STEPHEN J. POLLAK, ESQUIRE

Oral History Project
The Historical Society of the District of Columbia Circuit
STEPHEN J. POLLAK, ESQUIRE

Interviews conducted by:
Katia Garrett
April 8, October 9 and November 14, 2002
January 14, February 13 and April 11, 2003
April 12, 2004 and June 14, 2005
William Schultz
February 18, April 15, May 7, July 7 and November 22, 2010
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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

All rights reserved.
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 of 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. Oral history interviews are conducted by volunteer attorneys who are trained by the Society. Before donating the oral history to the Society, both the subject of the history and the interviewer have had an opportunity to review and edit the transcripts.


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. Audio recordings of most interviews, as well as electronic versions of the transcripts, are in the custody of the Society.
Historical Society of the District of Columbia Circuit

Oral History Agreement of Stephen J. Pollak

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, Stephen J. Pollak, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the transcripts of my interviews as described in Schedule A hereto, including literary rights and copyrights. All copies of the transcripts are subject to the same restrictions herein provided.

2. I understand that the Society may duplicate, edit, or publish in any form or format, including publication on the Internet, and permit the use of said transcripts 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 reserve for myself and to the executor of my estate only the non-exclusive right to use the transcripts 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.

Stephen J. Pollak
Dec. 3, 2013

SWORN TO AND SUBSCRIBED before me this

3rd day of December, 2013.

Debbie R. Best-Schneidmiller
Notary Public

My Commission expires: January 14, 2017

ACCEPTED this 3rd day of January, 2015 by Linda J. Ferren, Executive Director of the Historical Society of the District of Columbia Circuit.

Linda J. Ferren
Schedule A

Tapes recordings, digital recordings, transcripts, computer diskettes and CDs resulting from eight interviews of Stephen J. Pollak conducted on the following dates:

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The electronic media are in the possession of Stephen J. Pollak.
INTERVIEWER ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of Katherine L. Garrett

1. Having agreed to conduct an oral history interview with Stephen J. Pollak for the Historical Society of the District of Columbia Circuit, Washington, D.C., I, Katherine L. Garrett, 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, including placement on internet, 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.

[Signature]
Katia Garrett
Date 4/11/03

SWORN TO AND SUBSCRIBED before me this 114th day of April, 2003.

[Signature]
Janis Joy Dysart
Notary Public

My Commission expires, NOTARY PUBLIC DISTRICT OF COLUMBIA,
My Commission Expires December 14, 2005

ACCEPTED this 2nd day of February, 2004, by E. Barrett Prettyman, Jr.
President of the Historical Society of the District of Columbia Circuit.

[Signature]
E. Barrett Prettyman, Jr.
[Signature]
Stephen J. Pollak
Schedule A

Tapes recordings, digital recordings, transcripts, computer diskettes and CDs resulting from eight interviews of Stephen J. Pollak conducted on the following dates:

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The electronic media are in the possession of Stephen J. Pollak.
INTERVIEWER ORAL HISTORY AGREEMENT

The Historical Society of the District of Columbia Circuit

Oral History Agreement of William B. Schultz

1. Having agreed to conduct oral history interviews of Stephen J. Pollak for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter, "the Society"), I, William B. Schultz, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the voice recordings (digital recordings) and transcripts of interviews as described in Schedule A hereto, including literary rights and copyrights.

2. I understand that the Society may duplicate, edit, or publish, in any form or format, including publication on the Internet, and permit the use of said voice recordings (digital recordings) and transcripts 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 oral history or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

William B. Schultz

Date |

SWORN TO AND SUBSCRIBED before me this 6 day of December, 2013.

Notary Public

Commission expires: 3-14-17

ACCEPTED this 9th day of December, 2013, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
**Schedule A**

Voice recordings (digital recordings) and transcripts resulting from five interviews of Stephen J. Pollak conducted on the following dates:

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The electronic media are in the possession of Stephen J. Pollak.
Ms. Garrett: Let’s just jump right in, Steve, to talking about you and where it all started. When you were born, where you grew up, your family and the like. Tell me about your parents.

Mr. Pollak: Well, I was born March 22, 1928. My parents lived on the South Side of Chicago, close to their parents. I was the first child. My parents were married in August 1926, and I was born in 1928.

Ms. Garrett: What were your parents’ names?

Mr. Pollak: Maurice August Pollak and Laura Kramer Pollak. My father was 13 years older than my mother. He was a head taller or more than my mother. My mother was almost immediately out of Smith College (class of June 1926) and my father had gone two years to the University of Chicago. His father had died when he was quite young. His mother never remarried. When he was going to the University some friend of the family counseled him that he should get on with the business of life and leave college and get a job, which he did, probably greatly to his regret. He had held a number of different jobs, none of which I am really familiar with when he married my mother. My mother has told me that my father lost the job he had while they were on their honeymoon. He then went into the real estate business that my mother’s father and another man had begun in 1893, Draper & Kramer. He spent a lifetime in that business. My father loved that business. He
worked five and a half days a week. When I can begin remembering anything, I was then living in a suburb of Chicago. My family moved north of the city to a village called Highland Park on Lake Michigan and rented a house in a little division of Highland Park called Ravinia. It was on the Northwestern Railroad line between Chicago and Milwaukee. My father took the “8:10” in the morning to work and the “5:10” home. The train left from Highland Park and went non-stop into the city. One memory that I have is that each Sunday evening, or Sunday, we would drive into the city to visit the grandparents.

Ms. Garrett: Were all four of the grandparents living during your childhood?

Mr. Pollak: No. My father’s father had died when he was a young boy, and I didn’t ever know him. My mother’s parents were living at 53rd and University Avenue on the South Side of Chicago. My father’s mother and his sister, who didn’t ever marry, and a brother of his mother, were also living on the South Side, ultimately at 51st and University. We would visit them Sunday -- my memory is of visiting each family. I don’t think that those visits saw the grandparents getting together. We would visit one set and then the other.

Ms. Garrett: What was that neighborhood like? 53rd and University, 51st and University?

Mr. Pollak: Well, it was, to my recollection a very benign, probably totally white neighborhood. It was five, ten blocks north of the University of Chicago campus. I remember that milk was delivered -- the families purchased their milk from the Wanzer Dairy that delivered milk to the homes in a horse-drawn wagon. I can remember hearing the clop-clop of the horse on the pavement. There was a small
drugstore on the corner of 51st and University, and I can remember going in there and getting candy or something like that with one or another of the family of my father. My grandfather raised English Bulldogs that he had brought over from London, England, to the United States, and showed them in the shows of the American Kennel Club. I remember my parents telling me that he was the first Jewish member of the American Kennel Club. He had in his back yard in the city a run and dog houses for a number of these English bulls. One of the show names of one of the best dogs was “Glorious Sobriquet.” In any event, the grandparents, like grandparents everywhere, doted on us children. I had one sibling, a sister, who is two years younger than I am. It was a sizeable trip from Highland Park to the South Side of Chicago. When we would go home on Sunday evenings, we would drive along the waterfront east of the Loop in Chicago, and there were these neon signs on the top of the buildings. I remember one of them was for Glidden Paint. And it showed someone pouring paint over the world. We would be driving home in the dark and we would get to that place on the trip and my father would always point out these neon signs and my mother would say, “Oh, Maurice you’re waking up the children.” I think in a way that may tell something about my parents. My father enjoyed making us children happy about whatever was available and my mother was thinking about what was good for us, like getting enough sleep or making the trip go along without incident. The town in which we lived was just a benign existence. The family next door named Armstrong had a son my age, Mason. I was friendly with him and we would go
overnight to each other’s house and his parents were just like my own parents. They accepted us running around doing whatever we did. I had a friend across the street, named Buzz Laurie who became an artist and is a painter living in Taos, New Mexico. We called ourselves the “Three Musketeers” and played all around the home area. Down the street, I had another friend named Bobby Jones, who now lives in Durango, Colorado. Those were my earliest friends. Mason died relatively young. Young meaning probably 35 or 40.

Ms. Garrett: Are you still in touch with them?

Mr. Pollak: I am at the holidays, and I have purchased paintings of Buzz Laurie. I was just in touch with him because I offered to purchase one of his paintings for my daughter who lives in Boulder, Colorado. He paints Southwest United States scenes. Buzz sent me a bunch of his transparencies to look at. Yes. And I’m in touch with Bob Jones at the year end. Durango is a hard place to get to, and I haven’t seen him in many, many years, but we were friends and remain so. My friendships arose based upon the capability to meet without automobiles and those boys lived very close. I had to cross one street to get to the Laurie household and the Jones household. A little further away (meaning three blocks), there was a family with twins my age named Hotchkiss. I went all through school with Gene and Jim and both twins are still good friends of mine. Jim is an investment counselor and has provided that kind of help for my family and my parents and my wife Ruth’s parents. Gene became a college president and we are still close. So, those are four people that I’ve known for 65 or 70 years, pretty stable acquaintances.
We all attended public school right from kindergarten through the end of high school. Bob Jones went away to high school. He had very accomplished sisters and one brother, and I think the pressures on him academically were heavy. He wasn’t doing as well as they had done, although I think he was very capable. The twins were separated after the first or second year of high school.

Ms. Garrett: They were sent to different schools?

Mr. Pollak: Gene continued at the public school and Jimmy went to Vermont Academy, for no reason, I think, other than to foster their independent development. Then they went to the same college and I went to that college, too, Dartmouth. They and I joined the Navy when we arrived at college, and I went through the Navy with them, so I’ve spent a lot of time with the Hotchkisses. They are probably my longest close friends from childhood.

Ms. Garrett: Before we get into school, I want to hear a little bit more about your parents. Your mom, you said she went to Smith. What did she major in and what did she do when she returned to Chicago?

