, who are members of the Bar of the District of Columbia.

Indexed transcripts of these interviews and related documents are available in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C., the Library of Congress, and the library of the Historical Society of the District of Columbia. With the permission of the person being interviewed, oral histories are also available on the internet through the Society's web site, www.dcchs.org.

Such original audio tapes of the interviews as exist, as well as the original diskettes of the transcripts (in WordPerfect format) are in the custody of the Society.

[Standard Form]

INTERVIEWEE ORAL HISTORY AGREEMENT

The Historical Society of the District of Columbia Circuit

Oral History Agreement of S. PATRICK HICKEY
[Name of Interviewee]

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, S. Patrick Hickey do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, transcripts and computer disk of my interviews as described in Schedule A hereto, including literary rights and copyrights. All copies of the tapes, transcripts and computer disk are subject to the same restrictions herein provided.

2. I also reserve for myself and to the executor of my estate the right to use the tapes, transcripts and computer disk and their content as a resource for any book, pamphlet, article or other writing of which I or my executor may be the author or co-author.

3. I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said tape recordings, transcripts and computer disk in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

[Signature] July 7, 2008
[Signature of Interviewee] Date

SWORN TO AND SUBSCRIBED before me this
____ day of _____, 200__.

Notary Public

My Commission expires

*I declare under penalty of perjury
under the laws of the United States
of America that the foregoing is true
and correct.*

Executed on July 7, 2008
[Signature]

ACCEPTED this 14th day of July, 2008, by Stephen J. Pollak, President of
The Historical Society of the District of Columbia Circuit.

[Signature]
Stephen J. Pollak

Schedule A

Tape recording(s) and transcript(s) resulting from 2 interviews of
PATRICK HUCKEY on the following dates:
(Interviewee) (Number)

<u>Date (Month, Day, Year) & Title</u>	<u>Number of Tapes</u>	<u>Pages of Transcript</u>
8/27/07		74
9/5/07		

The transcripts of the 2 interviews are contained on 1 diskette(s).

Standard Form

INTERVIEWER ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of PATRICK HICKEY

1. Having agreed to conduct an oral history interview with PATRICK HICKEY for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, J. E. BENNETT, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings, transcripts and computer diskette of interviews, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society to duplicate, edit, publish, including publication on the internet, or permit the use of said tape recordings, transcripts and diskette in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

J. E. Bennett 7/3/08
[Signature of Interviewer] Date

SWORN TO AND SUBSCRIBED before me this 3 day of July, 2008.

Patricia Jean Bennett
Notary Public

My Commission expires Feb. 7, 2012

ACCEPTED this 9th day of July, 2008, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
Stephen J. Pollak

Schedule A

Tape recording(s) and transcript(s) resulting from 2 interviews of
(Number)

PATRICK HUCKEY on the following dates:
(Interviewee)

<u>Date (Month, Day, Year) & Title</u>	<u>Number of Tapes</u>	<u>Pages of Transcript</u>
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D.C. CIRCUIT ORAL HISTORY PROJECT

INTERVIEW OF J. PATRICK HICKEY

by Joel P. Bennett
First Interview, August 27, 2007
1:00 P.M.

Mr. Hickey: You want to just see also if it picks up my voice from where I'm sitting, too?

Mr. Bennett: When and where were you born?

Mr. Hickey: I was born in Iron Mountain, Michigan, October 20, 1939.

Mr. Bennett: How long did you live in Iron Mountain?

Mr. Hickey: For about three years, and then we moved to Milwaukee, Wisconsin, for a year, and then we moved to Washington State, where I grew up.

Mr. Bennett: The name "Iron Mountain" suggests that it's a mining community.

Mr. Hickey: Yes, it's right on the Wisconsin-Michigan border in the Upper Peninsula, and at one point was famous for having the world's largest artificial ski jump. But I don't know if that's still true.

Mr. Bennett: Do you remember anything about your three years there?

Mr. Hickey: No.

Mr. Bennett: And you moved next to Milwaukee?

Mr. Hickey: Yes.

Mr. Bennett: And how long did you live in Milwaukee?

Mr. Hickey: Just for about a year.

Mr. Bennett: And do you remember anything about that?

Mr. Hickey: Very little.

Mr. Bennett: And then you moved to Washington State?

Mr. Hickey: Yes.

Mr. Bennett: And where in Washington State did you move?

Mr. Hickey: We moved to Walla Walla, which is in the southeastern corner.

Mr. Bennett: Now that town sounds familiar to me. What is Walla Walla's claim to fame, if anything?

Mr. Hickey: Al Jolson once referred to it from the stage of the local vaudeville house as "the valley they liked so well they named it twice."

Mr. Bennett: (laughs)

Mr. Hickey: Other than that, it's been in more than one punch line of a joke. It is an agricultural area. The Washington State Penitentiary is also there. But when I grew up there it was pretty much a farming community—wheat, peas, some fruits.

Mr. Bennett: Was your father a farmer?

Mr. Hickey: No.

Mr. Bennett: What was he doing in Iron Mountain, Milwaukee, and Walla Walla?

Mr. Hickey: He was in the theater business. He ran movie theaters and the company that he was working for in Wisconsin had purchased a chain of movie theaters in Washington State and sent him out there to basically run the chain of theaters.

Mr. Bennett: So did he travel all over the state of Washington?

Mr. Hickey: Pretty much up to Seattle. There were – on the eastern side of the Cascade Mountains up from Walla Walla to Ellensburg is the last little town before you go across the mountains and then down into Seattle.

Mr. Bennett: And did you live in Walla Walla until you graduated from high school?

Mr. Hickey: Yes.

Mr. Bennett: And did you go to public school there, K through 12?

Mr. Hickey: I went to Catholic school, St. Patrick's.

Mr. Bennett: And what are your memories of your Catholic school education?

Mr. Hickey: It was a great experience. I had— It was a small school. Focusing on high school, there was a large public high school in town and then St. Patrick's High School, where I went, which was significantly smaller. We had a graduating class of about 35 students. But it was a great experience. Because it was smaller, there was a strong athletic program, and we all participated in it. We were state champions in a smaller classification because of our total enrollment. We had mostly nuns teaching us, who were wonderful.

Mr. Bennett: What sports did you play?

Mr. Hickey: Football, basketball and track.

Mr. Bennett: And what was your event in track?

Mr. Hickey: I was a miler.

Mr. Bennett: And in football, what was your position?

Mr. Hickey: I was the center on offense and a linebacker on defense.

Mr. Bennett: Very good.

Mr. Bennett: While you were in Catholic school, did you do anything that would have predicted your career in law, like debate club or student government or anything like that?

Mr. Hickey: No, I can't say that I did. I was a musician, I spent a lot of time and effort on my musical skills as a pianist, but I did not—. I don't think we had a debate organization, and I was not in student government. I completed my high school program in three years and joined my older brother, who was a year ahead of me, in the graduating class. And he was the student body president.

Mr. Bennett: Uh huh. And what did you do after you graduated from high school?

Mr. Hickey: Then I went off to college. I went to Carroll College in Helena, Montana.

Mr. Bennett: That's two Rs and two Ls?

Mr. Hickey: Yes.

Mr. Bennett: Named after John Carroll?

Mr. Hickey: No, after a different Carroll, but it is a Catholic liberal arts college in Helena.

Mr. Bennett: And what led you to go there?

Mr. Hickey: Well, there were a number of things. I knew some—I had some contacts with people who had been there who had been on the faculty. And I wanted to go to a Catholic school, and it's not too far up from where I lived, and it just seemed like a good place. We made those decisions, when I was leaving high school at least, in a much more casual fashion than kids do today. I mean I didn't go look at schools anywhere. Just kind of decided at the last minute where I thought I'd go and went.

Mr. Bennett: Did you apply anywhere else, or was this your sole choice?

Mr. Hickey: I did. No, I had applied to some other schools, and had been accepted at other schools, but this was the one I decided to go to.

Mr. Bennett: Good. How did you like the college experience?

Mr. Hickey: It was great. It's a great place. Since we're talking about the D.C. Circuit Historical Society, it has actually quite a few contacts with the District of Columbia. Former Chief Judge Bill Jones was the football coach there—

Mr. Bennett: Wow.

Mr. Hickey: . . . after he graduated from Notre Dame and came out of the Depression era before he came back east as a lawyer. You may not remember Judge Ed Tamm—

Mr. Bennett: Oh, I remember him, yes.

Mr. Hickey: He was on the D.C. Circuit.

Mr. Bennett: Actually argued before him.

Mr. Hickey: There was another Helena person. Charlie Horsky, who was a preeminent member of the bar here,

Mr. Bennett: Remember him, too.

Mr. Hickey: grew up in Helena. I don't think Horsky had a Carroll connection, but he was a Helena native. So for a small town it had a lot of people end up in Washington.

Mr. Bennett: I see. And in addition to the normal academic activities, what else did you do while you were in college?

Mr. Hickey: I was a seminary student in those days. There was a seminary program at Carroll, and I was involved, contemplating studies for the priesthood and taking a philosophy degree as part of that preparatory process. I continued to pursue my music, just privately, they didn't have a music program there at the college. I guess that's about it.

Mr. Bennett: Let me go back and do a few fill-in questions about your family. You mentioned your father, you mentioned you had a brother a year older. Did you have any other siblings?

Mr. Hickey: Two sisters.

Mr. Bennett: And how—was there anything unusual about your family life growing up, or was it pretty much a typical American family.

Mr. Hickey: I would say typical.

Mr. Bennett: Now after you graduated from college, what did you do next?

Mr. Hickey: I was off for a year. I worked in Walla Walla. Because it's mostly an agricultural town, the job opportunities are plentiful in the summer and not so plentiful the rest of the year.

Mr. Bennett: What year was this?

Mr. Hickey: This would have been '59, '60. I graduated from college in May of '59.

