

## ORAL HISTORY OF ROBERT P. TROUT

### Second Interview November 13, 2014

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The Interviewee is Robert Trout, and the interviewer is Stuart Pierson. The interview is taking place on November 13, 2014, in Bob Trout's office at Dupont Circle in Washington, D.C. This is the second interview.

**Stu Pierson:** We are here at 1350 Connecticut Avenue, Washington, D.C. Today is November 13, 2014. Stuart Pierson's voice here and Bob Trout across the table. This is our second session in the life and times and remembrances of Bob Trout. And, when we last left off, you had finished the rendition of the Supreme Court's summary reversal in the case out of the Third Circuit just as you were going off to the U.S. Attorney's Office in Baltimore.

**Bob Trout:** I had come to D.C. the way I think a lot of people came to D.C., which is go enjoy the big city for two or three years and then see what happens. And you end up maybe settling down someplace else. And if you were to pick a city where you were probably least likely to settle down, it might be D.C. At that time, anyway. It was . . .

**Stu Pierson:** 1976, 1975?

**Bob Trout:** Well, I arrived in D.C. in the fall of 1973. Taisie, my wife at the time, and I traveled in Europe for two or three months after I took the bar, and so I arrived at Justice in early October of 1973. In early October 1975, I left D.C. to go to the U.S. Attorney's Office. I actually left Main Justice to go to the U.S. Attorney's Office in Baltimore. But I actually didn't leave D.C. at that time.

**Stu Pierson:** How did you land the job in Baltimore?

**Bob Trout:** Well, when I was at Justice, it didn't take me long to figure out that the action was in the U.S. Attorney's Office. I think a lot of that has changed now where the lawyers at Main Justice can get some good substantive experience and training, not just pushing paper but actually doing things. But back in the early to mid-'70s, and presumably well beyond that, I think a lot of people at Main Justice were just pushing paper; the action was in the U.S. Attorney's Office. And I figured that out pretty early. Now the section that I was in was called the Government Regulations, which doesn't exist any longer.

**Stu Pierson:** Was it in the Civil Division?

**Bob Trout:** It was in the Criminal Division. And so one of the things that we did, as I think I mentioned, was that we handled all petitions for review from the Board of Immigration and Appeals, so they were civil in nature. But the section was, as I say, a bit of a dumping ground: where are we going to put this enforcement activity that doesn't naturally belong someplace else? Let's put it here, in the Criminal Division's Government Regulation Section. And so it is not like I viewed myself or my future as being an immigration lawyer, but, then again, I was freshly minted.

**Stu Pierson:** Somebody gave you a file and . . .

**Bob Trout:** Right. That's exactly right. And so I did that and wrote a lot of appellate briefs and argued a number of them. As I think I mentioned, I arrived in early October, and in early December, I was standing in front of the Fifth Circuit for my very first oral argument. And I think that was an experience—two months into my first year of a job after law school—that was not shared by any of my friends who were in big firms. As a personal aside, Taisie and I were living in Old Town and we were here to take advantage of living in the big city and have fun; we were foot loose and fancy free. Well when you start

thinking about settling down, having children, raising a family, maybe the big city is not where you want to do that. We were living in Old Town. We would get on the bus in the morning, and we would take the bus into work. At the time, the Pennsylvania Avenue corridor, which is where I was working was pretty shabby. Taisie may have been working closer to the White House, I think. But that whole corridor was like a wasteland in the early to mid 1970's.

**Stu Pierson:** Mmm hmmm. I remember.

**Bob Trout:** It was just not where the upper crust was hanging out. And the private sector was all in what is now known as the Golden Triangle, which is where we are seated right now. So we would take a bus to work at the beginning of the day, and then we would get on the bus at the end of the day and go back across the Potomac River to Old Town. And we had been there for six months and realized we never really did anything in D.C. And I would scratch my head why is that? Is it the river that creates some sort of boundary that you just don't think to go back downtown. We were just not doing anything in D.C. And one weekend we were looking at the paper, and there was some ad for a newly developed condominium. It was actually an old building of rental apartments that was spruced up and converted into condominium by a developer. And they were selling these two-bedroom units for \$48,000. It was located right across from Montrose Park around the 3000 block of R Street. So it was in Georgetown. It had the park right across the street. It was far enough from M Street and Wisconsin that parking wasn't a big problem. And so we put a contract down on this. I think I told my father what we were paying for this two-bedroom apartment, and he was just appalled that we would pay that much money for an apartment. We moved in, and all of a sudden, we started doing things in D.C. all the time. We would

go to restaurants. We would go to the theater. We would go to the ballet. And we just thought nothing of going all around town. It was electric. We had a great time. My brother, a doctor, had been in California finishing up his residency at UCLA. I spent a total of three summers in LA with him in or around Westwood near UCLA. And he was finishing up and he had a deferment from the Army that allowed him to finish medical school, but also committed him to doing something with the Army. He satisfied his obligation at the Walter Reed Army Institute of Research. And so he came east and we played a lot together. We played tennis. We did a lot socially together. He was single and I was married, but we did a lot of different things together. And he loved being in D.C. also. So . . .