Mr. Pollak: My mother went away to Smith College in Northampton, Massachusetts. Interestingly enough, my mother was called Polly during her youth and then she married Maurice Pollak and that fit with her new last name. She was a good student. I don’t know what her major was. It surprises me that I don’t. She spent her junior year at the University of Chicago. She told me recently that she had met my father and that led her to transfer to the University of Chicago. I don’t believe she prepared herself for a career. I think that those were not life paths that
were recognized as available then. I think my mother was very capable and in today’s world would have charted out a career. She actually followed a career of voluntary work.

Ms. Garrett: What kind of volunteer work did she do?

Mr. Pollak: Her major activity that I remember during my childhood was the League of Women Voters. She was very active in the League and during my young years was President of the Illinois State League and served on the National Board. Given my propensity for horrible puns and not-so-funny jokes, I would often say my mother was active in the “National League,” meaning the baseball league, although, of course, it was the National League of Women Voters. She knew, I think, the founder of the League, Anna Lord Strauss, and other women leaders. She was active in the League with Emily Taft Douglas, who was married to Paul Douglas, later Senator from Illinois. Emily Taft, as she was often referred to, was for a term or two a congresswoman from Illinois. My mother also was active, as was her brother Ferdinand Kramer, who with my father, ran the real estate business after my grandfather died in 1944, in the Chicago Planning and Housing Council. The Council has had a material effect on the development of the City of Chicago. That was a volunteer activity. Later, perhaps during the 1950s, maybe later, my mother was a member of the Northeastern Illinois Planning Commission which was a seven-person authority with power over planning of public works in northeastern Illinois, including the City of Chicago. That was a public body to which she was named by the Governor.
When I was little, I remember that many of the people living in Highland Park would call my mother when elections came around to find out how they should vote. She was up on politics and interested herself in it. I don’t remember either my mother or my father actively involving themselves in political campaigns. My mother was working for good government. I harbored the view then that my mother was a Democrat, or supported the Democratic candidates mostly, certainly Franklin D. Roosevelt. I recall my father as being more business oriented and possibly leaning a little toward the Republicans, but I’m not sure that he did. Later, I don’t think that he did at all.

Ms. Garrett: Was politics or public affairs something that was discussed in your household a lot?

Mr. Pollak: I think it was. I remember in grammar school, called “Ravinia School,” my father for a period of time served on the School Board for the District 108 which consisted of four or five grammar schools. In 1936, my school had a mock election for president. My memory is that there was a large number of students for Alf Landon from Kansas. I was one of four voting for Franklin D. Roosevelt. The mock election could have been in 1940 when Willkie was the Candidate.

Ms. Garrett: A distinct minority in the town were Democrats?

Mr. Pollak: That’s true, but I don’t have the feeling that Highland Park was an archly conservative area. I think it elected Republicans in Lake County, and that continues to this day. Concern with public affairs, concern for good government, these were concerns of our household. From almost the earliest that I can
remember I was interested in civics, probably coming a good bit from my mother. I remember my mother having an interest in those concerns stemming from and driving her involvement with the League. My father was supportive, but I don’t think that he exhibited, at least at a verbal level, the same interest. My father liked to play golf and the family was a member of a Jewish country club located in Ravinia called Northmoor. My father played golf each Sunday in the temperate part of the year. Sometimes as I grew older he would come out early from the city on Wednesday or Friday or Saturday and I’d play nine holes with him. He taught me to play golf and I have very fond memories of doing that with him. He liked athletics and was very supportive of my interest in athletics. My parents were big on volunteering. One responsibility my father took on, possibly connected to his service on the School Board, was to be the citizen responsible for supervision of the public ice skating rink. Winters were cold, and starting in November, the playfield at the grammar school was flooded as an ice skating rink. We kids went skating every night there. There was one employee who would flood or spray the skating rink each evening and my father supervised that and probably other matters relating to the rink as well. We were very active ice skaters, my parents, my sister, and I.

When I was very young, our family would go with the very earliest kinds of skis and ski on the golf course which had a few very little hills.

Ms. Garrett: I imagine hills were hard to come by in that area.
Mr. Pollak: Very. As we got a little more accomplished, we went into southern Wisconsin and skied at a place called Wilmot. We also skied further north at La Crosse, Wisconsin, and Ishpeming, Michigan. My parents’ closest friends were Bernard and Ruth Nath. They lived in Highland Park and had two daughters. Their daughter my age was named Marjorie. She was my earliest girlfriend. We went all through public school together. She is still a close friend of mine. One year we went skiing at Lacrosse over Christmas. When we were going home, it was very cold and we were at the railroad station waiting for the train. One would travel back and forth by train. I had been in a play or been reading a play, and went out on the platform and came back in to the station house and said to the group, “It is bleak without and I am but thinly clad.” My mother has always remembered that, as have I. It was from Shakespeare. On cold days, my mother would repeat the saying with a twinkle in her eyes.

One of the lovable things about my mother, something that she has willed to me, is that she loves the almost musical sound of persons’ last names. Highland Park was blessed by the fact that at the northern end, the whole town probably was maybe four miles from north to south, bordering on Lake Michigan, was Fort Sheridan, an army base. The community around Fort Sheridan was called Highwood and it had a large immigrant population of Italians and Swedes. That meant that the high school was more diversified than just suburbanite families. A lot of the Highwood families serviced in one way or another the needs of the military base and its personnel. In any event, in my high school class there were
many students with these melodic Italian names like Tagliapetria, Pignantaria, Almado Minerini, Passuello. My mother used to like to roll these names off her tongue. The children from these Italian and Swedish families contributed a great deal to my learning experiences coming from different backgrounds.

My memory is that all through my 13 years of public school in Highland Park, kindergarten through eighth grade at Ravinia School and four years at Highland Park High School -- my graduating class in 1946 had 242 students -- is that there was one black family named Brown. There were two children in that family, the daughter was the younger of the two and may have been in my class. The son, whose name was Shelby Brown, was a year or two older than I was. It was a very white community that I grew up in. It was diversified by ethnicity somewhat, but not by race. My memory of diversity also includes diversities of religious background. The predominant religion was Christian among the people that lived in the community, but there was a significant Jewish presence. My memory, a kind of a subliminal awareness, was that being Jewish was not only being part of a minority, but I had this vague feeling that it was a disfavored minority.

Ms. Garrett: Did you have any experiences directly where you were disfavored?

Mr. Pollak: The only experience I can point to as a memory is some kind of playground incident where an older boy called me a “kike.” I’m not sure I quite knew what it was, but I knew it wasn’t a term for a favored person. I never had anybody fight me over being Jewish. There were undoubtedly a lot of Jewish children in my
school. I felt no minority status in grammar school. I played football, swimming and tennis in high school. I never felt any minority status there. There was a Jewish country club and one or more gentile country clubs in my home town. Among my boyhood friends, the Laurie family was Catholic, and the Jones and Armstrong families were perhaps Presbyterian. The Jones and Armstrong families belonged to the gentile country club, Exmoor. I felt those clubs were exclusionary.

My father was tall and was a good basketball player. In high school he had had three or four or five close friends. They all played on the basketball team, and then he and they went to the University of Chicago and played on the basketball team, incidentally for Amos Alonzo Stagg, who was the great stand-out football coach for the University of Chicago, which then was a powerhouse in football. Stagg coached the basketball team as well. All of my father’s friends then joined a gentile fraternity and he was excluded. I think that was a life-affecting experience for my father. He didn’t really count gentiles as reliable friends until very late in life because his close friends had parted from him at the beginning of college because he was Jewish. And so I think that seeped into my awareness. But how early and how much this awareness became influenced by difficulties and worse experienced by the Jews in Germany, I’m not able to distinguish now. I can remember an awareness in the family that we were Jewish and that we were different in that respect. I think that the pride that Jewish people now have in their Jewishness was less in my youth. Families still saw
assimilation as a major goal, and assimilation was perfectly fine on the part of a community in this country. There has developed feelings that people can be a hundred percent a part of the American experience and still have their lesser communities. That’s a positive thing for people’s self worth. There was less of that for me in my youth. I don’t think I wanted to be different. I don’t recall that those considerations made a difference to the people with whom I spent my time. I don’t think that the Jewish-gentile difference made much of a difference in fact but it made some difference in my head.

Ms. Garrett: Was your family at all religious? Did you go to temple or services on holidays?

Mr. Pollak: My family was not very religious or at least that’s the way it seemed to me. My mother felt that we should go to Sunday school, as it was called, at the North Shore Congregation Israel, which was in Glencoe, the next suburb to the south. My sister and I did for many years. The rabbi was named Shulman. I don’t recall what age I began, but we would attend the regular Sunday service and then go to our classroom. I was resistant. My memory is that I was resistant because my father worked 5 1/2 days, so, to the extent that he was home and I was going to Sunday school, then I wouldn’t have time with him. But that is at odds with the fact that each Sunday morning he played golf. It may be that my resistance was that there were perhaps Saturday classes or maybe Hebrew classes. I connect my resistance to wanting to be with my father who, I recall, was supportive of my desire to avoid going to Sunday school. I didn’t open myself to the joys of religion. I found the classes boring. Neither of us, my sister Louise and I, was
confirmed or bar mitzvahed or bat mitzvahed. Later, my sister, who had a first marriage to Ray Marks, divorced, and married Chuck Salzman. Chuck is religious, and Louise is now quite religious. Her daughter -- she has three children -- her daughter Susan is ordained as a rabbi. I think that Louise has gotten a lot out of her religion.

My family always had a Christmas tree. Christmas was a big thing. I never saw anything out of the ordinary about celebrating Christmas until I married my wife, Ruth. Ruth is a granddaughter of the head orthodox rabbi of the State of Wisconsin. Her parents thought that a Jewish family that had a Christmas tree had made a terrible error. In our early years, when we had children, we had a Christmas tree, but in time, Ruth got me to give it up and I’m quite satisfied with that. I look back and think that I had confusions about who I was and what my relationship to Judaism was. I was resistant to it, probably taking a page from the assimilationists’ book.

Ms. Garrett: Did there come a point when that resolved itself?