Mr. Bennett: And what did you do during that year?

Mr. Hickey: And so I taught school at the local St. Patrick's grade school. I taught some piano lessons. I drove a school bus. And when summertime came, I went back to work in the harvest, which is what I had done most of the summers as I was growing up.

Mr. Bennett: When you say you went back to work in the harvest, do you mean—were you working machinery or were you hand-picking things?

Mr. Hickey: There was a large Bird's Eye frozen food processing plant there where I had worked for several summers.

Mr. Bennett: So did you work indoors?

Mr. Hickey: Indoors, where the machinery was used to process the product. Mostly peas, but also spinach.

Mr. Bennett: What were the working conditions like?

Mr. Hickey: They were fairly tough. I mean, we worked, we worked 12-hour shifts six or seven days a week. There was no air conditioning. There was a lot of—the processing of peas involves first what they call blanching them in a steam process. There was lots of water, lots of humidity and lots of heat. And—

Mr. Bennett: So it sounds like it was pretty uncomfortable.

Mr. Hickey: Yeah, it was fairly— It made me appreciate having air-conditioned jobs later on in life.

Mr. Bennett: Right. And when you—how old were you when you first started working in—

Mr. Hickey: 16.

Mr. Bennett: And do you remember how much you got paid?

Mr. Hickey: \$1.35 an hour.

Mr. Bennett: Did you get paid overtime when you worked more than 40 hours a week?

Mr. Hickey: Uh, yes. We did. It might have been over 50, though. I think—

Mr. Bennett: There might have been exemption under the Fair Labor Standards Act to agricultural workers, or something like that? But you were glad to have the job and make the money, I take it.

Mr. Hickey: Right. When I decided that I wanted to go to law school, which I decided early in 1960, I knew that I was going to have a difficult time financing it. And so I wrote—I took — Again, I'm struck by the difference between the way young people approach these things today, and how we did it in our day. I didn't take the Law School Aptitude Test in the fall and decided, you know, January or so of 1960, that I wanted to go to law school; found out that you could take the last aptitude test in February or March, so I just walked down and took it.

Mr. Bennett: You didn't take any prep courses or buy any books or anything like that?

Mr. Hickey: Nothing like that. And you could in those days send your results to three law schools and if you wanted to send it to more, you had to pay additional fees. I really, I only could think of two that I knew anything about.

Mr. Bennett: What were those?

Mr. Hickey: I sent one set of scores to Georgetown. I had a friend who was a lawyer in town who was a Georgetown alumnus. And I sent them to Michigan because I still had relatives in the Michigan area and I knew by reputation that it was supposed to be a good law school. So I sent them to those places. I applied for scholarships there, and I got tuition scholarships at both of the places. But I was not sure I was going to be able to finance it even with that, because it didn't cover room and board expenses. Then a friend of my father's—when my dad told him that I was wanting to go to law school but was concerned about whether that would really happen, who was a Harvard Law School alumnus suggested that Harvard had a really excellent financial

aid program. This by now is around May, and I applied there so I paid an extra two dollars to get my law school aptitude test scores sent there. Then, in about the third or fourth week of June, I got an acceptance notice with a scholarship award that was significantly better than what I had gotten at the other schools and really made it look like I could do it with some stretching.

Mr. Bennett: So did you enroll in Harvard, then?

Mr. Hickey: So I went to Harvard that August and studied there.

Mr. Bennett: Do you remember how much it cost a year back in those days?

Mr. Hickey: I think I do. I think it was, I think it was \$1500 a semester tuition.

Mr. Bennett: So that was three thousand dollars a year plus whatever your living expenses were.

Mr. Hickey: Right.

Mr. Bennett: Do you know what the tuition is now?

Mr. Hickey: I would guess it's around 35.

Mr. Bennett: I just had a reunion at Georgetown last fall, and the tuition there is 37 (thousand) a year, so I'm sure Harvard is that much or more.

Mr. Hickey: Yeah, probably 35 or 40 (thousand).

Mr. Bennett: And where did you live when you were in law school?

Mr. Hickey: I lived in the dormitories.

Mr. Bennett: They had dormitories for law students?

Mr. Hickey: They did, right there on the campus. It was a—They were really very, very good to me. There was a very tiny Irish Catholic woman in the financial aid office who I think thought I needed some help. And so, I mean I worked all the time that I was there at a variety of different jobs and she was very good about floating loans. And then finally, I think in my last year, she said, you know when we get to a certain stage of loans, we don't want to, we

don't want to burden our students with too much, so we just give you a grant after that. Which I thought sounded pretty good.

Mr. Bennett: What types of jobs did you work at while you were in law school?

Mr. Hickey: Oh, I did a lot of things. I worked at the Harvard Undergraduate Theater, both selling tickets and ushering for the nighttime performances. Usually if you worked during the day in the box office, you could study while you were sitting there until a customer came by. I translated a scientific treatise in Latin for a professor at MIT who was doing work in the history of metallurgical science. It was an avocation, a sideline of his. He had this 17th Century treatise by a Swedish metallurgist that had been written in Latin and posted a sign on a bulletin board at the college, you know where they had job opportunities, someone to translate this. I did that. I'm a published author in that sense, a published translator. More than once I—in those days, the hospitals in Boston offered twenty-five dollars a pint for blood, which they let you give once every two months. And so I did that. I worked for the Department of Economics in the undergraduate school just doing typing and clerical work.

Mr. Bennett: So you knew how to touch-type when you were in law school?

Mr. Hickey: Yes, I actually became quite a good typist because when I first went to law school, I got a ride back early with one of my fellow Walla Wallans that I didn't even know before. But he was driving across country and wanted someone to help with the driving and the gas. And so I went with him. He was going back a little early because he was on the Law Review, and they had to show up early. So I got there about three weeks before classes began and needed to find a job and in those days, the professors used clerical help often to type multilith materials or class materials when they didn't have textbooks. So I got a job.

Mr. Bennett: What were multilith? Multilith like mimeographs?

Mr. Hickey: Yeah, like mimeographs. You typed stencils and they're a real pain to correct, so you learned to do them well. And I got paid piecework. So I got paid—don't know what it was—I think a couple of bucks per page. And so if you were good, it was, you know, legal-size papers, and I first discovered the beauties of the citation system, which I had never been exposed to. And all the numbers that you have to type as you cite these case reports. And he had a lot of foreign materials because he was an international law professor. So I mastered my typing skills pretty well.

Mr. Bennett: When did you first learn how to type?

Mr. Hickey: I taught myself typing between high school and college, in the summer, just got a book and practiced.

Mr. Bennett: Was it rare when you were in law school for a law student to be able to type well? Or was there a lot—

Mr. Hickey: Uh, I don't think it was so rare. I have a recollection from law school. In those days, you could type your exams in —

Mr. Bennett: In a separate room?

Mr. Hickey: In a separate room. They had two rooms. One for the writers and one for the typers, and I always went to the typing place because it was so much faster that I could really spend more time thinking about it. And there were a lot of people in the typing room and the usual big rooms. And my class was 550 students or something. And—

Mr. Bennett: Was it noisy in the typing room when you took an exam?

Mr. Hickey: Well, it was. I mean, everybody was pounding away. What I remember is that the first person who hit a key always provoked a hiss

Mr. Bennett: (laughs)

Mr. Hickey: because everybody else was still in the middle of the problem and trying to understand what they were going to say and then somebody would start to type.

Mr. Bennett: You brought your own typewriter to the room?

Mr. Hickey: You brought your own typewriter.

Mr. Bennett: And were they portable electrics in those days? Or just portable?

Mr. Hickey: Portable.

Mr. Bennett: Portable manuals.

Mr. Hickey: Yeah, portable manuals.

Mr. Bennett: Hmm. So they were pretty noisy, I'm sure.

Mr. Hickey: (laughs)

Mr. Bennett: And did you go straight through law school in three years?

Mr. Hickey: Yes.

Mr. Bennett: What was your first law clerk or lawyer-type job while you were in law school, if you had any.

Mr. Hickey: The first summer I came back to Walla Walla and worked in the pea harvest again. The second summer I worked for a law firm in Walla Walla, for the lawyer friend of my father's who had suggested Harvard.

Mr. Bennett: You worked as a law clerk?

Mr. Hickey: I worked as a law clerk there after my second year.

Mr. Bennett: How big a town was Walla Walla in those days?

Mr. Hickey: Twenty-five thousand.

Mr. Bennett: And how many lawyers would you say there were?

Mr. Hickey: Thirty or forty.

Mr. Bennett: How did you enjoy working in the law firm?

Mr. Hickey: It was good. They had a general practice and it was, you know, fairly formal. The bar was tightly knit and cordial to each other, and there was a small-town atmosphere that encouraged everyone to behave like gentlemen. I thought it was a good experience for the summer.

Mr. Bennett: Would this have been the summer of '61 or '62?

Mr. Hickey: Uh, '62.

Mr. Bennett: Do you remember how much you got paid as a law clerk?

Mr. Hickey: No, I really don't.

Mr. Bennett: Okay. So then you went back to Harvard for your third year. Did you do anything differently third year in terms of working?

Mr. Hickey: No, I did more work as a research assistant. One of the professors that I was taking a class from on law and medicine was updating a textbook or something. But he needed a research assistant and had money to pay for it, so I hired on, did that.

Mr. Bennett: Was it hard to get research assistant jobs when you were in law school?

Mr. Hickey: Not too. Not too. I don't think there were a lot of law students that were working in those days.

Mr. Bennett: Cause some of the, historically, some of the most famous professors people liked to deal with, Frankfurter or whatever, seemed, from what I've read about them, seemed to have their favorites of people that they would hire who then would go on to Supreme Court clerkships, and things like that. I suppose that was sort of a higher level—

Mr. Hickey: Yeah, yeah, I think so. I think—I don't think a lot of the professors used research assistants. Don't know why, maybe because they—

Mr. Bennett: Did you have a favorite professor when you were in law school?