**Stu Pierson:** D.C. was starting to generate energy.

**Bob Trout:** It really was. There were nice restaurants, things to do, places were opening up. There was a time when Dupont Circle was probably regarded as a little bit on the scruffy side. Adams Morgan was scruffier still but just starting to get a little bit of interest. And so we started going into places in Adams Morgan and going to Dupont Circle and going wherever we felt like going. We just had a lot of fun, and there was just a lot more energy, I think, in town. I've gone back and forth on this over the years. I think that at various times I had this view that Washingtonians were so full of themselves and self-important that they were just—

**Stu Pierson:** Well, it's certainly true.

**Bob Trout:** Yes. That is true, but it is also true, as I have gotten older, that you meet a lot of very genuine, authentic, nice people, many of whom are very, very smart, but are also appropriately humble and great to be around. So my attitude has evolved. I used to think that D.C. was so full of itself that it could be a little bit on the insufferable side. But

we really enjoyed it when we were here to the point that we actually stayed in the D.C. area rather than moving to Baltimore when I became an Assistant U.S. Attorney there. My wife, Taisie, was working at a small financial advisory firm near the White House. Their sweet spot was telling Wall Street what was going on in D.C. that was relevant to Wall Street. Today all the Wall Street firms have their own people doing that. But in the early 1970's, this small boutique—there were probably only four or five principals—made its business by keeping Wall Street informed about what was happening in Washington. One of the persons my wife worked for left the firm in 1974 to become Deputy Chief of Staff of the White House. His name was Dick Cheney. By the fall of 1975, when I got the job in Baltimore, Taisie was probably working on the Hill for a member of Congress. We loved living in Georgetown and playing in D.C. But the law at the time required me to live in the jurisdiction where I was an Assistant. And since I was going to Maryland to be an Assistant U.S. Attorney, that meant I had to live in Maryland.

**Stu Pierson:** You had to have a Maryland address.

**Bob Trout:** I had to have a Maryland address. We found a place inside the Beltway in Silver Spring. And moved there in 1976. I commuted up from D.C.

**Stu Pierson:** By car?

**Bob Trout:** Yes. There were three other Assistants in the Office who commuted from Montgomery County. There was just one office then, and it was in Baltimore. We commuted up every day. It wasn't so bad. You'd learn a lot about trying a case because everybody had different levels of experience. And so we would be driving up, and you would be talking about a problem that you had, and you could just brainstorm issues as you were driving.

**Stu Pierson:** Like a law school study group.

**Bob Trout:** Yes, it was. To the point that the U.S. Attorney actually recruited around maintaining the Silver Spring carpool because—

**Stu Pierson:** It was good.

**Bob Trout:** That was a good thing. And then what I found is that we had had so much fun in D.C. after we learned how to do it that I would commute up to Baltimore, come back at night, and I would think nothing of getting in the car and driving down to D.C. and doing something in D.C. at night in the middle of the week, on a “school night.” And it was such a contrast to what we had experienced in Old Town. We continued to do things downtown, although we missed living in Georgetown, which at the time was pretty popular.

**Stu Pierson:** So were you a member of the Maryland Bar?

**Bob Trout:** I was not member of the Maryland Bar when I went to work in the U.S. Attorney’s Office in Maryland. When I accepted a job in the Honors Program at Main Justice, there was a three-year commitment. Within a year of starting at Main Justice, I was angling to find a position somewhere as an Assistant U.S. Attorney. Fortunately, when I received the offer from the U.S. Attorney in Baltimore, the new Assistant Attorney General in charge of the Criminal Division, Richard Thornburg, changed the commitment from three years to two years if you made an intradepartmental transfer to some other office within the Department of Justice. So I no longer had to worry about the three-year commitment, and I was free to leave Main Justice and take the job in Baltimore. So off I went to Baltimore. I think there were 26 lawyers in the Office at the time. There was no Greenbelt Division. It was all in Baltimore. And they were in the Old Post Office Building that was at Fayette and Calvert Streets.

**Stu Pierson:** I remember.

**Bob Trout:** The Post Office was on the first floor. On the upper floors, there were courtrooms, very nice old courtrooms. And on the top floor was the U.S. Attorney's Office. So you could walk into the Post Office building on the first floor—there was no security—and you could get on an elevator, and you could go up to the floor that was occupied by the U.S. Attorney. There was a lobby area for the U.S. Attorney's Office, which had some security, meaning the receptionist had to buzz you in so that you could open the door to get into the inner sanctum. The problem was that there was room for only about 20 Assistants. And so the overflow Assistants, that is, the most junior Assistants, ended up in an adjacent corridor. And for that corridor, you could walk in off the street, go to the elevator, take the elevator up, walk out, and walk right into my office where I could be storing evidence for a trial. There was zero security, none at all; and we never thought anything of it. It was a wonderful court. Our judges were generally pretty patient with young Assistants learning how to try cases.

**Stu Pierson:** Who were they?

**Bob Trout:** Well, the Chief Judge was Edward Northrop. There were two senior judges, Roszel Thomsen, very, very . . .

**Stu Pierson:** I remember Roszel Thomsen.

**Bob Trout:** Yes, Roszel Thomsen was a very smart, very highly regarded district judge, a bit of an iconic figure in terms of being a very, very smart judge. And the law clerk for Roszel Thomsen was a young lawyer by the name of John Bates, now United States District Court Judge in D.C.

**Stu Pierson:** Now Your Honor.

**Bob Trout:** Now Your Honor John Bates. Dorsey Watkins was another senior judge. He was affectionately referred to as The Dorse, and he was one of the sweetest men you could imagine. Roszel Thomsen could be abrupt and impatient. You better bring your A game to court. Judge Watkins was the model of patience. He had unlimited patience. He was just a wonderfully nice, generous man. Judge Northrop, very nice man, was Chief Judge. And then there was another judge, Judge Harvey, Alexander Harvey, who was a fabulous judge. He was very smart and appropriately decisive, very thoughtful, and he was right down the middle. And a pleasure to appear in front of. He was just great. There was a judge by the name of Frank Kaufman, who had achieved a certain high profile for having presided over a busing case in Prince George's County. He was an adventure to try a case before, and there wasn't a trial lawyer in Baltimore who didn't have some Frank Kaufman stories to tell.