Mr. Pollak: Some time later. I went to Dartmouth College. Many influences led me there. One of them was that I harbored the view that fraternities played a lesser role there than at some other places. As a macro matter that may be true, but they played a major role at Dartmouth. I can remember before going to college talking over the dinner table with my parents about college fraternities and how they were discriminatory. That keys in with the experience of my father at the University of Chicago. I did not join a fraternity at Dartmouth. I never wanted to. This, I
concluded later, was a coming-of-age experience. Somewhat after I’d made this choice, I realized that I hadn’t really made that choice myself. I felt I had made the choice I thought my parents would make or expected me to make. When this more adult, more independent thinking broke over me, I realized with some disappointment that it was perfectly fine not to join a fraternity, but it would have been better not to have joined for my own reasons, rather than my parents’. I was never sorry about it. It was just that it would have been better to have come to terms with my own thinking to say, “That isn’t something I want to do. Those are not necessarily the people that I want to be with.” In fact, many of my friends on the swimming team were fraternity members as were my close friends, the Hotchkisses. I was troubled by the idea of joining a segregated Jewish fraternity and I was also troubled by the idea of being a token Jewish member of an otherwise gentile fraternity. I didn’t like either alternative, so the swimming team was my fraternity.

Ms. Garrett: You were growing up in some interesting times, I think, globally and domestically. I wanted to talk to you a little bit about what impact some of those events -- events of World War I, World War II, had on you and on your family and if the fate, the plight of the Jews in Europe, was something that was discussed or known, or if you understood much.

Mr. Pollak: I was 11 or 10 when Hitler began moving against the Sudetenland and then Czechoslovakia and later France. That was a matter of constant concern in our family. My family was committed from an early time to the idea that the
United States had to be involved in opposing the Nazis. There were hatemongers on the radio, Father Coughlin and Gerald L.K. Smith, who had to be Nazi sympathizers and spouted anti-Semitism on the radio. We were aware of those conditions. I followed all of that very closely. I was committed to the entry of the United States into the war. The United States’ future was on the line.

Ms. Garrett: Where were you when you learned about Pearl Harbor? Do you remember that?

Mr. Pollak: I don’t remember where I was. I think I was just at home on a Sunday afternoon. I remember where I was when I learned President Kennedy had been killed, but I don’t remember where I was that Pearl Harbor day.

I remember the conditions in the United States in the Depression and the concerns that my family felt for people who didn’t have work. Our household had a strong concern for public assistance and for government doing the right thing, driven by the ethic of the League of Women Voters with which my mother was active. These views must have been reinforced in my grammar school, although I don’t recall much about that. As I got to seventh grade, I had a civics teacher – we had a home room teacher and I think my home room teacher was the same as my civics teacher – Lorraine Sinkler. She was very much concerned with good government and international cooperation and she had a large influence on me as did my mother.

Ms. Garrett: Were there any other teachers who filled that role in the early days?

Mr. Pollak: Well, I had important male teachers in high school. A lot of good solid teachers, all the way along. I think my public school education was a good education. The
public schooling was a good community to be a part of. I did very well as a student, but never thought of myself as a brilliant student. My three earliest friends often referred to me as “prof,” short for professor, although looking back on it I don’t really know why. I wasn’t really an intellectual youngster. I wasn’t reading deep books.

Ms. Garrett: What kind of books did you read? What did you enjoy?

Mr. Pollak: I remember enjoying the Hornblower books by C. S. Forester about the sea. My father had been in the Navy in World War I, and I had seen his picture in uniform. I always harbored the view as a youngster that I wanted to go into the Navy and I ultimately did. One of the great books that I read as a young person was Somerset Maugham’s *Of Human Bondage*. An influential reading for me was Dostoyevski’s *Crime and Punishment*, which I must have read later. I remember reading a book by Marcia Davenport, about coal mining in Britain, *How Green Was my Valley*. I read the Neville Shute books about South Africa. I liked reading novels. My memory of my education is that I did not draw as much out of a lot of it as I think was available, on history, on literature. I was doing a lot of different things, as well as growing up.

Ms. Garrett: What were your goals? What did you want to be when you grew up and had a career?

Mr. Pollak: From an early time I wanted to be in government. I thought that the government was a force for good, and that I wanted to be a part of it. I had a plan to go to college and to go to public administration school thereafter, Littauer at Harvard or
Maxwell at Syracuse or Woodrow Wilson at Princeton. The Navy sent me to 
college in something called the Holloway Plan and that obligated me to serve 15 
months to two years after graduation on active duty. While I was in the Navy, 
President Truman, because of the Korean War, extended my term to three years. I 
applied to those three public administration schools, and then I applied to Yale 
Law School and entered the Law School. I didn’t know any lawyers except for 
Bernard Nath, my parents’ friend. I didn’t know what he did as a lawyer. When I 
got to law school, I had no role models at all. I was confused in my first 
semester by all the terms for what to me seemed the same thing – petitioner, 
plaintiff, respondent, appellant, appellee, defendant. It was hard for me to get the 
case reports straight because I knew so little about the fabric of the law, which 
should have been otherwise because I had taken Constitutional Law at Dartmouth 
from Professor Robert Carr. I did not leave Dartmouth with the idea that I would 
become a lawyer.

I was active at Dartmouth in the National Student Association. I remember 
attending, possibly in the winter of ‘48-‘49, one of the early convocations of the 
National Student Association at the University of Wisconsin in Madison. I 
became friendly there with a young woman from Mount Holyoke College named 
Charlotte Huston and later dated her. After college, she married Otto Reischer 
who was an immigrant from Austria. Otto was an economist working for the 
Labor Department in 1951-52. Otto and Charlotte were living in Washington. I 
was beginning my third year in the Navy. Ruth and I came to Washington to visit
Charlotte. Over lunch at a hotel at the corner of Pennsylvania and 18th Street, Otto asked me what I was planning to do when I got out of the Navy. I said, “I’m going to go to public administration school. I want to be in government.” McCarthyism was then the bane of people in government. He said to me, “Well, that’s a bad idea. If you go into the government and you are trained in public administration and somebody takes out after you for your views, they’ll let you go, you won’t have anywhere to go. Government is your only skill.” He said a much better avenue to public service would be to become a lawyer. “Then,” he said, “you can go in the government and if McCarthy or someone takes after you, you can just thumb your nose and get out of government and practice law.”

Ms. Garrett: And that was the impetus for applying to law school?

Mr. Pollak: Yes. I had this feeling that Yale Law-trained lawyers were interested in public service. I applied only to Yale. That lunch really made a difference in my life. Otto didn’t even know me. I’m still friendly with Charlotte. I served as Otto’s lawyer. Otto died relatively young. Charlotte then, years later, married a wonderful MIT astrophysicist named George Clark. Law was almost an accident for me but it’s been a very good calling.

Ms. Garrett: Was your family involved in any wartime activities during World War II?

Mr. Pollak: A cousin of my mother, Dr. Stanton Freidberg, an ear, nose and throat specialist, was in the Army during World War II and served in the Pacific. He sent me a little cap of a Japanese soldier. I remember taking it out of the wrapping and
recoiling from it, which must reflect the feelings I had as a youngster about the “enemy.”

Ms. Garrett: Did you have any awareness of the Japanese internment?

Mr. Pollak: I regret to say that if I did, I imagine I supported it. I thought then that the risks that the President spoke about warranted what was done. I don’t think that anymore. At the same time, there were no Asians that I knew. I was aware of the internment. My memory is that I took seriously the idea of Japanese-Americans directing planes over America, so I thought there was a real threat. Now, it seems terrible to have accepted that. It was only years later that I became aware of underlying injustices of all sorts, including loss of land and businesses which non-Asian Americans took over. As far as I can recall, I am not distinguished by having had the independence of mind to condemn the internment at the time. As a general matter, I grew up supporting the rights that the Bill of Rights guarantees. I was conscious of those rights, and thought they were an important strength of our society. There was little conflict in my youth and I didn’t see much suffering close up. When I saw it, as I felt there was suffering in Europe, I was supportive of doing something about it.

Ms. Garrett: At the end of World War II, where were you when you heard about it?

Mr. Pollak: I was a competitive swimmer. In the summers of 1943, ‘44 and ‘45, I went to a wonderful North Ontario, Canada, camp, run by the nation’s outstanding swimming coach, Michigan University’s Matt Mann, an immigrant from Britain. He ran a boys camp and his wife and daughter ran a companion girls camp on a
lake near Magnetawan in Ontario Province. I was first a camper and then a
counselor at that camp, Camp Chikopi. I was at that camp in August 1945 when
the war against Japan ended. The news came through. There was an aide to Matt,
woman, not as young as I was, maybe three or four years older, whose husband
was in the military. I was conscious of her joy at his being able to come back. I
had no contemporaneous knowledge of all of the celebrations photographed in
Life Magazine. My memories of the wartime include sacrifices people were
called upon to make. My father went to the 8:10 a.m. train in a car pool so that
they would use little gas which was rationed. I remember using food stamps and
gasoline stamps, shortages, saving tin cans and knitting squares for blankets. I
remember earning money and saving it to buy war bonds. I was fully committed
to going into the military as soon as I was of age, although I could have joined the
Navy when I turned 17 in March of 1945 and I didn’t. I projected going into the
military after high school, and then the war ended. I remember members of the
class two years ahead of me going in. There was a young woman named
Kackie Watson. She was an “item,” we would say today, with a young man who
went away to the war and was killed in Europe. It brought the war home to me.
He was here and then he was gone. The war was an overpowering presence
during all those years. Every morning, one read the paper. When the Allies
landed at Normandy, every day we would look at the paper to see how the battle
lines moved. My recollection is that my education just proceeded along. The war
probably didn’t make that much difference in the way my life was going. The
social engineering that Roosevelt was pursuing had the full support of my household.

Ms. Garrett: Including your dad, who was engaged in business?

Mr. Pollak: There were tensions, but mother carried him along, I believe.

Ms. Garrett: It sounds like she was a strong personality.

Mr. Pollak: She was a strong personality. So was my father. My uncle Ferd Kramer went away to Washington, so my father ran the family business, Draper & Kramer.