Mr. Hickey: I did. I did. Paul Freund was the constitutional law star of the faculty. In my second year—in those days, the curriculum was almost all mandatory. I think you had one choice your second year, none your first year, one your second. So in the second year, I had to take corporations, tax, accounting, commercial law, constitutional law, and one other thing. And I had never had a taste for, generally speaking, business law. I never had thought that I'd become a corporate lawyer, and I couldn't care less about accounting. And I had this enormous dose of all these business-oriented practices. I found the classes just painful. But constitutional law was a joy because Professor Freund, besides being enormously smart, was a terrific teacher. Witty and clever and kindly and just kind of—

Mr. Bennett: This was second year?

Mr. Hickey: This was my second year.

Mr. Bennett: Let's go back to first year for a moment. Did you have a favorite course or professor first year?

Mr. Hickey: We did have kind of a favorite professor. We, several of us, we were just assigned, and the first-year property course had different sections to divide up the 550 first-year students. And I was in a section taught by Barton Leach, who was a, who had the property textbook that was used in many of the schools. We used Casner and Leach, Professor Jim Casner taught one section and Professor Leach taught the other. Professor Leach was a character of some renown. Things were somewhat different in those days. He was famous or infamous for conducting what he called "ladies' day," when he required the female students in the class to kind of lead the class from the stage while he sat in the audience and peppered them with questions. I think he actually helped them secretly prepare for it, to take off some of the anxiety. But it was still a fairly anxious performance and, of course, you know a class of 550, we had about a dozen women. Unlike today.

Mr. Bennett: Any minorities that you recall?

Mr. Hickey: I don't think so.

Mr. Bennett: So that was about two percent, two to three percent women.

Mr. Hickey: Yeah. He was kind of gruff and quick, but then he also had a sense of humor and a warm streak. The last class before the Christmas break, I remember, without any advance notice he came in, this was like 11 o'clock in the morning, and he took his usual spot at the front of the lecture hall and said, "We're going to do something different today." And kind of gave a signal to the back and three or four of our classmates came in with cases of beer. He pulled out a flask from his jacket and had a little nip and then took out his accordion. And led us in song for the class. It was kind of a humanizing gesture for a place that could otherwise be kind of big and—

Mr. Bennett: Have you seen the movie "The Paper Chase"?

Mr. Hickey: I don't think I have. I'm familiar with the story.

Mr. Bennett: Was the Harvard Law School of your day anything like that or, the movie basically makes it seem like it was very cutthroat and people were having, students were having nervous breakdowns and this particular professor was a real autocrat, used the Socratic method to humiliate people.

Mr. Hickey: I would say there was some of that. But I think there was an effort to try to avoid it on the part of some of the, particularly the younger faculty members. There were some very kind and caring senior faculty members as well who were terrific teachers and very interested in the students. The students that I became friendly with from my dorm and my classes and so on were just good friends. I never saw that kind of cutthroat, you know people taking advantage of other people. I mean you heard stories about some of it going on, but I can't say that I saw any of it.

Mr. Bennett: Nothing like books being stolen out of the library when you needed them to prepare for an assignment or anything like that?

Mr. Hickey: No.

Mr. Bennett: And what was your third year like?

Mr. Hickey: My third year was finally a little bit more peaceful because I found it a challenging experience. I'd always gone to a really small, very small schools in very small towns, and I was kind of thrown into a much bigger pond. And I worked very hard. So I was glad by the time the third year came that I could see the end in sight.

Mr. Bennett: And when you – did you have any goal in terms of what you were going to do after law school? What did you do immediately after and how did it happen?

Mr. Hickey: I did have a goal. In those days—I think still today—it was required that all of the first-year students participate in a moot court, which was an appellate moot court. You did it twice. Once in the fall, and once in the spring of your first year, and all of the students participated. And through some good luck I did very well in the fall competition and won an award for the best oral argument. And did well in the spring, too. And about that time, as part of the speakers' series, Edward Bennett Williams came to Harvard and spoke at the Harvard Law School forum and gave a very entertaining and interesting talk about his practice and kind of criminal defense work and so on. And so it gave me an interest in litigation that I tried to structure to the extent I could in my third year, some of my coursework towards that area. I had a trial practice course much different from the way they teach it today. And not nearly as good, I would say.

Mr. Bennett: Less clinical and more book oriented?

Mr. Hickey: Yeah, yeah, yeah. And I took, you know, the usual course in evidence and some things like that that were related but—

Mr. Bennett: One of the criticisms of law school is that teachers don't have practical experience for things like evidence and trial practice. I would think that would be particularly important. Do you remember whether your professors third year had any great practical experience in evidence?

Mr. Hickey: I think not a lot. The person who taught the trial practice course had done some work, but I think more on a higher level for large insurance companies, not as a trial lawyer but as a risk liability lawyer type. So, yeah, I don't think they had a wealth of practical experience like many more of them do today. And then in the third year there was an announcement from Georgetown for the Prettyman Fellowship program. And I remember that Ken Pye, then the—no, he was not then the dean. He was in charge of the Prettyman Fellows program but he was not then the dean of the law school. He came up and interviewed, and I interviewed with him. And I think it was not until the spring that we had, that the selections took place, but I was called in the spring and said I'd been selected.

Mr. Bennett: Spring of '63?

Mr. Hickey: '63. That required that I be admitted to the D.C. Bar as part of the program, so after law school I came to Washington, took the bar, and started in September. Well, I worked in the summer at the Prettyman program. They were putting out a book, and so I did the index and did some editorial work on the book.

Mr. Bennett: What was the book about?

Mr. Hickey: Criminal defense.

Mr. Bennett: And was the Prettyman Fellow program in those days a strictly criminal defense program?

Mr. Hickey: Yes. It was only—I think we were the third or fourth class of Prettyman Fellows. It had been set up before in honor of Judge Prettyman of the Circuit Court through the

assistance of John Warner, the Senator from Virginia, in terms of making some funds available since he was married to a Mellon in those days. And there were six of us. And the program was that you came, did a lot of studies and training just among the group, represented indigents in the District Court where all the criminal work was done, and took some classes and ended up with an LLM as well.

Mr. Bennett: Did you do appeals, too, or just the trial work?

Mr. Hickey: I think we did an appeal, Joel, but I don't remember actually arguing any in the Prettyman session. It was mostly trial work. In those days, in '63, there were preliminary hearings in what was then the Court of General Sessions. And preliminary hearings before a United States Commissioner—that was then—much later a magistrate in District Court. But all the felonies were tried in District Court. And so once we were admitted to the bar in the late fall of '63, we started taking cases, going to trial as they progressed through the system.

Mr. Bennett: When you had your first actual courtroom experience, was there a more experienced person with you or did you do it on your own?

Mr. Hickey: You just did it on your own. Typically, the director of the program would come and observe sometimes. If you happened to be in a case with co-defendants, you might have a more experienced counsel representing the other—

Mr. Bennett: And was Ken Pye the head of the program the entire time you were in the program?

Mr. Hickey: No. George Shadoan, now still a prominent trial lawyer, mostly in Rockville, became the director. No, he'd been the director in '62 and '61, and then Bill Greenhalgh was the director the year that I was there. And Ken Pye had administrative responsibility for the school.

Mr. Bennett: As some type of dean, perhaps?

Mr. Hickey: Yeah.

Mr. Bennett: And so in terms of your training, was Professor Greenhalgh the primary person who trained you?

Mr. Hickey: Yes. And he brought over guest speakers. I remember particularly Bill Bryant came over and talked to us. He had sessions with several representatives from the prosecutor's office to talk about papering cases, the grand jury system, things like that. We met with the bail to get the story on how they operated. It was quite an experience. It was really great.

Mr. Bennett: So you enjoyed those two years?

Mr. Hickey: Oh, yeah. In those days, it was one year.

Mr. Bennett: Oh, I see. It's now, it subsequently became a two-year program?

Mr. Hickey: It subsequently became a two-year program.

Mr. Bennett: So you did that from '63 to '64. And what did you do in '64?

Mr. Hickey: In the fall of '64, I remember that I had a first-degree murder case that I had been working on that was coming to trial and I wanted to make sure that I tried that, which I did in the September/October '64 time frame. And then, because I had been receiving draft deferments all through my educational career, the Draft Board decided that it was time that I did my—

Mr. Bennett: Faced the music. (Laughs.)

Mr. Hickey: So in those days there was a program in the Navy Reserve for lawyers where you could get a commission, but the requirement was that you had to serve six months' active duty first. And the Navy didn't have openings in their six-month active duty program. So I enlisted as an enlisted man in the Air Force Reserve, did six months on active duty, and basically a year before I could get my Naval commission and I became a Lieutenant (j.g.) in the

Navy JAG Reserve and spent the rest of my time in the reserves so that I could practice law basically and just do this—

Mr. Bennett: So how long were you actually on active duty in the military?

Mr. Hickey: Six months.

Mr. Bennett: So that would have been in '64 to '65?

Mr. Hickey: Right.

Mr. Bennett: So you were living in Washington when JFK was assassinated.

Mr. Hickey: Yes, I was.

Mr. Bennett: What are your recollections of that day and the days that followed?

Mr. Hickey: I do recall it. I recall hearing it at the bus stop outside Hecht's, 5th and E, 6th and E, as I was catching the bus to go home. And being shocked and horrified.

Mr. Bennett: Where did you live when you were a Prettyman Fellow?

Mr. Hickey: I lived in a wonderful house in Georgetown I stumbled on through the greatest good luck, at the corner of 31st and R, with three other young lawyers and an elderly woman, who worked for the Defense Intelligence Agency and kind of manned the house, and a live-in cook. So it was a great place to live and the price was right.

Mr. Bennett: How long did you live there?