**Stu Pierson:** Because?

**Bob Trout:** He could be demanding. He could be difficult. He might not be paying attention because he was multitasking, and would—

**Stu Pierson:** Miss things?

**Bob Trout:** Yes. He'd miss something. He'd want to go off in a different direction. Every trial was an ordeal because whatever unexpected issue might come up in the middle of trial, he would want a brief on the issue the next morning. He was especially hard on the government. But I always got along very well with him. I recall one day I had a status conference scheduled with him, and I became absorbed by something else I was doing and completely forgot to appear in court. The judges had recently passed a rule that there would be a \$50 fine for failing to show up on time. I was always very good about that. Until that

day when I had a status conference before Judge Kaufman. About an hour after I was supposed to be there, I remembered the status conference. Panicked, I went to his courtroom. He was in court hearing another matter, so I just sat down in the back. He waved at me to come to the bench, and in a side bar said “What happened? This is so unlike you.” I said, “I have zero excuse.” I said, “I know you’re supposed to fine me and I have no excuse, but if you’re handing out any mercy, I am not above accepting it.” And he just laughed and sent me on my way, and I never was fined. So he and I got along fine, but as I said, it was always a bit of an adventure appearing before him, and there was no shortage of Kaufman stories around the U.S. Attorney’s Office. Another judge was Stanley Blair, a very good judge. He had been part of Agnew’s inner circle, which is how he was appointed to the bench. Everybody loved appearing in front of him. Decisive, no nonsense, got things done. He contracted leukemia and died early. Herb Murray was another really fine judge who was a pleasure to appear in front of. Very deliberate. The book on Judge Murray was that he was obsessive about leading questions. The key workaround was to insert “if anything” into any question, and you were home free. So, for example, “What did you do next” was leading because it implied that you did something, whereas “What, if anything, did you do next” was not leading. A story circulated about one Assistant who had become so conditioned from having appeared so often before Judge Murray that once, when he was trying a bank robbery case, he asked the bank teller witness, “What, if anything, was the bank robber wearing.” Judge Murray seldom interrupted counsel, but that time he did, telling the Assistant to first think about the question he was asking. Another judge was James Miller who had come from Montgomery County. He was a smart, able judge, but he worked very long hours, and the stress of the job got to him, so he left the bench after just

a few years. As I recall, the last judge when I was there was Joe Young, a very nice man and a good judge. One of the things I loved most about the U.S. Attorney's Office is that it was a much more diverse experience for me, I think, than what I had grown up with. When I started in the office, I believe there was only one African-American lawyer, but there were many Jewish lawyers, and I just loved getting more exposed to Jewish culture and Yiddish expressions. Also, I was probably the only one who grew up in the south, with the sort of WASP heritage that was part of my background. I just loved having such great friendships with people in the U.S. Attorney's office who were different from what I had gotten use to. I think the experience really helped me grow to embrace a multicultural community. Many people get that as part of their normal upbringing, but growing up in Roanoke and going to the schools that I went to, it had not been a big part of my experience. While it may not have been as diverse as it could have been, or as diverse as it probably has become, by comparison with what I had experienced, it seemed pretty diverse. And I loved it.

**Stu Pierson:** Were there any women in the Office?

**Bob Trout:** There were a couple when I started, but then there came to be more and more. And that was great. Gale Rasin, Jane Moscovitz, Cathy Blake, and Lynne Battaglia were among the women who joined the office in 1977 or 1978. Gale became a Circuit Court judge in Baltimore, Cathy Blake became a federal judge in Baltimore, and Lynne Battaglia, after serving for a period as U.S. Attorney in the 1990's, became a judge on the Maryland Court of Appeals. Jane Moscovitz, who is now a prominent attorney in Miami and still a good friend, tried a couple of cases with me as a second chair. We got along great. She was Jewish, and so she would teach me Yiddish. And that served me very well

when Amy Jackson—now Judge Jackson on our federal bench here—joined my firm as a partner in 2000. Amy and I would share Yiddish idioms. But getting back to Baltimore, when I joined the office, we had something like 26 lawyers. We handled both criminal and civil cases, and we handled our own appeals. I just found there was so much energy. Everybody realized we had the greatest job in the world. It was something of a well-kept secret because a lot of young lawyers wanted to go to the big firms and make a lot of money. And people didn't really focus on what an amazing job it was to be an Assistant U.S. Attorney. And now that secret is out big time, and so that is where everybody wants to be, even though the experience today is different, with fewer trials. Our caseload at that time allowed us to try a lot of cases. Obviously there were some white-collar cases, but we handled bank robbery cases.

**Stu Pierson:** Theft from interstate shipment?

**Bob Trout:** Absolutely. Forging and uttering, counterfeiting, gun cases, a lot of stuff that doesn't get as much attention in the federal system anymore. But it gave us a lot of opportunities to try cases, which doesn't happen as much anymore. And so the reality is that I don't think I second chaired a case the entire time I was there. It was just me or, in time, as I became more senior, I was lead and I would have a second chair. But when I started there, I was expected to be second chair on a couple of cases. It was interstate transportation of stolen property. There was a big theft ring that was stealing off the road tires for big construction equipment, like Caterpillars. The cost of each tire could be as high as \$3,000 apiece, this back in the mid-70s. And they would steal them from these construction sites, and sell them to a fence. They were operating in West Virginia, Pennsylvania, and Maryland primarily, and a little bit in Virginia—a big ring—out of

Hancock, Maryland, I think. So we had a number of 30 different heists, with some individuals participating in some, others participating in others, and we broke them down into different cases and there was probably, I don't know, 10 cases that came out of that. I was working with another Assistant U.S. Attorney who was more senior than I, who is now a federal judge in San Francisco, Jeff White.

**Stu Pierson:** I know the name.

**Bob Trout:** So we were coming up to trial, and before you know it, Jeff had other things that he had to do. So I ended up trying all these cases. Some of them would plead out, but there were probably six different cases that went to trial. And there was one case where we were jurisdictionally close in terms of the value of the stolen goods to whatever was the felony level. I thought we were in pretty good shape. The evidence was in on what the values were, and right before closing argument, the defense lawyer argued that it ought to be wholesale value versus retail value and we had done all these calculations based on retail. And, sure enough, Judge Murray decided that the correct calculation was wholesale. At which point he asked for the jury to be brought in for closing argument. I had not done the wholesale calculation, so I found myself standing before the jury in the middle of closing argument, for the first time, doing the addition on the various stolen items on the easel.