Ms. Garrett: What was he doing there?

Mr. Pollak: He was part of the National Housing Administration and War Housing Administration. He brought his knowledge of that industry to Washington. During the Depression my father was an executive at Draper & Kramer, a real estate company begun in 1893 by my mother’s father. The executives didn’t take any salary at all. They worked for a time with no income. My family was limited economically then. My father was more realistic about making the private economy go. He would have dialog with my mother who was seeing what the social needs were that had to be met. Both points of view were entitled to credit. So there was some clash there. My father would say sometimes to my mother, “Laura you’re not being realistic.” At least that’s the way I would put it. I was greatly influenced by my mother, but both parents had a work ethic that I inherited. My mother’s work was in the home and volunteer work “downtown.” In my little town, going downtown meant going down to Chicago. My mother’s
mother came out to our house on Thursdays, allowing my mother to go out and do things or go downtown. My grandmother would take care of us.

Ms. Garrett: I think we are at a point we can stop. We have been going about an hour and a half or so. Next time, I’d like to pick up at college, the next jump. And then from there to your naval service and law school.

Mr. Pollak: It might be interesting to put on the record the careers of people that I grew up with or went to college with. There were 242 of us who graduated from Highland Park High School in 1946. I have probably been more involved in public life than any of my class from that relatively affluent community. Among the women, there are a number who, like my mother, devoted themselves to volunteer work or became teachers. Most of the women from my generation did the traditional thing, raise their families. My wife Ruth says she was trained to go to college and get married, and she did. We married following her graduation from Sarah Lawrence, a few weeks after my return from Korea.
Ms. Garrett: Steve, when we last wrapped up, you indicated that you wanted to go back and talk about some of the folks that you grew up with in a little bit more detail, and I thought we could perhaps start there and then move into your college years. Some of the people you mentioned were Buzz Laurie, Mason Armstrong, Bob Jones.

Mr. Pollak: The young people with whom I grew up had the best of opportunities for education and personal fulfillment through career and other ways. I’m thinking of my high school classmates. Buzz Laurie, best man at my wedding, became a painter of western scenes. Ruth and I have wonderful paintings of his in our home. Mason died young and unfulfilled. Bob became a salesman and lived most of his life in the west – Colorado and Arizona. Noel Behn became a writer and published books. He’s distinguished by having had that career. Of my very earlier friends, the Hotchkiss twins, one, Gene, became a professor of history and then president of Lake Forest College. The other, Jim, began his own investment advisory firm and made a great success. The story of my classmates born in the late 1920s is that the women went to college, married and raised families and probably did many things outside the home initially of a volunteer
nature and later had careers. That is the pattern my wife followed. My observation is that the women of that era did not expect to have a career in addition to family.

Ms. Garrett: Were these issues sort of what one expected to do in life? Do you recall discussing those issues with friends in high school?

Mr. Pollak: I recall discussing with male friends what we wanted to do in life. I would discuss with some of the several girl friends that I had, “what is the future.” I don’t recall discussing with girl friends what they would do or what they felt the future held for them to do. There was no currency like there is today to the issue of what women would make of their lives beyond family. It just wasn’t in the consciousness. That seems surprising now.

Ms. Garrett: And particularly look at your own household where your mom was very active in the political world.

Mr. Pollak: Right. The most descriptive word is expectation. My mother didn’t expect that she would be having a career or perhaps my father didn’t expect that – and that influenced her actions. Running a household was more time consuming. There were less labor-saving devices; there were more demands on the person running the household to do all that needed to be done. There wasn’t time for a woman, if the woman was the one keeping the household, to work in addition to working at home. We had help in the home, generally a farm girl from Michigan lived with us and helped, but that didn’t lead my mother to consider taking a job. The last oral history session we had in April led me to ask my mother a few
questions, to which I didn’t have answers. I asked her why she shifted in her junior year from Smith to the University of Chicago. She’s 97 now. She said she had met my father and wanted to get to know him better, or to catch him as a husband, so she moved from Smith to the University of Chicago, which was where my father lived, in order to see more of him. It was successful. She married in August after graduating from Smith in June.

Ms. Garrett: Interesting.

Mr. Pollak: Yes, in 1926.

Ms. Garrett: After that last session is there anything you wanted to add to amplify some of the issues that we covered?

Mr. Pollak: I went to my high school fiftieth reunion in 1996, and saw many of the men and women that I had known and gone to public school with. I found that the people that I had known and liked had grown into quite wonderful adults. They were adults you could have predicted they might be. It was easy to take up with them after a long period, some 45 or more years since I’d seen most of them. I’m not a big one for going to reunions. I went to my college’s fiftieth in the year 2000. Six of my classmates were asked to speak to my class on topics that reflected their careers. One was a doctor, one, George Woodwell, directed the Woods Hole environmental project in Massachusetts. Another was a renowned investment security person. Another, Frank Gilroy, was an outstanding playwright; he wrote “The Subject was Roses.” They spoke wonderfully. They
reflected a broad outlook on the world’s problems. I felt they were a credit to the education that I had gotten there at Dartmouth.

Ms. Garrett: Was Frank Gilroy somebody that you had known in college?

Mr. Pollak: I had known him, but not well.

Ms. Garrett: What was he like in college? Was he active in theater?

Mr. Pollak: He was active in theater and produced plays and acted in them at college. Another classmate with whom Frank was active in theater was Alan Tarr. Alan, I recall, was killed in the Korean War after college. My closest involvement with a group of students – it was all men at Dartmouth then – was with the swimming team. I swam for four years and was the captain my last year. I recall having a broad acquaintanceship in college but not having closeness with a broad number of people. The Hotchkiss twins from my hometown were close friends, as was a young person from Britain, Norman Clark. During World War II, Norm had lived in my hometown. His parents had sent him to the United States because of the bombing of London. He turned up at Dartmouth and became a very close friend. He was killed in my senior year in a car crossing Loveland Pass in Colorado – a head-on collision. There were no seat belts then. I always had roommates after freshman year and they became good friends. My enduring relationships are more with my law classmates. I consider my law education a more significant influence on my life than my college education, even though I had good professors and did well at the college.
Ms. Garrett: What was your major?

Mr. Pollak: I majored in economics with minors in government and history. I joined the Navy program when I arrived at college, which paid my tuition, books and $50 a month. Tuition was very low then. The program required several things. Dartmouth students took five courses each semester, and the program required that one of those five be a Navy course. It required that I go to sea as a midshipman each summer and that I serve 15 months to two years in the regular Navy as an officer after graduation. When I graduated, almost immediately the Korean conflict began and subsequently President Truman extended my term – and the term for all like me – for a third year. So, I served three years in the Navy after college. One-fifth of my college education was devoted to what then were, in my view, inadequate academic courses on naval subjects.

Ms. Garrett: What are Navy courses?

Mr. Pollak: They were insignificant. One of the courses was on armaments. We had to memorize all the pieces of the 5-inch, 38-caliber gun, which seemed to me as useless a bunch of information as one could possibly imagine. We learned naval history, which was valuable, but the academic level of the professorial staff – generally regular line officers – was not high. It was not the most rewarding part of my education.

I was left with four-fifths of my courses in the regular academic lines. As a result, I concentrated my major in economics but I minored in government and history, with a purpose of taking courses that I wanted to take in the three fields.
I took the range of the English, economics, government, history, psychology, philosophy, physics, and botany courses. I had a lot of good college academic courses and good professors. English literature was a strong course. In my fourth year, I wrote my thesis as an economics major on monetary policy in the early New Deal period and studied Keynes and all of the efforts to lift the country out of depression with monetary policy. My professor for my thesis was a great teacher, Malcolm Kier.

Ms. Garrett: What did you conclude in your thesis?

Mr. Pollak: I was impressed that the theories of John Maynard Keynes had been significant in helping Roosevelt find ways to use monetary and fiscal policy to stimulate the economy. I recall reviewing the many different approaches tried by Roosevelt. I can’t recall my conclusions, except that I found Keynes’ ideas persuasive. Professor Kier had been a member of a committee of three persons responsible for setting minimum wages and hours in the textile industry, which was part of Roosevelt’s National Industrial Recovery Act program. He had a lot to offer as a professor and helped me shape my thesis.

My recollection of myself in college was that I worked very hard. I was motivated to get good grades, and I hadn’t seen the distinction between getting good grades and learning.

In my senior year I invited Ruth Scheinfeld, now my wife of 51 years, who was a student at Sarah Lawrence, to come as my date to the Winter
Carnival, which was in February 1950. I had known her since Christmas
vacation of my sophomore year.

Ms. Garrett: How did you meet her?

Mr. Pollak: I met her in an unbelievable way. My sister, Louise, who is two years younger
that I am, had gone to a three-week summer camp for girls in Wisconsin, a
YMCA camp. She had met a girl named Ruth Scheinfeld from Milwaukee.
When I came home in my sophomore year for Christmas vacation, my sister
said to me one evening, “I’m going to go to a party in Glencoe [a nearby
suburb] and a friend of mine from camp whom you might like to marry will be
there. You should come with me.”

Ms. Garrett: She said that straight out?

Mr. Pollak: Yes. I never went to parties in Glencoe. I went to parties in my own little town,
but I accompanied her to the party and met Ruth and was very attracted to her.
We saw each other during that holiday and I returned to school. Ruth always
tells the story that she expected me to take her out on New Year’s Eve, and then
lo and behold I wasn’t there and didn’t call. I had returned for swimming
practice without even giving her a proper goodbye or telling her what’s what. I
wasn’t a very attentive suitor for the next couple of years, but I saw her at least
when I was home. And then, quite amusingly, after inviting a couple of
different women friends to Winter Carnival my senior year and being turned
down, on Sunday of the weekend before Winter Carnival, which began on
Thursday, I telephoned Ruth and asked her if she would come up. She knew it
was a late request and said, “Well, if I can find a ride, I’ll come, but otherwise I won’t.” She found a ride, she came up and I fell in love with her and wrote her every day until we married a year and a half later. I tried to become engaged to her when I was leaving to go to Korea on my Navy ship, but she said, “No way, I’m not going to go through my senior year engaged to some fellow who’s off in the Far East.” So, she went through her senior year. And I came home from Korea. She met me in Norfolk. We phoned her parents, said we wanted to be married in 10 days, and we had a big wedding in Illinois.