Mr. Hickey: I think about three years.

Mr. Bennett: So that would have been from about '63 to '66?

Mr. Hickey: Yeah. Oh, when I came off active duty, I got a job with what was then called the Legal Aid Agency, the forerunner of the Public Defender Service. And I started there in the spring of '65 after I got off active duty, like March/April, around then. And I went right to work for Legal Aid.

Mr. Bennett: Who was the head of the Legal Aid Agency at that time?

Mr. Hickey: Charlie Murray was the director. He was a very distinguished older gentleman, a fine man and a good lawyer. I think he had been an Assistant U.S. Attorney and in private practice. He may have been if not the first, then probably the second, director of the agency. Because it had only been started about 1960 or '61.

Mr. Bennett: How many attorneys were there in the agency at that time?

Mr. Hickey: I think there were about a dozen of us.

Mr. Bennett: And was it divided into sections at all or did everyone do everything?

Mr. Hickey: Well, there really weren't many sections. We—all the criminal cases were still in the District Court so we all just took felony cases. I think one person served at the United States Magistrate, Commissioner as it then was, and one person provided representation before the Mental Health Commission on cases from St. Elizabeth's Hospital.

Mr. Bennett: Did you do your own appellate work? If you took a case to trial, did you do the appellate work or did you have a couple of specialists within the Legal Aid Agency?

Mr. Hickey: We didn't have appellate specialists. I think most of those ended up being farmed out. I think the private bar took more of those, as I recall.

Mr. Bennett: And do you remember how much you got paid when you worked at the Legal Aid Agency?

Mr. Hickey: I remember when I was a Prettyman Fellow I got \$4,000 a year. But because it was an educational stipend, it was tax-free. I think at Legal Aid it paid somewhere around like seven, maybe, something in that vicinity.

Mr. Bennett: So you were at Legal Aid from the spring of '65 until when?

Mr. Hickey: Until the spring of '67, at which point I had been approached by a lawyer who had gotten some help from the Legal Aid Agency on an appointed criminal case and had

come back to them to ask if there was anybody there that might be looking to move on because he was looking for some help. And he was a young partner at Shaw Pittman.

Mr. Bennett: What was his name?

Mr. Hickey: Phil Bostwick. And so he talked to me about whether I might be interested in moving on and I decided I was. And so I came to Shaw Pittman in the spring of '67.

Mr. Bennett: And were they located at 910 17th Street at that time?

Mr. Hickey: Yes, they were. It was a grand old building, the Barr Building.

Mr. Bennett: I started out there in 1976, and I had Gerry Charnoff's old office.

Mr. Hickey: Oh. Well then you know where we were.

Mr. Bennett: Right.

Mr. Hickey: Overlooking Farragut Square. And when we moved there, they still had the elevators that were operated by some very elderly ladies—

Mr. Bennett: They were still there in '76 when I was there. And how many attorneys did Shaw Pittman have when you joined the firm?

Mr. Hickey: A dozen.

Mr. Bennett: And that was in the spring of '67.

Mr. Hickey: Right.

Mr. Bennett: And when you joined Shaw Pittman, what type of work did you do?

Mr. Hickey: I was doing litigation work. They had a significant practice, mostly with foreign, primarily British, aviation insurance companies. And so we did aviation accident defense work for those companies and underwriters at Lloyds. And that's what I was hired to do and what I did for them.

Mr. Bennett: Was that work local or all over the country or all over the world?

Mr. Hickey: All over the country primarily.

Mr. Bennett: So you did a lot of traveling?

Mr. Hickey: A lot of traveling, yes.

Mr. Bennett: And when you came on board you were an associate?

Mr. Hickey: Yes.

Mr. Bennett: And how long did you remain an associate?

Mr. Hickey: I stayed there until 1970 and then I left. The Public Defender Service had just been created as part of the court reorganization of 1970. And so I went back to the Public Defender Service.

Mr. Bennett: As the director?

Mr. Hickey: No, I went back—one of the mandates from the new legislation was that the Public Defender Service was to take greater responsibility for training and utilization of the private bar to assist them in the representation of indigent defendants. And so I went back to head that portion of their new responsibility. And there was a program that we embarked on to try to increase the amount of private bar participation because it was—this may be slightly before your time—in those days, there was the very small Legal Aid Agency, then the Public Defender Service, and there was the local bar from the Court of General Sessions primarily, and to a lesser extent from the District Court. But there were not many attorneys who practiced down there regularly except for regulars—and there were concerns about some of the regulars—whether they were really providing adequate representation.

Mr. Bennett: They were called "Fifth Streeters"?

Mr. Hickey: They were called the "Fifth Street Bar," yes. And one of them pointed out to me once with pride that Daniel Webster had his office on Fifth Street. But—I think everybody felt among the judges that there was certainly room for improvement in the quality of representation that they provided. So the goal was to try to increase private bar participation.

There was a plan which we had negotiated with what was now the Superior Court of the District of Columbia to try to bring down more attorneys. I think Chief Judge Harold Greene, although initially supportive, felt pressured by the volume of cases that he was responsible for processing in that court and was worried that an influx of private lawyers would drive away the existing bar that he had no choice but to rely on to get representation for people processed in his court. So it all pretty much came to naught, although I think it did serve a function in bringing to light some of the situations and conditions at the Superior Court, the need for some improvements.

Mr. Bennett: What was your title when you went to PDS in 1970?

Mr. Hickey: I was the Director of Criminal Justice Act Programs, or the Criminal Justice Act Program.

Mr. Bennett: And how long did you maintain that title?

Mr. Hickey: I became then the Deputy Director of the Agency in about '72 or '73. And then I became the Director in '75.

Mr. Bennett: And how long did you stay as the Director?

Mr. Hickey: I stayed until 1979.

Mr. Bennett: Let's go back to your career at PDS. Having graduated from Georgetown and became a member of the D.C. Bar in 1972, I remember while I was a law student at Georgetown that there was a lot of talk about abuses in the CJA system, that several attorneys were making too much money or were falsifying records or padding time. Did you get involved with that or are you strictly with training?

Mr. Hickey: Mostly with the training and trying to increase their participation because the courts, the judges, continued to sign off, I think some of them reluctantly, on voucher requests for payment. I mean there were a lot of other—there were other issues about the—other

concerns about the quality of the representation from some members of that bar that the judges tried to deal with.

Mr. Bennett: Was there ever any discussion of trying to create a PDS that would do all of the criminal defense work or somehow—

Mr. Hickey: There was some talk about that, but never, I don't think it ever really got going very far. A little bit of the history that I recall is that, well I remember specifically when the Legal Aid Agency was set up, which I was not around for, but I was there three or four years after, I remember being told that it was very much intentional that it was not called the Public Defender Service at the start because in those days, the District of Columbia was very much a creature of the congressional committees (unintelligible) that were chaired in many important instances by conservative southern congressman who were not really supportive of representation for indigent criminal defendants in the District where most of them were minority people anyhow. So they were, they were tacking their sails a little bit to try to make sure that it got established and in the early days, when I was first there Gary Bellow, who later became a professor at Harvard and set up their clinical program at the law school, was the Deputy Director. And they did not have an individual calendar system in the U.S. District Court. They had an assignment court, do you remember that?

Mr. Bennett: I was admitted in '72, and I think they were just changing over to individual system. But of course in Superior Court, they've had that until fairly recently and the Eastern District of Virginia has that, too. And to me, it's a nightmare.

Mr. Hickey: Well, when I was first at the Legal Aid Agency, the chief judge was Matthew F. McGuire, who was a real character, interesting man. And he would run assignment court in the morning, and it was always a show. And poor defense counsel would sometimes—basically, they'd call the case and the prosecutor would say they were ready and

defense counsel would have to say whether they were ready or not, and if there was a judge available and Judge McGuire would say, "All right, report to Judge Holtzoff."

Mr. Bennett: (Unintelligible) (laughter)

Mr. Hickey: Tried one of my early cases before this man. But there was some pressure on the court to assign the Legal Aid Agency lawyers cases when they couldn't find other counsel. And Gary Bellow, among others, let it be known that while he was a hardworking lawyer and was prepared to do that, he was not going to take cases that he couldn't handle. And he was sent out, over his objection, by Judge McGuire to try a case that he had just recently been appointed to. And it went to Judge David Pine, who was then a senior judge, had been around since the '40s, a wise old man, I say that in a complimentary sense, and at the start of the trial, when the judge asked if they were ready and whether they should start empaneling the jury, Mr. Bellow said no, he was not ready, that he hadn't had time to prepare the case, that he had not done any of the following things that he enumerated, and that if he were compelled to go trial and there was a conviction, he would think it was his professional responsibility to testify on behalf of the client that he had not received effective assistance of counsel. And the story was that Judge Pine called Mr. Bellow to the bench and said, "You know, young man, you're not going to be very popular around here, but I understand what you're saying." Then he called Judge McGuire and said, "Unless you want to try all of these cases over again, you better recognize that you can't make these cases go to trial when counsel says they're unprepared to try them." And so it kind of set a tone that the Public Defender Service, unlike defender offices most everywhere else in the country, would control its case load and would not take cases that they couldn't handle. And it made all the difference in the world in being able to give quality representation.

Mr. Bennett: Let me go back to your Prettyman days and then Legal Aid Agency days—I've never done criminal defense work at the trial level, I did a few CJA appeals early in

my career, but there's at least one book that's been written where the title was something like, "How can you represent these people?"

Mr. Hickey: That was a lawyer that worked for me, yes.

Mr. Bennett: And did that syndrome ever bother you when you were doing criminal defense work?