**Stu Pierson:** Did you have the wholesale prices in evidence?

**Bob Trout:** We had the wholesale prices in evidence. But I was writing down the numbers on the board for the first time and I had no idea—

**Stu Pierson:** Where it was going to end up.

**Bob Trout:** Where it was going to end up. And I was trying to do simple arithmetic—add two, carry three, that sort of thing—and I was in such a panic I could not get it done. Here I was standing before a jury, and I could not do simple addition of probably six to ten numbers. It was embarrassing. And, finally, I got it done—I was probably sweating by this time—and I ended up with about \$100 to spare. But I was in such a panic as I was trying to figure out how to do this—because I was thinking, holy cow, if I end up doing this math and it comes out \$100 short, what am I going to do? It was one of those memorable experiences in trial.

**Stu Pierson:** Did you ever talk to the judge about it, or say to him, “Didn’t you see me sweating?”

**Bob Trout:** No, I didn’t. Surely he was able to see that I was completely flummoxed by simple arithmetic. And I suppose if I’d have had more maturity and gumption, I would have tried to figure out a way to engage the judge on that. In any event, the jury convicted the defendant. So that was one of those experiences at trial that stick with you. There was another case that I vividly recall from my first year in the U.S. Attorney’s Office. This was a theft from the mail case. The postal inspectors had arrested a heroin-addicted prostitute for forging and cashing numerous welfare checks that had been mailed out to all the welfare recipients. So the question was, how did she get these checks? When the postal inspectors squeezed her, she said that she had gotten the checks from the letter carrier who was delivering the checks in the neighborhood. He would give her checks, which she would then forge and cash to feed her heroin habit, and in return she would turn tricks for him. I am sure that we had more evidence than the word of the prostitute for making the decision to prosecute the letter carrier, but we had some concerns about the strength of the case. The

prostitute was African American and the letter carrier was white, and back in the '70s interracial relationships were not as common as they are today. Lots of heroin plus the prostitute's lifestyle had left her with a pretty ragged and unattractive appearance, whereas the letter carrier was married and outwardly seemed to be a very religious man. The idea that these two had a continuing sexual relationship seemed counterintuitive. So we were looking for some persuasive way to corroborate the prostitute's story. She told us that when they were having sex, she couldn't help but laugh whenever she saw his feet. She thought they looked really funny. And whenever she would laugh, he reacted very defensively about his feet. I assumed there was something very unique about his feet that she would be able to easily identify. And so I filed a motion to require the defendant to submit to a foot lineup. As you can imagine, the postal inspectors had a big laugh about this. They thought it was great sport and very funny that we were going to have a foot lineup. The judge ordered the lineup, and at the appointed time we had about seven barefooted men—other postal inspectors—plus the defendant behind a screen for the prostitute to pick out the feet of the letter carrier with whom she had been having sex. The only thing you could see were the bare feet behind the screen. I took one look at the lineup and was amazed at the collection of weird looking feet the postal inspectors had included in the lineup. I had thought they would've done a better job of screening the feet for the lineup so we would have seven pairs of completely normal looking feet, plus the defendant's. Long story short, the witness could not do better than narrow it down to three sets of feet. Fortunately, she at least included the defendant's among the three. In the end, I think the lineup was as valuable to the defense as it was to the prosecution, presumably more so because the defendant was acquitted at trial. For a good while, the story of the foot lineup was quite the

talk within the U.S. Attorney's Office. I hated losing that case, but of course, in time, the foot lineup was the sort of unusual situation that forges such rich memories of your time in the office. You can't make this up, so these are the stories that make a legal career interesting and fun. When I was in the U.S. Attorney's Office, I had one case that ended up in the Supreme Court. It grew out of a statute, since repealed, called the Youth Corrections Act. Its purpose was to rehabilitate youth offenders, not punish them, and so imprisonment was not an option for youths whose offense came under the Youth Corrections Act. The statute was silent about a fine. The Fourth Circuit had not addressed the issue, but all of the other circuits had said that a fine was punishment and hence inconsistent with the rehabilitative purposes of the Act. There was a Magistrate Judge in Baltimore, Paul Rosenberg, who had a point of view about this, and he was just gunning for the case that would present this issue because he saw the path that would take the issue to the Supreme Court. One day a youthful offender was arrested on a misdemeanor, and I was assigned to handle the case. Mike Frisch, then an Assistant Public Defender, later Assistant Bar Counsel in D.C. and now a professor at Georgetown Law School, was handling the defense. The case went to arraignment before Magistrate Judge Rosenberg, and you could just see in his eyes, this is the one. And when we left court after the arraignment, Mike Frisch and I were saying to each other, this was the one. And so we worked out a plea, and the defendant ended up with a fine. I'm not sure that a fine was part of the plea deal, but everyone knew Rosenberg was going to impose a small fine. And he did. At that moment, everyone—Magistrate Judge Rosenberg, Mike Frisch, and I—we all had the feeling that this would end up as a test case in the Supreme Court. The reason is that we knew the fine would be appealed to the Chief Judge, Edward Northrup, who was

conservative, generally pro-government. We expected he would affirm the decision imposing a fine, notwithstanding the case law from all the other circuits. And from there the case would go to the Fourth Circuit, also viewed as conservative, a court likely not to be persuaded by the fact that the other circuits had previously ruled that fines were not permitted under the Youth Corrections Act. So we were expecting the Fourth Circuit's decision would create a split in the circuit and that this pipsqueak little misdemeanor case would end up being decided by the U.S. Supreme Court. And that is exactly how it played out. When the Supreme Court granted cert. and set the case down for oral argument, I knew the case would be argued for the government by someone in the Solicitor General's office, but Mike would handle the argument for the defendant. He actually didn't have enough years in the Bar to qualify as a member of the Supreme Court Bar so he had to be specially admitted. But he did a wonderful job of arguing against Wade McCree, the Solicitor General, who argued the case for the government. Mike and I had a private bet. It was not whether he would win or lose. We both thought he would lose, that the Supreme Court would agree with all the judges below—that a fine has a rehabilitative purpose because it teaches accountability and that actions have consequences—but the question was whether he would get a vote. I won the bet; the Supreme Court upheld the fine with a unanimous decision. Again, this was at a time when some very strong liberals—Thurgood Marshall and William Brennan—were on the Supreme Court. You can probably tell how much I loved being an Assistant U.S. Attorney in Baltimore. I would wake up every day just pinching myself at how lucky I was to be doing what I was doing. And I couldn't imagine why anyone would stop doing this. It is ironic as I think about it now, but I remember thinking, what would it be like to be a defense lawyer? I don't think I could imagine doing