I started all of this by talking about my education. I visited Ruth at Sarah Lawrence a few times in the spring of 1950. Sarah Lawrence students did not receive grades. The college kept a transcript, but the grades weren’t revealed except when a student applied to graduate school. Rather, students received constructively critical reports on their performance in each course they took. I observed the education at Sarah Lawrence at close hand and thought it was superior to what I was getting. The students were encouraged to learn rather than to achieve good grades. And, of course, the students have greatly achieved. Ruth has just completed twelve years as a trustee of her college. As a result, I have a sense of the college today and it continues to be an amazing school. Dartmouth is a very strong school as well. The chemistry for me at my age didn’t allow me to maximize my opportunities at Dartmouth, although I did very well. I was a junior Phi Beta Kappa and a successful athlete, but whether I learned all that I could or got as much out of it as one could remains a question.
for me. I suppose that’s not uncommon. I’m sure I had a lot of growing up to
do.

Ms. Garrett: I think that’s part of the college experience. That’s what it’s designed to do.

Mr. Pollak: Me, too.

Ms. Garrett: You told in other places of how you came to attend Dartmouth, but I don’t think
that we’ve touched on that here.

Mr. Pollak: Going to Dartmouth was one of the fortuitous events of my life. My family
liked skiing and my parents taught me to ski at a young age. For some reason I
associated Dartmouth with skiing, and when I was 12 I wrote the college a letter
saying that I wanted to attend. I anticipated being a skier there. Of course there
were lots of years between 12 and college. Later, I applied formally to a
number of different colleges, including Dartmouth. Preparing the applications
was a very agonizing task, because it required a lot of introspection as to what
college should be. I wasn’t mature enough to be able to write the most
insightful answers as to what I expected. I then proceeded to drive east with my
friend Eugene Hotchkiss to visit colleges in the spring of my senior year. We
picked up Gene’s brother, Jim, who was attending Vermont Academy, and
visited a number of colleges. I remember visiting Yale and not liking it so
much but I can’t say why now. I remember visiting Williams. On the day we
visited Dartmouth, the acceptances had just gone out and the Hotchkiss boys
and I learned that all three of us had been accepted. All three of us concluded
right at that point that we would go to Dartmouth. That was how the decision
was made. Whether it was the herd instinct or what, I don’t know. The Hotchkisses attended school in the class of 1950 along with their brother Frank, who had returned from the War. So, there were three of them. The Hotchkiss family did not have funds enough to send them all to school and pay the costs, so the twins were committed to joining this Navy program for financial reasons. I didn’t have to join the Navy program for financial reasons. My parents were prepared to pay for my education, but perhaps having always thought I would serve in the Navy, having seen pictures of my father in his Navy uniform and seeing what the Hotchkisses were doing, I marched right along with them and signed up. My father generously contributed to a bank account the money that he was going to pay for my schooling, which then assisted Ruth and me in later years. Those experiences had a tremendous influence on my life. They influenced my selection of Yale Law School. They influenced how I spent my summers during college and how I spent three years after college in the Navy and all the experiences that came along with those decisions.

Ms. Garrett: If you had to do it again, would you make the same decisions – Dartmouth, Navy?

Mr. Pollak: For who I was at the time, those were good decisions. I think of myself then as being personally – not politically – conservative. Yet, at the college I was active in the recently-formed chapter of the National Student Association, which was a student organization created after the War to pursue social causes and social change. I went to its national convention. One of its planks was the
ending of discrimination in fraternities, which then, generally, had restrictive clauses in their charters barring religious minorities, Catholics, Jews, and certainly Blacks. I returned to Dartmouth and became a leader in seeking to require the fraternities to remove clauses in their charters that required such discrimination. That was surely swimming against the tide.

Ms. Garrett: How was that received?

Mr. Pollak: I don’t think I felt like a pariah, but there was substantial opposition. I began something that led later to the College banning those clauses.

Ms. Garrett: What led you to attend the NSA convention?

Mr. Pollak: There was a chapter of NSA called the Northern New England National Student Association. It had meetings in Boston. I attended those, became an officer of the New England group I believe, and as a matter of course attended the national convocation in 1949.

There are a couple of good stories about the NSA meeting in Madison, Wisconsin. I was thrown in with many of the leaders of the organization. I didn’t consider myself to be a national leader. As an officer of the Northern New England Chapter, that may have brought me together with the national leadership. Allard K. Lowenstein, later a congressman, was one of the leaders and impressive. There were other very impressive young people. It was soon after World War II and there were many issues. One experience reflects how sheltered and narrow my experience had been. It also causes me to believe that my college education and broadening experiences like NSA had a very
constructive effect. Even though there was a significant Jewish community in my hometown, it was not unusual for people to tell dialect jokes. I went to this convention in Madison and I remember meeting and being impressed with a student leader from CCNY, City College of New York, who not only was Jewish but his normal manner of speaking was in the dialect that had been used in these jokes. That was an eye opener for me. I was well impressed with him. His ideas were impressive. He was impressive. I never found anything amusing about a dialect joke from that point on. I thought it was just making fun at the expense of individuals whose homes and communities led them to speak with that kind of accent and use of the language. That was a broadening and formative experience. I met people that I continued to see and gained friends that I consider closer friends than I had at college. Someone who is active here in the bar in the District of Columbia and has had a distinguished career, Berl Bernhard, was my friend at Dartmouth and was one year junior to me. He was active in NSA and he picked up the antidiscrimination-fraternity-clause banner from me when I graduated. It may have been in his year that positive steps were taken by the College. But I remember speaking to Dartmouth’s Interfraternity Council on the subject. There’s a picture somewhere in the class yearbook of that event. During my junior year, I spent Thanksgiving with Berl and his family in New Jersey. I came down with the stomach flu, and Berl went back to college, and Berl’s mother and sister took care of me for a week afterwards.
Ms. Garrett: And where did he live?

Mr. Pollak: Across the Hudson River from New York.

Ms. Garrett: When did you get active in the NSA?

Mr. Pollak: It had to be my junior year. It was close to the inception of the organization.

Ms. Garrett: What drew you there? If the meetings were in Boston, it wasn’t something that you would have idly stumbled upon?

Mr. Pollak: Someone from NSA came to campus for an organizing meeting and I attended. It was the center of my social action in my time. John Dickey was president of Dartmouth. He had come from the State Department and became president in my freshman year. He had a significant influence on me. He commenced for all seniors a course in “Great Issues.” He brought in major leaders in world affairs, academic fields and poetry. I remember Robert Frost talking to us. So, there was a lot of interest on the Dartmouth campus in social issues.

Ms. Garrett: McCarthyism was on the rise at that time. Was there any general awareness of it on campus? Was that discussed at all?

Mr. Pollak: It was certainly discussed and there was an awareness of it. In the late 1940s and 1950s there was certainly an attack on liberal organizations such as NSA. And I felt no deterrence from those attacks. But it was some wind that was blowing on the campuses. The common wisdom of social historians is that students in the 1950s were being disengaged from social issues. My era was not.

Ms. Garrett: I think that’s right.
Mr. Pollak: I was benefited in college because there were many returned veterans and they were concerned about current issues.

Ms. Garrett: An interesting group to attend college with?

Mr. Pollak: Yes. My law class had returned Korean War veterans, of which I was one, and that made the law class a group with very rich backgrounds.

Ms. Garrett: Bringing a very different life experience to the table.

Mr. Pollak: Right.

Ms. Garrett: What about other political issues or events during the time you were in college? Alger Hiss -- did that make it onto anybody’s screen?

Mr. Pollak: Certainly. I was aware of his case and the cases of Harry Dexter White, Owen Lattimore, and others. I considered the attacks on those persons unwarranted. In some cases history has proved me right, and in some cases history has apparently proved me wrong. I recall vividly Winston Churchill’s speech in Missouri where he forecast the coming Cold War. I had considered Russia an ally and was resistant to the idea that it was now the enemy of our country. I was concerned with the limitations on speech that were pursued by the government in the interest of fighting communism. That was a major issue for me, but I don’t recall being concerned about it as much from the standpoint of law as from the standpoint of policy and limitations on freedom.

Ms. Garrett: Did that concern take form in any action or articulation?

Mr. Pollak: I may have joined in NSA resolutions on the subject. I see myself as having been concerned, but I don’t think I protested individually or wrote letters.
Ms. Garrett: Were there folks on your campus who were protesting?

Mr. Pollak: I think there were. I recall a couple that I met in NSA, who were attending Harvard or were teaching assistants there, named Chan and Natasha Davis. I think her name was actually Natalie. They were vocal opponents of the limitations that government was pursuing. I was impressed with them and I recall making some common cause with them. I may have engaged in social action that I can’t now recall. They were on the left side of the issues. I was undoubtedly on the left side, too, on the liberal side. I was a strident opponent of McCarthy and all he stood for and those who stood with him.

I recall being active in opposing the Bricker Amendment. He was a Senator from Ohio who was pressing a “know-nothing” amendment to the Constitution, a piece of McCarthyism. One of my recollections of the coming of age of the American Bar Association was that it took a position in opposition to the Bricker Amendment, an unusual step for it then.

Ms. Garrett: What did you do at college besides study, swim and participate in NSA?

Mr. Pollak: One of the things I didn’t do is I never skied because skiing muscles weren’t considered fit for swimming. There was also the risk actually of breaking something, and I didn’t want to be out of swimming. I was active. I did outdoor things. There was the Dartmouth Outing Club. I worked hard. I studied a lot of the time and had some interactions with professors. I had friends that I knocked around with and had dates taking me off the campus or having some young woman up to Hanover. I remember that I had an old 1936
car that I drove from Illinois. I would drive off in it somewhere. My freshman year I had a girlfriend from high school that went to Skidmore. I would often drive over the mountains to Saratoga Springs. I remember the town Saratoga Springs as very beautiful. That was a great time. I did the things that college students do. It was a good time. My only competitive sport was swimming, which took up the period from November through the end of March all my four years. I was very committed to that. I remember taking French. There were, of course, holidays. I would travel on the “sit-up” train back to Chicago, only probably for Christmas.