Mr. Hickey: No, I can't say that it did. There were a lot of very emotional and troublesome cases, where you felt sympathy and sorrow for what had happened to people. But I frankly found that most of the clients that I represented, I was able to feel some empathy with as well. That's not a hundred percent true, but I would say it's about 90 percent true. Many of them were people who had had few advantages and a lot of difficulties in their lives. Usually I had a good relationship with them, they were kind and respectful to me, and they seemed to appreciate what I was doing for them, or trying to do for them. And we were just, I think, able, maybe of necessity to some extent, to block off the horrors of the offense with which they were charged and focus on what our responsibility was. I mean, we used to say to ourselves and to each other, "I'm not the judge of this person, I'm his lawyer or her lawyer and whether they're morally culpable or not, I leave to someone else. I can't—I'm not in a position to figure that all out given their background and circumstances, and so on." So we just put that aside and focused on what we were being charged with doing, which was providing them the best representation we could.

Mr. Bennett: Sure. During the years that you were actually a litigating attorney for both Legal Aid and Public Defender, can you give me any approximation of the cases you handled, what percentage pled out versus going to trial?

Mr. Hickey: Well, there was—even in those days there were a lot of pleas, probably even more in some ways because we didn't have sentencing guidelines and we had some ability to arrange for cases for pleas to be given before certain judges. And some of the judges were

more receptive to sentencing arguments for mental health services or probationary services. The Legal Aid Agency had, through a grant, one of the first offender rehabilitation social work programs in the country connected with a defender office. And they did excellent—it's now a permanent part of their agency, but they did excellent service with juveniles and adults as well in attempting to provide rehabilitative programs, including drug care and treatment, psychiatric or psychological counseling, job placement services, family services, so that you could go to a judge who was considering a sentence to impose and say in a fairly persuasive way, "It's not necessary to put this person in jail or not for a long time anyhow. He deserves a chance and we have a program that has a reasonable prospect of success." And so we were able to, I think, make a much more positive impact both on the system and on the individual defendants. Now the swing of the pendulum has been so much that there's a, I think, an over-readiness to wash your hands of them and a resultant over-incarceration and enormously severe sentences that are really just delaying the problem that we're going to have to deal with sooner or later. But I think I tried about maybe a third or so of the cases that I had as a Legal Aid lawyer.

Mr. Bennett: Well, from what I've seen of statistics, that's a pretty high rate of trials in the criminal system.

Mr. Hickey: Yes, I think that's true.

Mr. Bennett: And the other thing that I remember we used to discuss in law school—Sam Dash was my criminal law teacher first year, which was very interesting—was what do you do when you have a client who is gonna get up there and lie, and you have some basis for knowing it's a lie. Did you ever face that situation doing criminal defense work?

Mr. Hickey: Really, it came up much less frequently than I had been led to expect. I had, first of all I had few clients who would admit that they had—would admit their guilt at the start. And when they don't do that, you're always left uncertain—I mean you know, or you try to

know and try to find out what the evidence is against them. But if their posture with you is that they are denying that they were guilty of the offense, then there's no problem from an ethical point of view of having them testify to their denial. Obviously, there's a psychology and a human relations aspect to it so that if you have a good relationship with your client, and if you're not insisting that he confess to you in a way that will make it difficult for him, and are able to persuade them that their chances at trial are slim to none, then you can attempt to work out an arrangement for them and bring them gradually to admit their guilt to the judge as they must at the plea proceeding.

Mr. Bennett: Were you generally successful in doing that, would you say? Or I don't know if—it may be hard to quantify that, I suppose.

Mr. Hickey: I think generally I was.

Mr. Bennett: And we're about to end this tape so I'll just ask one more quick question. In the years when you were actually trying cases as a criminal defense lawyer, did you have any particular favorite judges that you liked to appear before?

Mr. Hickey: Yes, Judge Bryant was one, for sure. The others were more of a mixed bag. I tried a serious homicide case before Judge Sirica. I had one of my first trials before Judge Holtzoff, that was a unique experience, later reversed on appeal. Judge Luther Youngdahl who was the former governor of Minnesota, was a kindly judge. Judge Spottswood Robinson when he sat in the trial court was an excellent judge, very meticulous and careful and detail-oriented so that it took a long time to finish your trials.

Mr. Bennett: And back in those days, was all your work in District Court?

Mr. Hickey: Yes. Yes. There were—I'm trying to remember if I ever tried a misdemeanor in General Sessions—I don't think I did. I had some preliminary hearings over there. I remember going there at two or three in the morning one night for a presentment of an

individual defendant who had just been involved in the homicide of a police officer and who was being presented before a judge at 2:00 A.M. and the prosecuting attorney knew he needed to have counsel for him and called me and asked me to come down.

Mr. Bennett: Were all your cases—all your cases were indigent, correct?

Mr. Hickey: Yes.

Mr. Bennett: And were any of them what we would call today "white collar people" who just happened to be indigent or were they all pretty much what we'd call "street crimes"?

Mr. Hickey: I would say more street crimes. There were some, I had some people involved with drug cases who came from a more middle-class background, some of whom were white and they had gotten into the drug problem. There were in those days—I didn't have them—there were a couple of instances where there were indigent securities fraud cases that were brought, that required appointed counsel, but I didn't get involved in those.

Mr. Bennett: And once you became deputy director and then director, did you no longer try cases anymore?

Mr. Hickey: That's right. I was in—well, that's not quite true. I tried the—in 1971, the Public Defender Service had some wars to fight. Public Defender Service had filed a case about conditions at the D.C. Jail, and I kind of consulted on it, but then as it went on and as some of the lawyers left, I took a more active role.

Mr. Bennett: That was a civil case?

Mr. Hickey: That was a civil case, and I tried it in 1975.

Mr. Bennett: Who was the trial judge?

Mr. Hickey: Judge Bryant.

Mr. Bennett: Interview of Patrick Hickey on August 27, 2007, this is Tape 1, Side B.

Mr. Hickey: Yes, and we're continuing with the interview.

Mr. Bennett: Okay, we were talking about the civil case that you tried involving the conditions at D.C. Jail. Was that the only civil case you handled when you were with PDS or did you have other civil cases?

Mr. Hickey: No, that was all.

Mr. Bennett: And how long was the actual trial?

Mr. Hickey: Oh—

Mr. Bennett: Any idea?

Mr. Hickey: I would say it went over—I mean there were a lot of hearings in it at various stages. As you may know, the case went on forever. But my recollection is that the trial took part of two weeks.

Mr. Bennett: And what was the ultimate outcome?

Mr. Hickey: The outcome was that Judge Bryant issued a terrific opinion that found that conditions at the jail were unconstitutional and that we needed to implement, that the District needed to implement, remedial programs to improve conditions there.

Mr. Bennett: And when you left in 1979, did Judge Bryant still have jurisdiction over the case?

Mr. Hickey: Yes, he did.

Mr. Bennett: And it went on for quite a while after that, I understand.

Mr. Hickey: Yes, I took it with me when I left and brought it to Shaw Pittman and it ended in 2003. That was like 32 years or something.

Mr. Bennett: Amazing.

Mr. Bennett: Let me try to wrap up your Public Defender Service era. By the time you left in 1979, how many attorneys did the Public Defender Service have?

Mr. Hickey: I think at that point we had about 35 or so.

Mr. Bennett: And were you divided into an appellate section and a trial section?

Mr. Hickey: Yes. We then had an appellate section, we had a trial section for the District Court. We were then—no, we were moving out of District Court and by then, were mostly in Superior Court. We had a juvenile branch, we had a mental health branch at St. Elizabeth's Hospital.

Mr. Bennett: You still handled some cases in District Court?

Mr. Hickey: A few. Yeah, but because they had shifted most of the jurisdiction to the Superior Court in those days, that's where most of the trial work was.

Mr. Bennett: Did you try any criminal cases in Superior Court yourself?

Mr. Hickey: No.

Mr. Bennett: Several of the attorneys who worked with you went on to become Superior Court judges, correct?

Mr. Hickey: Yes, that's true. Fred Weisberg was the first, but there's I think more than a dozen of our lawyers, many of them from that period in the '70s, who are now on the bench in Superior Court or in the D.C. Court of Appeals judge. Judge Glickman is a former PDS attorney. Thought there was somebody else up there, but maybe not. Maybe he's the only appellate court judge.

Mr. Bennett: Okay. Now in 1979 you came back to Shaw Pittman?

Mr. Hickey: Yes.

Mr. Bennett: And did you come back as a partner?

Mr. Hickey: Yes.

Mr. Bennett: At that time, how many attorneys did Shaw Pittman have, would you say?

Mr. Hickey: I remember when the partner that I was talking to about coming back was describing changes in my absence he said, "You won't believe the place. I think next year we're going to have 50 lawyers."

Mr. Bennett: That was at 1800 M?

Mr. Hickey: We moved to 1800 M in 1987. So I came back to the Barr Building at 910 17th Street.

Mr. Bennett: I think you're mistaken about that. Because I moved into the Barr Building in October of 1976 and Shaw Pittman was out.

Mr. Hickey: Oh, I'm sorry. That's right. That's right. I'm sorry, I was thinking about this building. You're right. 1800 M Street.

Mr. Bennett: Right. And Shaw Pittman stayed at 1800 M until it moved to 2300 N.

Mr. Hickey: Yes. And that was in 1987.

Mr. Bennett: Because I remember visiting over there shortly after you moved in because it was considered quite the modern, elegant office and that would have been around '76, I think.

Mr. Hickey: I remember in those days the idea of having 50 lawyers in a firm was just—people were just astonished that you could put that many lawyers together. And of course now, that's not even a medium-size firm.

Mr. Bennett: And when you came back to Shaw Pittman, was the firm divided into sections or groups or anything like that?