that. And again, I probably had those thoughts at a less mature time when I was without a lot of the experience that I have had since. I just thought that this was the greatest job—you sit on the right hand of God, you wear the white hat—why wouldn't you do this for the rest of your life? But of course, things change. In 1978, my wife and I had a baby boy, Carter Trout. Having children changes things. And the other thing that changed is that I had completed the typical tour of duty that Assistants have before they think about leaving the office. At around the same time, the First Assistant came to me asking me to handle either of two matters, both involved working with an Assistant technically senior to me but someone who was viewed, I think, as needing some supervision. I was supposed to provide that supervision, so it was understandably going to be awkward, since this Assistant had greater seniority. There could be tension. One of the matters would involve a potentially lengthy investigation. The other would involve a trial of a case that had been remanded for retrial following the Fourth Circuit's reversal of a conviction from an earlier trial. Again, because I didn't know how I felt about committing to a long investigation, I decided on the trial. The case was a bombing case. I don't think anyone had been killed, but I think someone was injured. There was a single defendant who had been convicted in an earlier trial of either trying to or succeeding in placing bombs in two cars on separate occasions. In a unanimous decision, a panel of the Fourth Circuit had reversed the earlier conviction, ruling that there should have been a severance, that the two bombings should have been tried separately. The other Assistant with whom I was now going to try the case, had been second chair to Jeff White at the original trial, and after Jeff left the office, she handled the appeal, which led to the reversal. So now I was going to have to try this case after it was remanded from the Fourth Circuit. As I studied the case to figure out how to try it, I realized

the case could not be tried unless we could use evidence from both bombings, because it was evidence from the first bombing that would allow us to prove that it was the defendant who committed the second bombing; and it was evidence from the second bombing that would allow us to prove it was the defendant who committed the first bombing. So the Federal Rules of Evidence should have allowed evidence relating to both bombings to be admitted, and there should not have been reason to require a severance of the two. Unfortunately, this argument was never made in the original appeal. I was convinced if the government had included that argument in the original appeal, the outcome might have been different, the Fourth Circuit might have affirmed the conviction. So I decided to seek a rehearing from the original panel of the Fourth Circuit. I didn't need the Solicitor General's approval to file for a rehearing because I wasn't going to ask for *en banc* review by the entire court. If I was going to ask for *en banc* review, then I would have to go to the S.G. But I said, "Let me take a run at this," because I didn't see how I could retry this case, that we couldn't get the evidence in that we would need to get in in order to get the conviction. And so I wrote a brief . . .

**Stu Pierson:** Did you tell the U.S. Attorney you were going to do it?

**Bob Trout:** Yes. The front office signed off on it. And so I wrote this petition for rehearing to the three judges—all three judges had agreed that the conviction needed to be reversed. And I basically apologized. I said it's our fault. We didn't tell you the argument that you needed to hear. And, sure enough, they reversed themselves three-zip.

**Stu Pierson:** Did you try the two together?

**Bob Trout:** No, they unanimously reversed themselves and affirmed the conviction.

**Stu Pierson:** That's a sleight of hand.

**Bob Trout:** Yes. So, I put that as one of my better legal efforts. And so I had been thinking, well, I'm going to be trying this case down the road or I'm going to be doing this investigation that is going to take a while. And none of that happened. "I wonder whether I ought to be thinking about leaving."

**Stu Pierson:** So how long were you in the U.S. Attorney's Office?

**Bob Trout:** Four years.

**Stu Pierson:** And then?

**Bob Trout:** Well, around the time of I began thinking it might be time to consider leaving, I got a call from a friend, John Foley, whom I had gotten to know through one of my dearest friends in life—I just loved him so much—Sandy Mayo, a law school classmate who was at Hogan & Hartson. John Foley's wife, Jan, had been at Hogan with Sandy, and that is how I had gotten introduced to Jan and John. John was working as of counsel for a firm called Dunnells, Duvall, Bennett & Porter. And one of the young lawyers at that firm—John Keith, who had been a couple years ahead of me at Episcopal—had left the firm to join Hugo Blankingship in forming Blankingship & Keith in Fairfax. John Foley called me up to tell me that Bob Bennett was looking for someone to help him in his practice. Well, I had met Bob Bennett because John and Jan had hosted an annual Christmas party at their house, and I had met Bob two or three times at the Foley Christmas party. Bob had been at Hogan and knew them. So we were acquainted. I called up Bob and came down and interviewed with Dunnells, Duvall, Bennett & Porter and they offered me a job. All of a sudden the question whether I should consider leaving the U.S. Attorney's Office collided with the reality of leaving the greatest job a young lawyer could possibly have. I was really torn. It occurred to me that this could be a really unique opportunity, a

small, young firm, with a nice litigation practice, including criminal work. It was exactly the sort of firm I thought I would be happy at, and one that did not seem to have many peers. But as I said, I was very torn, because it is one thing to muse about what might be out there after the U.S. Attorney's Office, and it another thing to leave a place that you have loved so much. And I think what happened is I asked for a lot of time to think about it—like six weeks to think about it—and they said okay. And then I went back to the U.S. Attorney, Timmy Baker by this time, who said he did not want me to leave, and he asked me to give him time to consider whether there was anything in the pipeline that he thought I should stay for. And while that was going on, one day the First Assistant came into my office to ask if I would try a bank robbery that was scheduled for trial. I was no longer trying bank robberies, but the Assistant who had been handling the case was unable to try it for whatever reason. I had about a week to prepare. I got the witnesses and exhibits all prepared, and on the morning of trial, I drove up from Silver Spring to start the trial. I have always been someone who believes there is nothing so important in the trial of a case as the opening statement. But on that day as I was driving up, I realized I was preparing my opening for the first time in the car, no more than an hour or two before trial is scheduled to begin. And I remember thinking: this is not good; this is wrong; you're mailing it in. You're not taking this seriously the way you need to; this is not the way to try a case. It was an eye-opening experience for me, and that was the time it really hit me, it is time to leave. And it was about that same time that Timmy Baker came into my office and told me he had nothing in the pipeline that was so sexy or intriguing that I should stay. So I left.