Ms. Garrett: Thanksgiving you would spend at college?

Mr. Pollak: Right, or go away as I said, to Berl Bernhard’s. I had family in New York and I would go down there. Mainly, I was up there in the middle of New Hampshire and that’s where I stayed. It was a good place to be. It was a great move when the college became coeducational. Going to school there with all men was not as good as going to school in a coed situation.

Ms. Garrett: It was fairly controversial when it went coed?

Mr. Pollak: Yes. There are many Dartmouth alumni who never forgave President John Kemeny for doing it. One of the things that burdened Dartmouth for many years was that the alumni had very conservative viewpoints on the academics and other things.

Ms. Garrett: Have you been involved in alumni activities since leaving Dartmouth?
Mr. Pollak: Way back I did some interviewing of candidates for admission. Later, for a
decade or so, I served as a member of the Native American Visiting Committee,
which was formed because John Kemeny in the 1970s undertook to make the
college more fully available to Native American students. Dartmouth had
originally been formed in part to educate Indians. In fact, very few attended, so
Kemeny admirably opened the college up through recruiting and encouraging
Native Americans to attend. They came and they had a difficult time. To help
make the College more accessible to Native American students, the Native
American Visiting Committee was formed. Its aim was to provide support for
Native American students, to advocate for them and to encourage and support
the program. I served on the Committee after I had served in the Civil Rights
Division of the United States Department of Justice. Later, I became its chair
for several years. We would meet two or three times a year in Hanover. I
considered that a constructive activity. One of the mentors of the program was
a gifted Native American professor on the campus, Michael Dorris who so
tragically committed suicide. I knew him well. He provided us with support
and insights to do what we were created to do. He was a wonderful man. I
can’t imagine what led him to take his life.

I have two sons. Both chose to go to Dartmouth. I never encouraged
them to go there. My son David, who is the elder, was active in the theater and
the theater people at Dartmouth became his group. He loved Dartmouth, had a
good time there, got a very good education. His brother Roger followed him
there, but never liked it. He said Dartmouth was full of persons with great academic potential but no interest in academics. He took a lot of time off, working on Capitol Hill here in Washington and with environmental groups and doing various things. Then after his first two academic years were completed, perhaps in three years, he transferred to Berkeley. He loved Berkeley, met his future wife there and was much more satisfied. My connections with Dartmouth were closer when the boys were there and then I was doing this Native American Committee work. I’ve never been active as an alumni person. It’s not my cup of tea. I’ve been interested and active in the Yale Law School. I’m just closer to my law class.

Ms. Garrett: And why do you think that is? More in common? More shared experiences or goals?

Mr. Pollak: Yes. By the time I got to law school, I had been married for a couple of years. Looking back, I still suffered from the “grind” syndrome. I worked very hard at law school. I think I was much more open to learning and having a more fulfilling educational experience. I was drawn to my classmates with whom I shared the experience. I was active on the Law Journal and then elected an officer. I was close friends with several of the officers. We shared interests in law matters and generally in public service, which was high on my agenda. One of my college and law school classmates was a close friend from Dartmouth, Robert Sisk. Bob was in the Navy program. He was a swimmer. He remains a close friend. Bob is a wonderful story. He was co-head of the radio station at
Dartmouth. He has a very deep and sonorous voice. He was well spoken. That aided him in becoming a very fine trial lawyer. He became head of the Hughes Hubbard law firm in New York. During college, I visited Bob at his home in West Hartford, Connecticut. He introduced me to a girl, Arlene Greenberg. It was she who turned me down, leading me to invite Ruth to the Winter Carnival in February 1950. Bob was one of three children -- two boys, he being one, and a sister. His father was a butcher. The family name was Sisitsky. Bob is a great story of a likely second generation American who made it big. His mother was a strong and inspiring person. It turned out that Mike Heyman and Berl Bernhard from Dartmouth were also with me at Yale Law. There were many really talented and interesting people at the Law School in my class. Arlen Specter, the Senator, was a classmate. Jon Newman, who became Chief Judge of the Second Circuit, was a classmate. Norb Schlei, who was an Assistant Attorney General in charge of the Office of Legal Counsel of the U.S. Department of Justice during the Kennedy years, was the editor-in-chief of the Journal and the star of the class. He and I had known each other in the Navy. So I had a lot of good colleagues at the Law School. I had good associations with the professors who, even though it was a time of great change at the Law School, were very strong. I consider myself extremely fortunate to have gone to the Yale Law School. The relationships with colleagues there, professors there, people who have gone there, are undoubtedly the most determinative relationships of my professional life.
Ms. Garrett: I would like to pick up more on Law School and touch on your time in the Navy at the next session.

Mr. Pollak: In my college senior year, at graduation, the Hotchkiss’ uncle, George Kennan, gave the graduation address. While we were in college, he had written the great Mr. “X” article that originated the containment policy as a way of dealing with Russia. The Hotchkisses referred to him then and now as “Uncle George” and Uncle George talked with the Hotchkisses at graduation. I don’t think I was present, but they often quoted him to me. He spoke to them about their upcoming military service. “If you make a career in the military and rise to the top, and the best people do rise to the top in the military, there are great opportunities for public service thereafter,” he said. I believe he mentioned Admiral Kirk, who was then Ambassador to Moscow, as an example. In thinking about whether I would make a career of the Navy, I thought about his statement. While there were a great many useful experiences in the Navy, I found sea duty as a junior officer, which was what I had, generally boring and not sufficiently fulfilling to consider making the Navy a career.
Ms. Garrett: We left off the last time finishing up with your college career. You talked a little bit about graduation, and we spent some time talking about your time in college. I thought we’d talk initially about your naval service, both during the summers and then, after we discuss that some, move into what happened next, law school, marriage, kids, and the beginning of your legal career.

Mr. Pollak: I don’t know how much my naval service is of any interest to an oral history, except perhaps as it reflects the United States at midcentury and the role of the military in the lives of persons who are truly part of the civilian population. I went to sea each summer, 1947, 1948 and 1949, as a midshipman. My ships were a cruiser the first summer, the U.S.S. Oregon City, the second summer I served on the U.S.S. Boxer, a large aircraft carrier, and the last summer I served on a destroyer, U.S.S. Frank Knox. The Boxer and the destroyer service were in the Pacific. I remember going on the destroyer to the Galapagos Islands. I remember going to Hawaii. The first summer on the Oregon City we went to several different locations in the Caribbean. It was very hot. That was shortly after the conclusion of World War II. The Navy properly foresaw that Annapolis could not serve all of its needs for officers and began what was called the Holloway Plan,
named for the Chief of Naval Personnel at the time, Admiral Holloway, that put NROTC chapters at fifty-two colleges. Commencing in 1946, each college brought in a group of male students to be officer candidates. I was one of those at Dartmouth. The commitment was for fifteen months to two years of active duty service after graduation, as well as summers on active duty. In return, the government paid tuition and, as I recall, books plus a stipend of $50 per month. Because of the Korean War, President Truman extended our required service to a third year. I served three years exactly to the day from June 11, 1950 to June 11, 1953. We also were obliged to take one Navy course each semester, making that one-fifth of my college program. I thought those classes were mostly a waste of time and wasted my opportunity to take other courses that would have served the Navy better and me better. I don’t regret having committed to the Navy obligation at college because overall it was a worthwhile experience. I thought the Navy was ill prepared to handle the large influx of several thousand midshipmen the summer of 1947. It was better able to do so the following two summers. It had never had that complement of young midshipmen before. Young enlisted personnel had authority over us as midshipmen and a few of them were sadistic in giving us orders. A very few did dumb things and others didn’t know how to handle their responsibilities, but many did. The entire experience as a midshipman certainly introduced me to sea duty and the military hierarchy and made me more ready for my commission and active duty.
North Korea invaded the South almost at the very time I was commissioned in June 1950. I reported to my ship, the U.S.S. Borie, DD-704, a Sumner Class destroyer, in Alexandria, Virginia, on July Fourth. The ship had come up to Washington, D.C., for the celebration of the Fourth of July. I was proud to be commissioned in the United States Navy. I wasn’t a reservist. The ship had perhaps something under 20 officers and 300 enlisted men. Commander Merle Bowman, an outstanding officer, was its captain and Lt. Cdr. John M. Montgomery, who was a member later of the D.C. Bar, was the executive officer. It had a good complement of officers and men. I enjoyed serving on the Borie for almost two years. In September 1950, our division, DesDiv 161, was ordered to travel through the Panama Canal and over to Korea. We did so, arriving at the eastern end of the battle line in Korea, I think, on or about October 18, 1950. We remained at sea providing shore bombardment on call from land spotters and airplane spotters from October to just after Christmas. We were part of the naval force that provided close support for the evacuation of the American troops that were in retreat from the Chongjin Reservoir following China’s entry into the war. They retreated south to a harbor called Hungnam, and on Christmas Eve Day, the last of them were offloaded onto transports, protected by a shrinking perimeter of military artillery and naval support. On the morning of the final day -- we, the Borie was one of the Navy vessels located close in, perhaps 100-200 yards from the shore, to provide gunnery support to hold off the opposing forces -- all of us on the ship thought that as the perimeter shrank down to the harbor, we would be
subject to fire from the shore. Amazingly, there was none. All the troops got on board merchant ships and sailed away without incident. We then moved with the troops to Sasebo, Japan, for our first short liberty since coming to Korean waters. For us on the Borie, Korea was mostly a benign experience, although a demanding one. We stood watches, one in three, which meant at most eight hours off, four hours on, day in, day out. There was some danger from mines that were floating around. About the time we arrived, one had hit an American destroyer, the U.S.S. Kidd, and caused a lot of damage and some deaths. The main naval involvement in the war, besides ships bombarding, was the pilots, who did a lot of flying off carriers steaming perhaps 20 to 50 miles off the coast. There was virtually no ground fire against the planes, no air power from North Korea or China that I recall. My ship was fired on only once from the shore when we accompanied a cruiser, the U.S.S. St. Paul, to provide close in shore bombardment near Wonsan. There was firing against the cruiser and against us, but it was of a very modest and seemingly innocent nature. The shells just dropped in the water. Yet, it was a full war experience. I have photos of the ship with the focsule, that’s the forward deck of the ship, full of mounds of 5-inch shell casings, which reflected a night’s firing on shore. We never knew whether anything was hit. We could look ashore -- sometimes we were as close as a couple of thousand yards -- and see Korean farmers tilling their land with those then-famous stovepipe black hats on their heads, all very pastoral looking. I don’t recall seeing any military personnel on land.
Ms. Garrett: It must have been a very removed experience.