Mr. Hickey: Yes, we had always had a number of fairly discrete practices. You mentioned moving into Gerry Charnoff's office when you moved to the Barr Building. He was part of our nuclear energy group which was one of the first in the country, had been involved

with the original contract and licensing of the first nuclear reactors in the early '50s and on into the '60s. That was always a very significant part of the practice. We had a large real estate group, we had a corporate business group, we had litigation, and that's where I returned to. I recall that, I think it was the first week I came back to the firm, the accident on Three Mile Island had happened about two or three weeks before that, and a couple of my partners had basically moved to Harrisburg because Three Mile Island was a client of ours, you know working around the clock to try to deal with the multiple legal issues arising out of that incident. And not long after, although I was continuing to work on aviation defense cases, there were some grand jury actions that commenced involving various nuclear industry issues in which our firm was involved. And because there were not any lawyers at Shaw Pittman who had any significant criminal experience and our nuclear lawyers didn't feel comfortable addressing grand jury issues, I was asked to come help on the grand jury side. I started doing that in the early '80s and I still do it today. It's no longer so much criminal, now it's more just government regulatory investigations and enforcement actions by the Nuclear Regulatory Commission. I know you do employment law, I do a lot of whistleblower law defense work for our utility clients who have employees or former employees who claim that they have been discriminated and retaliated against for raising safety concerns.

Mr. Bennett: And from 1979 to the present, have you been continually with Shaw Pittman and the successor firm?

Mr. Hickey: Yes.

Mr. Bennett: And has your practice changed much, that's almost 30 years, has it changed much over that period of time?

Mr. Hickey: Yes, I gradually got out of the aviation work and moved more and more into this government investigation employment-related work. That's not all been with the nuclear utilities, although a good bit of it has, but I've done work also for other corporate clients.

Mr. Bennett: And how many lawyers does the worldwide firm have today?

Mr. Hickey: About 800.

Mr. Bennett: Twelve to 800—that's quite a change. (Laughs.)

Mr. Hickey: Yes.

Mr. Bennett: I know that a friend of mine, Bob Weinberg, who is a retired partner from Williams & Connolly, told me that that was quite a change because when he joined Williams & Connolly, the firm was a group of guys sitting around a table with Ed Williams brainstorming cases and he never got that after that, after a period of time and it was never the same, even though it was enjoyable in many ways but it was never as good as it was when it was a group of guys sitting around a table with Ed Williams. Do you ever have that feeling?

Mr. Hickey: Well, I think, you know, things change, and you have to anticipate that that's going to happen. I think Shaw Pittman and its successor have certainly tried hard and done reasonably well in avoiding some of the major problems of size. I have a vivid recollection, I think this was at 1800 M Street, when we were growing by leaps and bounds, some of the founding partners, when the discussion was raised about whether we shouldn't have name tags on the office doors, were just appalled at the idea that you'd be practicing law with someone and needed to have a name tag on their door to know who it was. But the reality was, that was true. I had partners, you know, that did real estate work that I didn't lay eyes on more than once or twice a year, and so we finally put the name tags up and moved on from there.

Mr. Bennett: When you left Shaw Pittman to go to PDS, you were an associate, right?

Mr. Hickey: Yes.

Mr. Bennett: And when you came back, you were a partner, and there was about 50 lawyers. How has it changed being a partner in a 50-lawyer entity as opposed to an 800-lawyer entity?

Mr. Hickey: Well, I don't have a lot of experience at that. I took Senior Counsel status in—at the end of 2004, and our merger was effective in April of 2005.

Mr. Bennett: Okay, but let's back up to just the Shaw Pittman era. Shaw Pittman went from 50 attorneys to many more by December of 2004 and as an entity, in governance and management, and so on, did it change a lot from your perspective?

Mr. Hickey: Some. I mean we had more committees, I think. And the burdens on the managing partner became more intense, and we finally went to having a full-time managing partner, whereas in the past it was just something that you kind of do on the side as well as keeping your own practice going, which was an enormous burden on the people who had to do it. But I think we recognized that when you are of that size and with that number of professional people, you just need more administrative and staff support and you hire appropriately for it. You get an HR Department, and a Personnel Department, and you have financial and accounting people, that's just one of the things you have to do.

Mr. Bennett: Sure. And were you ever interested in being involved in the management, or do you prefer just to litigate and let someone else do that?

Mr. Hickey: Yeah, I didn't have any taste for management. I've tried to stay active in the firm's pro bono program and have served as the committee chair for that for a number of years. But I have never been part of the firm management and never missed it.

Mr. Bennett: (Laughter.) Okay. And in terms of your group, the group that you were in from '79 to 2004, how, what was that group, was there a specific name for that?

Mr. Hickey: I was in the litigation group.

Mr. Bennett: Is that separate from the employment group?

Mr. Hickey: Yes. Although the employment lawyers were really a part of the litigation group, most of them. They did some counseling work, but also litigation work.

Mr. Bennett: Did you have chairs of the different groups?

Mr. Hickey: Yes.

Mr. Bennett: Were you ever the chair of the litigation group?

Mr. Hickey: No.

Mr. Bennett: By the time you took Senior Counsel status, how many people were in the litigation group, would you say?

Mr. Hickey: Around 20.

Mr. Bennett: It was a fairly small group.

Mr. Hickey: Yeah.

Mr. Bennett: It was really like a firm within a firm, perhaps in some ways?

Mr. Hickey: Uh huh.

Mr. Bennett: You have to answer audibly. (Laughs.)

Mr. Hickey: Yes. I would say yes. That's correct.

Mr. Bennett: We told them not to make this a deposition, but I have to tell you that.

Mr. Hickey: Thank you.

Mr. Bennett: Okay. Now during the time since you've been back at Shaw Pittman, what else have you done with your life other than practice law?

Mr. Hickey: That's a bit of a challenging question. Because it's been a fairly —

Mr. Bennett: Almost 30 years.

Mr. Hickey: It's been a fairly full-time occupation. I will be 44 years at the bar this December. I will tell you that when I was back at the Public Defender Service and spending a

lot of time on the D.C. Jail case, including a lot of weekends at the jail, my oldest child was in kindergarten and being asked with her classmates by the kindergarten teacher what their fathers did, reported that her father was in jail—

Mr. Bennett: (Laughs.)

Mr. Hickey: because that's where I was that particular day. That's one of our family legend stories, but it actually is true.

Mr. Bennett: That brings up another issue and that is there is a lot of stuff in the legal press about young lawyers being more disaffected than they were years ago about pressure for billable hours, pressure on the bottom line. From your years going back to 1970, or '67, to the present, do you think that's exaggerated or has it changed a lot?

Mr. Hickey: No, I think it has changed. I think there is more pressure along those lines and that it's more of a challenge for young lawyers to find a way to balance their lives with their work life. Two of my children are lawyers, both spent some time in private practice and then both left private practice to do other things. And I think that was one element of it. It's not a question of not being willing to work hard, but it's wanting to have some ability to control your life so that you can have other interests and meet other obligations.

Mr. Bennett: You mentioned earlier that you've been active in the pro bono program at Shaw Pittman. How has that changed over the years? Years ago, from my observation, it was very informal and unstructured, and it seems like the larger firms are much more structured these days in how they deal with that.

Mr. Hickey: We do, I mean we try to encourage everybody to participate in it. To do that, we have set up, as many firms have, programs where associates are credited with the time that they put in on pro bono cases. We try to help them find appropriate pro bono cases. Like all of our matters, we require that there be a supervising partner on any case, pro bono or otherwise,

and so if there is an associate who has a particular area of interest in the pro bono field, among the things I often say to the summer associates that are here with us for the summer is that a good thing about practicing law in Washington is that almost any kind of interest group that exists in the world you can find here, whatever your interests as a lawyer in doing pro bono work – whether it's children, families, or battered women. We have one associate who's doing work on animal cruelty, something which is very much in the news these days.

Mr. Bennett: (Laughs.) Today especially.

Mr. Hickey: But there's a lot of opportunities and so we try to help them find something that would be appropriate for them and also meet the interest that they're trying to—

Mr. Bennett: That brings up an interesting issue. Back when I first came to the bar, other than Edward Bennett Williams' firm, the big firms in Washington did little or no paid criminal work, white collar criminal was the bailiwick of a few small firms and solo practitioners. Today, several big firms have white collar criminal departments, Steptoe and others, and do very high-profile criminal work. Does your firm do that at all?

Mr. Hickey: Yes, we do. We do. We have several very capable criminal lawyers. I haven't done any for quite a while. And the ones that I did were ones that came out of nuclear industry investigations. But yes. We do white collar criminal work in a variety of areas. I think all the firms these days, or most of them, because of the increased—for want of a better word, "criminalization" of everything from banking law to products liability to mortgage financing—

Mr. Bennett: Something Fortune 500 corporations have to worry about a lot more than they did—

Mr. Hickey: Absolutely.

Mr. Bennett: 20, 30, 40 years ago. And so you see a firm like Covington bringing in an Eric Holder, whatever, that where years ago he might not have been a good fit for a firm like that, nothing about him personally but in terms of his background.

Mr. Bennett: Now, let's go back to your career here and comparing it to PDS. When you were with PDS, for the attorneys, what was it like in terms of support? In terms of support staff and technology, remembering, of course, that was in the decade of the 1970s when technology was in its infancy for law offices. I can remember starting out in 1976, having a Correcting Selectric was pretty much state-of-the-art for most people and a few fringe people had what were called "dedicated word processors" that looked like computers but weren't really computers. At PDS in those days, were you pretty much behind the curve technology-wise?

Mr. Hickey: Yes, I would say we were. I mean, we still did a lot of typing, I remember that. And the support that we focused on was, I think the right choices were made. It was always a very emotionally supportive place because it was a challenging job that we had undertaken to do and a challenging environment. We had any number of judges who were not sympathetic to the positions we were taking, that there were time and workload pressures, there were lack of supportive resources, so we all kind of clung together and supported each other as we had to do and it made it interesting. It was a wonderful place to work, which it still is today as far as I can tell. And very much a desired place to work by all kinds of great young lawyers who want to spend some time there. I would say we had adequate support, we had some very dedicated secretaries and we had the social work support from the Defender Rehabilitation Group, and we had investigators. All of which were an important component of our defense responsibilities. But I think they've come a long way since then.