**Stu Pierson:** And what year are we in now?

**Bob Trout:** This is October '79. I was at Justice—Main Justice—for exactly two years and the U.S. Attorney's for exactly four years.

**Stu Pierson:** So Watergate had pretty much run its course? So you were actually watching that from . . .

**Bob Trout:** Yes. And, well, no. The President resigned in August of 1974, while I was at Main Justice.

**Stu Pierson:** But then there was all the follow-on.

**Bob Trout:** Yes. And I was following that. Bill Hundley, who had represented former Attorney General John Mitchell in the Watergate prosecution in the District of Columbia, later represented one of the principal defendants in the Mandel prosecution in Maryland, which was going on when I was in the U.S. Attorney's Office there. Bill and Plato were then partners in the firm of Hundley & Cacheris, and of course Plato and Bill's son, John, are now my partners in this firm. So it really is a small world. The Mandel case was obviously a very high profile case, especially in the Washington and Baltimore areas. So it was a very interesting time to be an Assistant in the office when that case was going on. One of the prosecutors on the Mandel team, the third chair, was an Assistant by the name of Dan Hurson.

**Stu Pierson:** Yes, I know Dan.

**Bob Trout:** Do you know Dan?

**Stu Pierson:** Yes. Dan actually was—he was at Verner Liipfert for a while and I saw him not too long ago at a Securities Litigation . . .

**Bob Trout:** Is that right? So Dan was like the third guy on the team. He is a very smart guy, very funny, very good, and he was part of the carpool. And so we would talk about

what was going on in the trial while carpooling. Generally, it was about what had gone on, because the entire team was very closemouthed about the case because they were very fastidious about not having any leaks. But one day, without telling us anything more, Dan simply said, "You guys might want to come in to watch today." That was going to be Barney Skolnik cross-examining Governor Mandel in his corruption trial. In a nutshell, the government's case related to things that the governor had allegedly done to help his friends, the owners of the Marlboro Race Track, get more value out of their investment through certain actions of the legislature. The government was able to prove that these friends had bestowed a lot of personal financial benefits on the governor, and the government was able to show that the friends had an ownership interest in the racetrack. But the defense position was that they had kept secret from the governor their ownership interest and their interest in legislation that would have given additional racing days to their racetrack. And so after Dan Hurson suggested we attend the trial that day, we saw Barney Skolnik's cross of the governor. Barney locked the governor into the defense story that the governor didn't know about his friends' ownership in the racetrack and their interest in the legislation to increase the race days. The governor said that he rarely spoke with his friends over the phone. And that was true, except for one day when there were something like over 20 phone calls between the governor and his friends. And that was either the day of or the day before the day when the legislature was considering whether to grant additional racing days to the racetrack. The governor had denied such contact so it was very dramatic when Barney presented the phone records that showed otherwise. It was very powerful. The governor and his co-defendants were convicted. And as a federal prosecutor, I casually and naturally jumped to the conclusion that Mandel was a bad guy. That's a mistake prosecutors often

make. They see things in black and white, seldom in shades of gray. Some time later, after his conviction was ultimately overturned, I spent a lot of time with Mandel, for we worked together on behalf of a mutual client who was being investigated for securities fraud in Maryland.

**Stu Pierson:** This is an SEC enforcement proceeding?

**Bob Trout:** No. It was like the state version of the SEC.

**Stu Pierson:** Oh, Yes.

**Bob Trout:** And so I spent a lot of time with Marvin Mandel. I never told him what my background was, and I don't know whether he knew that I had been in the U.S. Attorney's Office at the time that he was not feeling very good about the Office. But a nicer man you just couldn't meet.

**Stu Pierson:** Who was his lawyer during the criminal case?

**Bob Trout:** Arnold Weiner.

**Stu Pierson:** Arnie and I got into some case together. I can't remember what it was. But I also had a witness in the Mandel case, just somebody who came in and said I saw such and such.

**Bob Trout:** Right.

**Stu Pierson:** Arnie was an unusual guy.

**Bob Trout:** Yes. And he and I have had cases together and we've had cases against each other.

**Stu Pierson:** He used to call himself "Never Plead 'Em Arnold."

**Bob Trout:** Well, he is a very good lawyer, very thorough and very good. When I was working with Marvin Mandel now in the early 1990's, he took me to a couple of bars where

he would meet his wife, whom he just adored. It was very sweet to see how much they were in love. He couldn't have been a more gracious or nicer person to deal with.

**Stu Pierson:** Did you fix the enforcement problem?

**Bob Trout:** Well, it depends on how you define "fix." It ended. Yes, we worked it out.

**Stu Pierson:** So Dunnells Duvall, you're there for how long?

**Bob Trout:** Well, I arrived in 1979 and I was working with Bob Bennett a lot, and then I also wanted to learn civil practice. And Dick Duvall was really doing a lot of that work, and so I was working with both of those guys.

**Stu Pierson:** All defense?

**Bob Trout:** No. Some civil plaintiff's work—Bob and I tried a medical malpractice case on the plaintiff's side—and some civil defense work. We had a small firm. I believe I was the fifteenth lawyer in the firm when I joined. I became a partner in 1981, so that took a couple of years. And we were just doing a lot of Bob's white-collar criminal work. And I was having fun. I was enjoying it. Bob, I think, figured out the Department of Justice was starting to look at corporate . . .