Mr. Pollak: It was. We provisioned and fueled by going out to sea and running alongside tankers and provision ships or tying up to them and receiving fuel and provisions. All officers had various duties. One of mine was being the movie officer. I would go to the large aircraft carriers when we went out to where they operated and get a big stack of films. Movies were shown every night at 8 o’clock in the mess hall. I think I was the U.S. mail officer. Every two weeks or so we would go out for provisions and receive two weeks’ worth of mail. Of course, everybody was interested in mail call. I had endeavored to convince Ruth, she’s now my wife, to become engaged before I left for Korea, but she refused. I wrote her every day using a little Royal portable typewriter and still have those letters in my attic. I’ve never had the courage to read them. She saved them and I, hers. She wrote me almost every day, and I would get her letters in packages of two weeks’ worth. I read them avidly. I could read between the lines that she was having a gay time in her life as a college student near New York City, doing lots of things, going out and about. I was very worried that she would find someone else. When my ship returned to the States from Korea, I telephoned Ruth from San Diego. We talked a long time, of course, and I can recall thinking what a vast expenditure it was to pay the cost of the call, which, I think, was $13.60. Another vignette: I was tremendously anxious to get home to see her. When we were going through the Panama Canal, I was having lunch in the wardroom. Down came one of the officers who had been on duty in the communications center, all
of our communications were by radio and teletype. He came in and said he had a communication for me. It was letter orders to “proceed and detach from Colon, Panama,” which was the Atlantic side of the Canal, and report immediately for duty in London. Here I was expecting Ruth to meet me in Norfolk. My face fell from where it was onto green felt table cloth. The captain, who was in on the gag, couldn’t stand it for long and soon said that it was all a hoax. So, I did get home with the ship. When I came back to Norfolk, Virginia, in June of 1951, she had driven there to meet me. The ship came in with bunting flying. All the families were there, and Ruth was there. We immediately telephoned our families and said we wanted to be married and were married two weeks later at her home in Glencoe, Illinois.

Ms. Garrett: That’s a happy ending clearly to that service. But, then there were two years that remained in naval service. Was it active duty?

Mr. Pollak: That’s right. The destroyer went into the “yard” in Charleston, South Carolina, for refitting. I saw what I’d never seen before, hard edged segregation, drinking fountains in the U.S. yard, saying white and colored and segregated bathrooms, the whole nine yards of what race was in the South. After being in the yard, the destroyer had sea trials and went to Guantanamo Bay, Cuba. I remember going ashore to the Officers’ Club at Guantanamo Bay where a bottle of Scotch cost less than a dollar. The ship then operated out of Norfolk. When the ship moved, Ruth and I moved our home. We lived in 16 different apartments in nine different cities in a year. On arrival, Ruth would go to naval housing at the new location
and identify apartments for rent by the week and we would rent one that day. I
attended sonar school in Key West, Florida. For three weeks we moved there.
We lived in Newport, Rhode Island, in Portsmouth, Virginia, and Norfolk. It was
an interesting time. My naval responsibilities on the destroyer were not as taxing
because we spent less time at sea. I qualified in Korea as an Officer of the Deck,
which meant that when we were at sea, I would stand watch and have command
of the ship, with the captain of course, having the ultimate responsibility.

When the Borie was in the Navy yard in Charleston, South Carolina, we
lived on the Battery, lower King Street, which is a beautiful area. Fort Sumter is
just off the shore there. It was fall or winter 1951, Ruth volunteered and turned
out for a meeting of the Democratic Party. They immediately wanted to make her
treasurer. Not many people attended. I think she declined, but she observed quite
a bit about what the Democratic Party was in South Carolina, which was a very
conservative Democratic Party. Living in Charleston was enjoyable. One of my
college classmates was also there in the Navy.

Ms. Garrett: Which classmate was that?

Mr. Pollak: Jim Hotchkiss and his wife Nancy. We shared their apartment which was in
former slave quarters behind one of the mansions on King Street. An element of
segregation was just out the side window. There was a fence along the side of the
house and over the fence, right there on the Battery, were rundown homes in
which black families were living. The black families had no running water and
drew their water from a well even though the house that we were in right over the
fence had full running water. We could hear them drawing their water from the well.

In the summer of 1952, I was assigned to Mine Warfare School at Yorktown, Virginia, and attended that school for a couple of months. On graduation, I was assigned to a minesweeper, the U.S.S. Grackle (AMS-13). By then I was a Lt. Junior Grade. The Grackle was a training ship stationed at Yorktown. We took students out to sea and trained them in using minesweeping gear. Ruth and I lived in Williamsburg and she worked for Phi Beta Kappa on the William and Mary campus. The minesweeper had four officers and about 40 men. I generally had “duty” two days, meaning 24 hours on the ship, and on the third day, I had the night off. Life was good.

Ruth and I experienced the election of 1952 in Williamsburg. We attended an election night party where most of those present were favorable to General Eisenhower, who was running against Adlai Stevenson; and as history knows, Eisenhower won. We thought the evening was a downer because Stevenson lost.

Ms. Garrett: Tell me a little more about your experiences with segregation in South Carolina. It was the first time you lived in a community where there was segregation?

Mr. Pollak: Yes. I don’t recall comparable incidents of segregation in Yorktown or Williamsburg. I’m sure they were there because we were living there in a time of segregated schools. I can’t comment on segregation, for instance, in movie theaters. I don’t recall going to the movies. I don’t remember much more than
the incidents I saw in the Navy yard. Other elements of segregation were hotels, restaurants and schools, and I wasn’t going to the schools. I don’t recall going to restaurants.

Ms. Garrett: Was the Navy integrated at that point?

Mr. Pollak: The Navy was not well integrated, but President Truman had desegregated the Armed Forces and Judge Gesell, then a lawyer with Covington & Burling, was a major leader in that, heading or directing the Commission that did the work leading to the decision. Most Blacks in the Navy were mess cooks, which meant they handled all the cooking and serving. We had a small number on the destroyer of line seamen who were Blacks. I recall both acceptance and rejection of those minority members by other seamen. One experience that does stick in my mind reflects rather positive attitudes about ethnic and racial differences. The minesweeper traveled through the Inland Waterway to be overhauled at a shipyard in Elizabeth City, North Carolina, in the fall of 1952 or spring of 1953. The Grackle was small enough that it was taken completely out of the water into a dry dock and the hull was scraped – it was a wooden ship – and then it was repainted, red leaded, which is protective, and then painted gray. First, all of the paint was chipped off. That work was done by members of the crew and they were a mixed racial and ethnic group. As they began repainting, they painted on the hull a number of terms which are considered racial and ethnic slurs. The only ones I remember are “spick” and “wop.” The painting was done by minorities
who were part of the crew. As the whole hull was repainted, the terms were painted over. The seamen seemed to use those terms in a good-natured way.


Mr. Pollak: The first captain of my minesweeper was from Charleston. He was prejudiced against Blacks. Four officers lived very close together. A minesweeper is a very small vessel. He was constantly telling terrible stories, which had racial aspects and his political views were also very unacceptable to me.

When I was on the destroyer, particularly in Korea, standing night watches on the bridge as an officer of the deck or junior officer of the deck, the ship was often either at anchor providing shore bombardment support or cruising up and down the coast. We had four-hour watches, like from midnight to 4 a.m., and there would be the officer of the deck, the junior officer of the deck, a helmsman, a quartermaster keeping the log, and two lookouts, who stood at the side and looked out with binoculars. All but the officer of the deck and junior officer of the deck were enlisted men. The backgrounds of these individuals were all very different. One of the officers with whom I stood watch, Lt. Jacob Smith, was a “mustang,” an enlisted man who had become an officer. His background was quite different than mine.

Ms. Garrett: A mustang, it’s called?

Mr. Pollak: Yes. A mustang is an enlisted man who becomes an officer, not through Annapolis, but by receiving a commission in the field. Jake Smith was a very good officer. He had been at Pearl Harbor. He was older than I was. I learned a
lot from him. One of the subjects that was open to all and in which these men from diverse backgrounds and of diverse ages had experiences they could exchange was the movies. So we talked a lot about movies because that was a currency that could be discussed equally by all these men from diverse backgrounds. I don’t believe that I ever openly talked about being Jewish. I do not know that anyone on the ship was Jewish other than me, and that’s about 330 people. I had the perception that many people who were my friends were prejudiced against Jews.

Ms. Garrett: So, nobody knew that you were Jewish?

Mr. Pollak: I do not know. Maybe they all knew I was Jewish.

Ms. Garrett: How did you handle Christmas holidays, then?

Mr. Pollak: My family had celebrated Christmas. I wasn’t particularly religious, so it really never came up. In the first year when we were in Korea, we were all engaged in this evacuation at Hungnam and nobody paid particular attention to what day it was. I don’t think my way of dealing with religion was particularly forthright.

Ms. Garrett: But, not uncommon, I think, the approach that you took.

Mr. Pollak: I wanted to belong and wanted to be one of the group.