Mr. Bennett: Sure, sure. Right. And from my dealings with government agencies in my practice and from my recollection when I was a government attorney, the typical secretaries

are pretty much disappearing from the federal government because today all young lawyers know how to use computers, know how to type, know how to prepare their own documents, and so unlike when I was a young lawyer, giving a secretary a yellow pad and saying, "Here, type this brief," doesn't really happen any more.

Mr. Hickey: That's right. I mean, it's happened in law firms, too. We have many fewer secretaries per attorney than we had before.

Mr. Bennett: And again, when I was a young lawyer, even the lawyers who could type would close the door because it was kind of embarrassing, and you were an exception to this rule because you are seven years older than I am, but when I was a young lawyer, for a lawyer to sit there typing, people would make jokes. This is in the government, people would make jokes. And so, and especially female attorneys particularly did not want to be seen typing because they would be considered to be a secretary.

Mr. Hickey: Right.

Mr. Bennett: But you apparently did your own all along then, but you were atypical, I suspect.

Mr. Hickey: Well, and I mean I've had a lot of good secretarial assistance over the years. I didn't, I was slow to come to the technological revolution and to become at all, I wouldn't say "adept," I'm not there yet, but comfortable enough at a computer. But I used to use a secretary a lot. I think those days are gone, though.

Mr. Bennett: Right. Now when you were with PDS, were you getting really high-quality law school applicants because people wanted to do this kind of work and get responsibility and so on?

Mr. Hickey: Absolutely. We would have—I remember we were governed then as now by an independent board of trustees and we would have a monthly dinner meeting, we used to do it at the old Lawyers Club down on 19th and L, is that where it was?

Mr. Bennett: I think it was at 1815 H when Earl Kintner started it for Arent Fox. That was his baby.

Mr. Hickey: And the board was always very supportive and they were great lawyers and fascinating people. In the '70s, Sam Dash was our chairman; Sidney Sachs was on the board; Paul Connolly was on the board, Ed Williams' partner; Fred Vinson was on the board. And so during Watergate, you'd start off with about a 20-minute gossip session about what was the latest thing happening with Watergate at the moment. Because we had a lot of people who really knew what was going on. But I remember once going to the board and reporting on our, we just finished our consideration of applicants, and I said, "We've made offers, and here's who we're bringing on in the fall, the following." It was always a small number, usually we got to hire four, five, six lawyers. And several of the trustees said that any law firm in town would give their right arm to have that kind of caliber of applicant.

Mr. Bennett: And the starting figure was considerably less than private practice, no doubt.

Mr. Hickey: That's for sure. That is for sure.

Mr. Bennett: Hopefully back in those days people didn't have the kind of loans they come out of law school with today.

Mr. Hickey: But no, we had very talented lawyers and really very good people, and they worked hard and it was just a terrific place to work and to develop your skills, to do something that was very worthwhile to do. It was a great experience.

Mr. Bennett: You were with Legal Aid from—

Mr. Hickey: '63 to '65.

Mr. Bennett: Right. And then came back in '70, right?

Mr. Hickey: Right.

Mr. Bennett: What changes did you notice, if any, between the Legal Aid of '63 to '65 and the PDS of '70 to '79?

Mr. Hickey: Well, it was, it was, we always had a kind of a precarious toehold on our continuing existence, that's the Legal Aid Agency. It was small, you know, and funding was every year a crisis. Our hope was—and it proved to be true—that with the court reorganization in 1970, and the creation of the Public Defender Service, it really gave it a foundation and I was going to say a legitimacy, not that we were not "legitimate" before, but a recognition as being an important part of the equation for the criminal justice system, not something you could, you know, maybe have or maybe not have. You had to have it and it was important to have one that functioned well. And so I think we all felt in the '70s that we were no longer at such risk of being legislated out of existence or having our budget cut off.

Mr. Bennett: Was your original legislation federal or D.C.?

Mr. Hickey: No, it was always federal.

Mr. Bennett: And I would think, notwithstanding the fact that I haven't done this type of work, that for the judges, having this entity around for the more complicated cases, the difficult cases, would be a benefit rather than a detriment—

Mr. Hickey: Yes.

Mr. Bennett: because of the caliber of the people you had there, the training, the support, the backup.

Mr. Hickey: That's true. And I think they used that, I mean that's why, in general, our lawyers were assigned to the more serious cases because courts knew that it would make things

proceed on a more efficient basis, and one where they could be confident that they weren't going to have issues about ineffective assistance, that the defendants would be well represented.

Mr. Bennett: Right. Because, unfortunately, the Board of Professional Responsibility of the court, they get a lot of cases involving complaints against CJA attorneys, and I've been involved as a hearing committee member sitting on them, and some of the people in the CJA program operate pretty much out of their jacket pocket and it's a problem in terms of recordkeeping and other administrative issues that don't relate to courtroom advocacy or legal skills.

Mr. Hickey: Yes.

Mr. Bennett: And of course your people didn't have to worry about administration in the same way that a solo practitioner doing CJA work would have to worry about it, if they worried about it. (Laughter.) So that was a benefit to them. Going back to the private practice experience, we talked a little bit about associates and disaffection and things like that. What changes and one of the other key phrases of the era is "quality of life"—what changes have you seen from 1979 to the present, if any, about what law firms do about quality of life for associates?

Mr. Hickey: Well, I've seen a couple of changes. One of them is, I think, attributable in large part to the presence of many more female attorneys, which has been, I think, a real good thing for the profession and the practice. And, it has helped the firms recognize the importance of letting lawyers have a life outside the law firm. Our firm, Pillsbury Winthrop, was one of the first to have a female managing partner who had been a part-time attorney. And we have been recognized for being very receptive to arrangements for lawyers, male and female, who want to carve out some portion of their life. And I think just in general, partners, even the more senior partners, now are more sensitive to the fact that you don't want to impose on a junior associate

unless it's really essential. I mean, everybody knows that in the law, like in other professions, there are times when everybody has to kind of pull together and it may be a Friday night or the day before a holiday, or whatever, and you just have to do it. But you don't do it unless it's necessary. And if you have that kind of a screening process for it, you find that it's really not necessary very often. Sometimes, yes. But not often.

Mr. Bennett: I know a friend of mine who had been in the government and in political jobs in the government took a job at a large law firm that I won't name, and he told me, and this was I'd say in the late '80s, early '90s, this is a multi-city firm, a big national firm, that they actually had something for new lawyers, even people who came in laterally like he did, that they called "boot camp," where you went someplace and you worked like round the clock and were subjected to all kinds of pressures. I was astounded to hear this, just dumbfounded. Because I've always felt that there were some people in big—not just big law firms, but even small law firms—who felt that this was a necessary process to put people through, like the military.

Mr. Hickey: Yeah, or like the medical profession.

Mr. Bennett: Yes.

Mr. Hickey: Still does some of it. But the idea that you can't be a doctor unless you, you know, work 36 hours or 48 hours straight on your feet as a resident is just nonsense.

Mr. Bennett: In fact, if I were a patient, I wouldn't want someone working on me who hadn't slept for a couple of days. (Laughs.)

Mr. Hickey: True.

Mr. Bennett: And the other thing that's interesting is this—until your merger with Winthrop Stimpson, this was a firm that had been founded right after World War II?

Mr. Hickey: Yes, we had our 50th anniversary in 2005, so '55.

Mr. Bennett: And for many years the main partners were still active in the firm.

Mr. Hickey: That's true.

Mr. Bennett: And by the 1990s perhaps, they were either phased out or a second group of—

Mr. Hickey: Well, there were a lot more younger partners, Ramsay Potts and Steuart Pittman, Ramsay Potts passed away just in the last year and continued to be Of Counsel to the firm. Steuart Pittman still comes down occasionally although he's in his upper eighties, and they were—our other founding partners are deceased. And yes, I think they have.

Mr. Bennett: So when was the torch passed would you say from the founding partners to the next group, if you can put a time period on it

Mr. Hickey: I would say in the early '90s.

Mr. Bennett: And was that a painful transition or something that went fairly smoothly?

Mr. Hickey: I think it went quite smoothly as a credit to the senior partners who were always willing to share responsibilities and credit with the rest of the firm. I think their attitude was what somebody has characterized as the willingness, the recognition that there's just no limits on what you can get done if you don't care who gets the credit for it. And I think their attitude always was we want to have a first-class law firm. Whether you get the credit or I get the credit, who cares?

Mr. Bennett: And before the Winthrop Stimpson merger, did you have a mandatory retirement age for partners?

Mr. Hickey: We had a presumptive retirement age, retirement from the partnership.

Mr. Bennett: And what was that?

Mr. Hickey: It was 65.

Mr. Bennett: And has that changed since the merger?

Mr. Hickey: It's in the process of changing. We have some partners who are over 65. I chose that as a good time for me to try to ramp down a little bit, so I took Senior Counsel status the year I became 65.

Mr. Bennett: Have you found you're actually spending less time at the firm or does it—

Mr. Hickey: Yes, I am.

Mr. Bennett: Did the firm ever have a sabbatical policy?

Mr. Hickey: I remember when that was the—

Mr. Bennett: Vogue?

Mr. Hickey: fad of the moment in the firms. I don't think we ever did it. I can't remember it anyhow, and I do remember the effects of it at some of the other firms. I mean the almost without exception experience was lawyers would go off for their sabbatical and do something wonderful and then three-quarters of them wouldn't come back. And they suddenly discovered—

Mr. Bennett: A lot that they were missing.

Mr. Hickey: Yeah, that there's life out there, and they could have a good time. I know a lawyer who took a sabbatical from Arnold & Porter and ended up teaching surfing in Hawaii.

Mr. Bennett: Quite a change.