**Stu Pierson:** Malfeasance.

**Bob Trout:** Yes. As I said, when I started at the U.S. Attorney's Office, it was bank robberies, it was drugs, it was guns, it was interstate transportation of stolen property—there were different cases like that—trials lasting no more than a few days—with some political corruption, but not a lot of corporate malfeasance. I think Bob found himself in a place where the large corporate law firms, when they got these criminal matters, they would say, "Okay, we don't want to dirty our hands with . . ."

**Stu Pierson:** We need someone who knows how to do that.

**Bob Trout:** Yes. Right. And so he was getting a lot of that. He started getting a lot of that work. And it was great work with well-heeled and well-financed clients. And Bob really started to develop that as one of the go-to people, I think, in the white-collar practice. Carl Rauh joined our firm. He had been First Assistant under Earl Silbert, and after Earl left, Carl was Acting, or Interim, U.S. Attorney appointed by the court.

**Stu Pierson:** Carl Rauh is the only lawyer in government who has ever given me a written deposition.

**Bob Trout:** Is that right?

**Stu Pierson:** Stunning.

**Bob Trout:** Chuck Ruff came in as U.S. Attorney, and Bob and Carl had a long personal and professional history together, from the U.S. Attorney's Office. They were very close. And so Carl joined our firm, and they had a really great deal going. I think Bob was in the CEO role and Carl was in the COO role because he could really manage the cases. They were a great team. By then I was starting to move out of Bob's orbit. I was working with Dick Duvall and I was also trying to develop and work on my own cases and create a persona for myself. I think Bob was a better partner to me than I was to Bob because I am sure I chafed in the role of his second. And where I wanted to . . .

**Stu Pierson:** Spread your wings.

**Bob Trout:** Spread my wings. Bob couldn't have been more generous to me. Bob had a very nice network from the U.S. Attorney's Office here in D.C. And so when I arrived here having been in the U.S. Attorney's Office in Baltimore, which is where my professional contacts were, Bob spent an incredible amount of time and energy introducing me into his network to the point where it became my network, even though I hadn't been in the U.S.

Attorney's Office here. And I am forever grateful. Although I'm not sure, at the time—I think he knows how I feel about him now—but I'm not sure, at the time, that I conveyed my appreciation the way I should have. So, anyway, I moved a little bit out of his orbit. The very first case I ever had in private practice was a referral from my current partner and dear friend, Plato Cacheris, and my former colleague in the U.S. Attorney's Office, Barney Skolnik. Barney had left the U.S. Attorney's Office some time before me, and he was on his own but sharing space with Bill Hundley and Plato Cacheris. And Plato and Barney were representing two principals in a company that was being investigated in Harrisburg, Pennsylvania. They had a couple of employees that needed representation, and so the very first case that was referred directly to me was from Plato and Barney. That reminds me of my first encounter with Plato. When you're in the U.S. Attorney's Office and you are handling these cases and you tend to measure your progress in your career with . . .

**Stu Pierson:** How good the guys on the other side are.

**Bob Trout:** Bingo. And I had a case with Plato when I was in the U.S. Attorney's Office. And so I was starting to think that I was getting somewhere when I had a case against Plato. And there was another investigation that I was handling, a white collar case, and Bill Hundley was representing the putative target. I would see Bill and he would chuckle, tell some funny stories, but seemed content to have me simply conduct the investigation to the end. He was not the least bit aggressive. As I looked at the case and what we had, it seemed that the FBI had heard something about this target, had decided he was dirty, and was certain if we kept digging we'd find something. He may have been a sharp operator, but what I thought was missing was evidence of a crime. So we didn't go forward on that one. But that is how I came to know both Plato Cacheris and Bill Hundley. I stayed in touch

with Plato and with Bill. They were fast friends and enjoyed a great practice together in the firm of Hundley & Cacheris. In the mid to late 1980's, with sons going off to college, Bill decided he wanted to make some more money so he decided to join a large firm. And then one thing led to another, and Plato decided he was going to talk to us at Dunnells, Duvall, Bennett & Porter. He joined our firm around 1987 or 1988. This was about the time we moved our offices at 1220 19<sup>th</sup> Street to more elegant space at 2100 Pennsylvania Avenue. Plato was now working there, and when there was a civil case that came to him, he typically would ask me to get involved in the matter. There was one such case that was filed in federal court in Alexandria that ranks as one of the more unusual and fascinating civil cases that I've had. Our client was a Saudi-American businessman who was sued by a couple of former partners on a deal that supposedly had gone bad. There was something about the suit that didn't make sense; it seemed more pre-textual rather than a genuine business dispute. One of the former partners was connected to a very wealthy Arab businessman and the other was connected to the Saudi royal family. We were able to establish facts that allowed us to bring a counterclaim, and with the benefit of an affidavit from a witness in London, we were able to put ourselves in the driver's seat. One Sunday I was at home with my children, about to take them back to their mother's, and my client called me from London. "Can you come to London tonight?" he asked. So that night I flew to London and for the next two weeks I stayed at the Dorchester Hotel as we tried to settle the dispute. This involved daily meetings alone with my client and daily meetings alone with someone who I was told was a confidant of the Saudi King, someone not officially connected to the King but who supposedly spoke for him. I spent many hours with this person—we developed a nice working relationship—but I never received confirmation that

the intermediary was representing the King. He spoke only about “his principal.” Over the course of the two weeks there were many ups and downs in the negotiations, but in the end we were able to get it settled. I never knew the amount my client received in the settlement of the lawsuit that began as a suit against him. But he became a very rich man. Apart from having two weeks in London staying at the Dorchester Hotel, on a professional level the shuttle diplomacy over an extended period made for one of the most interesting two weeks I’ve had in the practice. My big regret was that I did not maintain a journal of each day’s activities. I am forever grateful to Plato that he asked me to handle that civil case. Getting back to the Dunnells Duvall firm, by about 1990 we had close to 60 lawyers. And Bob Bennett had a pretty robust practice. The old Ill Winds investigation was going strong, and there were a lot of procurement fraud cases. They were coming Bob’s way. And so we would do what firms do when they are trying to look at their belly button and figure out what life is all about. And what’s the future.