Mr. Hickey: Huge one. (unintelligible)

Mr. Bennett: That's great. Let me look down my list of questions, suggested questions here and see if there's anything else we should pick up.

Mr. Bennett: So two of your children became lawyers, so they weren't completely turned off by your experience, although after they had a taste of private practice, they realized that there were better opportunities for their particular needs.

Mr. Hickey: Yes.

Mr. Bennett: Let's go back to your time in the military. What did you do when you were actually on active duty?

Mr. Hickey: That's really a not very exciting story. I was, first I was in basic training—

Mr. Bennett: That was the Air Force?

Mr. Hickey: Yes.

Mr. Bennett: And where was that?

Mr. Hickey: At Lackland Air Force Base, Texas. San Antonio, Texas.

Mr. Bennett: That was as an enlisted man?

Mr. Hickey: As an enlisted man.

Mr. Bennett: I was in the Army. The rumor is the Air Force is the most civilized of the services. In the Army, in 1969 in Fort Bragg, North Carolina, it was pretty abusive and humiliating, not physically, but mentally. What was Air Force basic training like, was there a lot of yelling and screaming and name-calling?

Mr. Hickey: I never saw, you know, and I was obviously a little bit older, most of the—

Mr. Bennett: Now this was what year again?

Mr. Hickey: This was in '64.

Mr. Bennett: '64. So you would have been 25, you were out of law school, and, now again, when I went in in '69, I was 23, I had finished one year of law school, and I was with a bunch of 17- and 18-year-olds who were going to be shipped off to Vietnam in combat. And I was like a grandfather to them. Did you have a similar experience?

Mr. Hickey: Yeah. I mean, I think people recognized that I was older and most of them were just out of high school. Some of them were, you know, looking to spend some serious time in the service. There were a couple—

Mr. Bennett: Vietnam was not yet heated up when you were there? We weren't sending hundreds of thousands of troops over there yet anyway.

Mr. Hickey: I remember considering the possibility that I might have to go there, which was not an appealing prospect. But I think, yeah, I think, I mean I can't compare it with the other branches, but I thought the Air Force experience was okay. I came back and was assigned to Andrews Air Force Base where I worked on the reserve side of the base.

Mr. Bennett: What was your military occupational specialty?

Mr. Hickey: I was a warehouse materials specialist.

Mr. Bennett: So you sorted nuts and bolts?

Mr. Hickey: Yeah, basically, and desk chairs, filing cabinets—

Mr. Bennett: Making full use of your educational background and intellect, right?

Mr. Hickey: Processing my papers to get my Navy commission.

Mr. Bennett: Now, you spent all your active duty time in the Air Force?

Mr. Hickey: Yes.

Mr. Bennett: That was about six months?

Mr. Hickey: Yes. And then it took me about another six months to get my Navy commission, so I was in the Air Force Reserve for one year.

Mr. Bennett: One weekend a month?

Mr. Hickey: Yes, and I went to two weeks of summer camp that summer, also at Andrews Air Force Base. And then I think in the fall I got commissioned as a Navy JAG officer.

Mr. Bennett: Once you were a Navy JAG officer, were you strictly reserve or did you have to do active duty?

Mr. Hickey: I was in the Reserves. I went one—mostly we went to drills that were held at the GSA auditorium. I belonged to a law company. It was just lawyers. And one summer I went to Naval Justice School at Newport, Rhode Island.

Mr. Bennett: At this time, you were working for the Legal Aid Agency.

Mr. Hickey: Yes.

Mr. Bennett: Part of it, at least.

Mr. Hickey: Yes. And then at Shaw Pittman.

Mr. Bennett: Right. And so you did your drills and then your two weeks summer?

Mr. Hickey: Just the one two weeks because you had to get the satisfactory reserve career, you had to accumulate a sufficient number of points, which you could do by attending drills, doing correspondence courses, or going to active duty.

Mr. Bennett: You didn't—I had to do six years total, including the reserve part. You didn't have that long a commitment.

Mr. Hickey: I think I did. I was—

Mr. Bennett: But you didn't have to go to meetings and summer camps the whole six years. Or you did?

Mr. Hickey: I did. Not summer camps, but I think when I was in the reserves, I went to a lot of meetings.

Mr. Bennett: (Laughs.) And the meetings were typically in a GSA auditorium or something like that?

Mr. Hickey: Yeah, you know, there'd be some presentation about some aspect of military justice. There were—some of the people in the law company were old Navy hands, and—

Mr. Bennett: They were going for the retirement, putting in their 20 years or whatever.

Mr. Hickey: There were several of us who were young lawyers in various law firms around Washington. We were less enamored of the whole experience.

Mr. Bennett: Right. And about the time you were out, the Vietnam thing had heated up, so there were a lot of people who wanted to be there, as opposed to going to Vietnam, even in the Navy.

Mr. Hickey: I'm sure that's true.

Mr. Bennett: During your tenure at Shaw Pittman, I'm sure they did committees, and you mentioned you were involved in the pro bono program. What other committees or firm things have you done other than the traditional practice of law over the years.

Mr. Hickey: Oh, over the years I think I've served on the recruiting committee, gone off to interview applicants.

Mr. Bennett: Did you enjoy that?

Mr. Hickey: Yeah, it's usually pleasant to go to the law schools. Sometimes you go places where you know somebody that you can see. And the interview was usually a fairly crowded, intense day or two days where you just interviewed one applicant after another. They're all interesting young people and fun to talk to, and eager about the practice of law. I always found that a kind of rewarding experience.

Mr. Bennett: You mentioned earlier that you have a lot more women in the firm now than when you started,

Mr. Hickey: Yes.

Mr. Bennett: And I know that at law schools, the percentage of women has gone up tremendously, 15 percent when I was in law school, it's 40 to 50 percent now.

Mr. Hickey: Yeah, I think it's great. I think they are the majority at Harvard, for example, female.

Mr. Bennett: From what I read in the trade press, the one place where the recruitment hasn't picked up a lot is minorities, particularly African Americans, for most law firms. And this is across-the-board, from what I hear. Is that a particular—was that a particular challenge when you were involved in recruiting?

Mr. Hickey: Yes. It is. It still is today. Part of the issue is that the minority enrollment in law schools has not increased. And I remember at the Public Defender Service trying to recruit minority lawyers was doubly hard, because often for financial reasons, the attraction of a law firm position was very hard to resist for young minority lawyers with debts from their educational experience. And it's—I think it's still true today that it's a challenge to find minority lawyers.

Mr. Bennett: That concludes my first session with Pat Hickey.

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

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.

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J. PATRICK HICKEY

Biography

J. Patrick Hickey was born October 20, 1939 in Iron Mountain, Michigan, the second of four children of Edward J. and Jeanette G. Hickey. His father was employed in the theater business, and was also a talented musician and band leader.

The family moved to Walla Walla, Washington in 1943, and Mr. Hickey attended St. Patrick's Grade and High School there, graduating in 1956. He graduated from Carroll College, Helena, Montana (B.A. in Philosophy, maxima cum laude) in 1959.

He received a scholarship to Harvard Law School, and was awarded the LL.B. in 1963. He was then selected as an E. Barrett Prettyman Fellow in Trial Advocacy at the Georgetown University Law Center, Washington, D.C. for the 1963-64 academic year. He was admitted to the Bar of the United States District Court for the District of Columbia in December 1963, and served as a trial attorney for indigent defendants in criminal cases in that court during his Fellowship at Georgetown. He received a LL.M. degree from Georgetown in 1966.

In 1965, Mr. Hickey became a staff attorney with the Legal Aid Agency in Washington, providing representation in criminal trials in the United States District Court. (The Agency was a forerunner of the D.C. Public Defender Service, established in 1970.) In 1967, Mr. Hickey joined the Washington, D.C. firm of Shaw, Pittman, Potts, Trowbridge & Madden, where he had a litigation practice primarily handling aviation accident defense work.

In 1970, Mr. Hickey left private practice to join the newly established Public Defender Service, and remained there until 1979. He served as the Director of PDS from 1975-79.

In 1979, Mr. Hickey rejoined Shaw Pittman as a partner, and remained there until his retirement in 2008. (The firm became Pillsbury Winthrop Shaw Pittman in 2005).

From 1972 until 2003, Mr. Hickey served as counsel for the plaintiffs (residents of the D.C. Jail) in Campbell v. McGruder, a case in the U.S. District Court which found conditions of confinement at the Jail to be in violation of Constitutional requirements. The lengthy proceedings addressed continuing efforts to improve living conditions for persons confined at the Jail.

Mr. Hickey was married in 1970 to Frances J. Hummel. They have four children, Anne, Kathleen, Edward and Elizabeth. He is a member of the Bar of the United States Supreme Court and numerous Federal courts.

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Employment

1984-present: sole practitioner
1981-1984-partner; Bennett, Deso, Greenberg & Thomas
1976-1981-sole practitioner
1975-1976-associate; Stein, Mitchell & Mezines
1972-1975-trial attorney; Bureau of Consumer Protection; Federal Trade Commission
1972-law clerk; Hon. Richard W. McLaren; U.S. District Court; N.D. Ill.

Education

Georgetown Univ. Law Center; J.D.; 1972 (law journal staff member)
Brown Univ.; A.B. 1968 (junior year abroad, London School of Economics)

Bar Activities

Bar Association of D.C. ; President, 1991-1992; Chair; Young Lawyers Section; 1981-1982; treasurer, 2007-2008; other leadership positions
D.C. Bar; co-founder and first chair, Law Practice Management Section; chair and steering committee member, Litigation Section; steering committee member, Labor and Employment Law Section
American Bar Assn.; Chair, Law Practice Management Section, 1997-1998, previously served as chair-elect, vice-chair, secretary, council member and various other leadership positions

Publications: more than 20, including various books and articles on attorney's fees, employment discrimination law and law practice in management