**Stu Pierson:** What’s our strategic plan?

**Bob Trout:** Yes. What is our strategic plan? And so we booked a hotel room and spent a Saturday there seated around the table trying to talk about what the future holds for us. And by this time, I think the legal consultants from Hildebrandt were pushing the idea that mid-size firms were dinosaurs. There was no way that mid-size firms are going to survive. And we read all that. But we thought we were different. It was true of every other mid-size firm, but it wasn’t true of us, because we were special. I remember this group therapy exercise, the retreat about what do we want to be when we grow up and how do we want to get there. And I remember looking at Plato. Plato was a good sport, and I knew this was not his first choice of how he wanted to spend his Saturday, and it certainly wasn’t mine.

But Plato was a good sport. He was there. And in due course, after a couple of years, Plato announced that he was leaving to go back to the townhouse practice that he had had before with Bill Hundley, although it wasn't with Bill. It was with another lawyer.

**Stu Pierson:** Named?

**Bob Trout:** David Tuohey. David had been at Arnold & Porter, and I can't remember more particulars about how they came to know each other or decided to practice together. But I think Plato was really ready to go back to a small setting. And so I went into Plato's office and I said to him, "Plato," I said, "I remember looking at you at this Saturday retreat that we had, and I remember thinking, 'What is Plato thinking about all this?'" And he says, "Well, I'll tell you what I was thinking. I was thinking, I want to be out of here." And he was no more specific about whether "out of here" meant "I don't want to be in this hotel room right now" or whether he was saying "I don't want to be in this law firm."

**Stu Pierson:** This is something I don't like.

**Bob Trout:** He didn't get specific about that, but it was ambiguous enough that you could go either way. So he left and at some point later, not that long after that, Bob Bennett announced that he was leaving and a number of lawyers—a large number of lawyers—were going with him over to Skadden Arps. I think that he realized that the large firms had now woken up to the fact that they needed to . . .

**Stu Pierson:** This is business.

**Bob Trout:** This is business. And they're going to keep the corporate criminal practice in-house. And if Bob didn't snap it up, somebody else would, and then Covington would do the same thing, and Kirkland & Ellis would do the same thing, and Sidley and so on. And of course that is exactly . . .

**Stu Pierson:** What happened.

**Bob Trout:** What happened. And so not only would there be business for him if he left for the big firm, conversely, if Bob stayed at a smaller firm, a significant part of his practice might dry up because the large corporate law firm would keep that work in-house rather than refer it out, as they had before. So, if we had been smart, I suppose, we would have realized then, when Bob Bennett left, that the law firm consultant Hildebrandt had it right, a firm our size could not survive. But we didn't figure that out when Bob and the other lawyers who were part of his practice migrated to a big firm. And so we all decided, let's just suck it up and stay the course. And with some empty offices to fill and some business void to fill, we haphazardly recruited other lawyers to join our firm. While our body count grew, the quality was diminished, as was the cohesion and culture within the firm. And a couple of years after Bob Bennett and his team left for Skadden, the leader of our transactional practice, Steve Porter, announced that he and the lawyers who were part of his group were leaving to go to Arnold & Porter. And at that point, we figured it out. During this period of uncertainty for my firm, I was experiencing my own professional uncertainties. Divorced and single, I was trying to make my way in a new personal life, and I was more than a little distracted in my law practice. I suspect that's not uncommon in that situation.

**Stu Pierson:** No, I understand as well.

**Bob Trout:** So I was not as focused, I think, on my practice. And I'm sure I was not as productive and I didn't pay attention as much to the internal marketplace. Dick Duvall was a generous mentor when I joined the firm and became a good friend of mine. He talked about how often people neglect the internal marketplace. Everybody is trying to figure out

how to make rain in the external marketplace, but people oftentimes ignore the internal marketplace, that is, making sure that your partners and colleagues think of you in the first instance for whatever it is that is going on. And I'm sure I neglected that marketplace, too. I was a little bit at sixes and sevens during that time, so I went off in 1991 to gaze my navel on a trek to Nepal. And I did it literally at the last minute. I didn't really have a lot going on. I think we were still trying to figure out how do we recover from this loss of Bob Bennett?

**Stu Pierson:** And Steve Porter.

**Bob Trout:** Well, Porter hadn't left yet. This was '91. Porter left around '93, I think—the beginning of '93. So I basically—within about two weeks—all of a sudden said I want to do this. And so I put this trip together with about two weeks' notice and left for a month.

**Stu Pierson:** On your own.

**Bob Trout:** Yes. I went with a group called Mountain Travel, but, yes, I didn't know anyone else in the group. And it was too abrupt and probably irresponsible in terms of my relationship with the firm, I think, because I just left. I left for a month, and that is unusual.

**Stu Pierson:** Did you get your head straight?

**Bob Trout:** I think so. It was great. It was a wonderful time. I don't know that it was immediate. I was in different relationships with women, so I was also trying to sort those things out. And I was trying to take care of my children. So I had a lot of distractions. It's not like I just came back and there was this switch that had turned. But it was definitely a good thing to have done. I had a good friend whom I had been seeing. She was very entrepreneurial and knew a lot of people. She was very helpful as I worked on what I ought to be doing. Did I even want to be continuing to practice law? And so I spent some time,

at least a couple of years, musing about that issue. And I probably wasn't all that productive, I think, as a partner and a lawyer. I wasn't all that engaged. And I wasn't having that much fun.

**Stu Pierson:** Okay. So what year are we in?

**Bob Trout:** That would have been—call it the end of '92—let's say the end of '92.

**Stu Pierson:** The merger with Holland & Knight was when?

**Bob Trout:** That was effective beginning of 1994. [END OF SECOND SESSION]