Ms. Garrett: Now, Ruth’s family was more --

Mr. Pollak: Ruth’s grandfather on her father’s side was the head orthodox rabbi of Wisconsin. Her parents had a feeling that any Jews who had a Christmas tree – that was a very bad thing. Her family was not particularly religious, but they celebrated all the Jewish holidays and had the best of the traditions. Ruth had a more Jewish
upbringing and was more at home with her Jewishness and I was. Ruth has said to me that the rabbi’s five children were essentially atheists rather than real believers, but they all were ethnically Jewish. That was somewhat different from my family. Her family came from Eastern Europe, my parents’ families came from Germany and Austria. Perhaps that was the difference.

Ms. Garrett: Interesting. Was it a source of tension between you and Ruth at all when you were starting your marriage?

Mr. Pollak: Our only tension was over Christmas. For a number of years, maybe through the childhood of our children, we celebrated both Chanukah and Christmas. It was difficult to wean me away from Christmas, but slowly but surely I was.

Ms. Garrett: Interesting. For a number of people their experience in the military is often described as very formative, establishing key aspects of their character or goals. For you, what did you take away from your experience in the Navy, and was it such a formative experience in that core way?

Mr. Pollak: I’ve often puzzled about that. I don’t think it was a core experience for me, but I may underestimate it. I must have gained a feeling inside of myself that I could navigate and get along through any kind of situation, an inner core of confidence that I would be equal to whatever physical demands were made on me, that I wasn’t afraid of danger, or at least that I wasn’t unable to function in a dangerous situation; that I could make my way with people; that I could learn new tasks; that I could travel wherever I might be called on to go and find it easy. Those must be experiences and learnings that I took away from the Navy, but I didn’t come out
of the Navy experience feeling much different about myself than when I went in. That’s a function of the nature of the human being that I am. I face challenges with a feeling that I can’t really do that and then I always can do it. Generally, I approach challenges feeling, “Gosh, I’ll never be able to accomplish that.” I don’t think the Navy changed that, although it must have laid an inner foundation of confidence. It’s a conflicting picture.

I had so many different experiences in those Navy years. In 1951, I took the train with other officers from the naval base at Sasebo, and visited Nagasaki. I took photos and I have them. All that I can recall is the breadth of the devastation and some feeling of disbelief that this could even have occurred. I juxtapose that experience with a visit on the way in to Korea. The ship stopped at the harbor that serves Tokyo, Yokosuka. I visited Tokyo then and again on the way back home. Tokyo was then (1950-51) a thriving, colorful, essentially intact major urban area, very much different than Sasebo, which I couldn’t see was damaged but was more a minor city, and very much different from Nagasaki, which had been destroyed.

Ms. Garrett: We were talking about your experience in Japan and in particular Nagasaki. You saw sort of at a very personal and direct level the devastation that many people in the country only heard about and yet it affected some people very deeply in their sense of their place in the world and their country’s place in the world. Did you carry something like that away from your experience at Nagasaki or is it difficult at this point to quantify that?
Mr. Pollak: I would like to answer it by saying that it was a life affecting experience, but I don’t know that I can say that. These experiences seeing the devastation of World War II and then participating in this sort of detached way in the Korean War were more like being an observer rather than a participant. In Korea, the Borie and the other destroyers in our division went around on assignment to Inchon on the west coast, where General MacArthur had invaded in a successful maneuver, helpful to the Allied Forces, the UN forces. I interrupt myself to say that one thing that was impressive to me, that I took pride in, was that we were part of the UN force in Korea and we flew, and all the ships flew, the UN flag as well as the US flag. That meant a lot to me.

Inchon, I was told, has the largest tide change daily of almost anyplace on the globe. Sixty feet in the harbor. When we sailed into or out of Inchon harbor, the tide was out, mud flats were on both sides and we were in a rather narrow channel. There were all these landing craft that had been sunk during the invasion that were still resting on the mud beside the channel, US craft. I reacted to seeing that and thinking back to when people were riding in those craft as part of the amphibious force attacking Inchon. The whole naval experience did not change the views I entered the military with, which were formulated by the need I saw for entering World War II and opposing Nazism and the scourges of Japan. It didn’t change my view that use of the military to maintain or seek freedom or to challenge imperialistic aggressors is necessary. So I think the experience probably influenced me in that direction. Later, when the Vietnam War was
presented as a war to prevent the “fall of the dominos,” I accepted that for a long time. And I differed from friends who much, much earlier saw it as the mistake that it turned out to be.

Ms. Garrett: That must have led to some interesting discussions with friends.

Mr. Pollak: It did. I consider myself to have been slow in coming to that conclusion. I believed we shouldn’t sit idle as a nation when there was aggressive communism or imperialistic communism pursuing its objectives. As it turned out, that was not what was going on in Vietnam.

Ms. Garrett: What ultimately changed your opinion about Vietnam?

Mr. Pollak: I came to the change of opinion late and consider that a mistake. My good friends at the time included Paul and Jenny Moore. He was then the Suffragan Bishop of Washington. They were very strongly against the war in Vietnam and marched and participated in vigils. William Sloane Coffin, also an Episcopal priest, came to their home. He was one of the leaders of the peace movement. My views were changing. I was part of activist arms of the government, but being part of an activist arm of government is a very sheltered way of being an activist. I never had any reluctance to be that. I wanted to do that. But one can be much more risky in being an activist and I admire people who are.

Ms. Garrett: That’s interesting. What did you think of all the war protests and marches going on and efforts even in the legal communities to support those who were opposing the Vietnam War?
Mr. Pollak: I thought that they were quite proper insofar as they were nonviolent. I did not approve of violent activities. The level of violent activities was very limited. I remember there was an activity or group that supported a mass antiwar effort in Washington called the Mobe or New Mobe. That was shorthand for mobilization against the war or the anti-Vietnam mobilization. Those protests were a precursor of the World Bank oppositions of today. I disapproved of efforts to interfere with traffic, throw around garbage cans, and similar techniques. That marks me as a centrist about behavior. Yet, those efforts are to be admired in making the nation come to its senses about what it was doing. The nation owes a debt to those people. One of the groups included lawyers who had come from backgrounds like my own, the Institute for Policy Studies, Marcus Raskin, Richard Gardner. Both are still active. They were doing a lot of thinking about oppositional activities as well as research and scholarly efforts to show the error of the nation’s policies.

Ms. Garrett: Hindsight. We sort of skipped a couple of decades there in our conversation and I want to pick up on it again. We left you in the Navy and we haven’t gotten you out of the Navy yet. Did you think about making a career in the Navy at all or were you happy to get down and out the door?

Mr. Pollak: In the main, I thought sea duty was generally boring. You had little time to yourself. If you were at sea, every night you had to stand watch. Of every twelve hours, you were on duty for four. Each night you either had a watch from eight to twelve or twelve to four or four to eight. Then you had work activities as well as
a watch during the day. There was very little time for reading, almost none. There was really no useful place, congenial place to do any reading. Life was very limited.

The human beings I was with were interesting. I was interested to learn about their lives, and I learned a great deal in that respect. But I never wanted to make it a career. Never, never harbored the idea.

For some reason, I considered becoming a part of the submarine service. I always wanted to do that. I went down on a submarine a couple of times. Two of the officers that were on the Borie in Korea joined the submarine service and left the ship. I considered applying and thought I would certainly get in, but you had to sign over for more time and I was unprepared to do that. George Kennan, who was the State Department thinker and uncle of my friends the Hotchkisses, counsel us: “A military career could be a very good thing if you stayed long enough and rose high enough.” I didn’t want to do it and I thought it was also chance. If I really wanted to make it a career, I would have tried to go to Annapolis.

Ms. Garrett: Right.

Mr. Pollak: My father had been an Ensign in the United States Navy in World War I. He was selected number five on a list for attendance at Annapolis. The first two died in the influenza epidemic of 1917. The next two attended. He missed by one. So I often thought of going to Annapolis. I’m glad I served in the Navy. I am proud of doing so, but I never wanted to make it a career and as my time winded down, I
began thinking about what I was going to do. As I’ve recounted, I applied to Yale Law School and took the LSAT at the University of Richmond in Richmond, Virginia. I found that I scored in the 92nd percentile. I took the test with Norbert Schlei who became my close friend when we attended Yale together. He was also in the Navy. When I mustered out of the Navy on June 11, 1953, I happened to be in line with Norb. We hadn’t seen each other since taking the LSATs. I said to him, “So, what are you going to do?” He said, “I’m going to Yale Law.” I said, “Well, so am I.” He said, “Well, so how did you do on the LSATs?” I thought I had done fabulously well and I was very reluctant to tell him how well I had done out of a human concern that he might have done less well. Before I could answer him, he said, “Well, I scored in the 99th percentile.” He had an eidetic memory and became the editor-in-chief of the Law Journal and graduated number one in our class. Of course, he was quite matter-of-fact about his accomplishments.

I got out of the Navy in 1953 and Ruth and I went on a delayed honeymoon to France and Italy during July to September, a wonderful trip. We studied French at a University of Bordeaux program in Pau, France, and then traveled around France and Italy in a little car. Then I came back to Yale. Ruth was pregnant and we had our first child in May 1954, when I was taking my exams. While Ruth was in the hospital in labor I took my “Business Units” exam, a great course taught by Vern Countryman. I got a “C” which was the lowest grade I ever got. I went to talk to the professor. I said I thought I did well. He
said, “You wrote a great answer to the second part, but you answered a different question than was asked.” I think my mind was back at the hospital.

Ms. Garrett: That’s a funny story, but it’s very difficult to take an exam while your wife is in labor, I imagine. Who was your first child?

Mr. Pollak: Linda.

Ms. Garrett: Linda.

Mr. Pollak: Linda Jan Pollak. She’s an architect practicing in New York. Well, I didn’t have a particularly successful first semester. I had had no legal experience. Much as I’d taken constitutional law at Dartmouth, it didn’t seem to penetrate. I was confused in my first year by the terminology. It seems funny now, but the case books, for instance the civil procedure case book, for a course taught by the great Fleming James, had all of these court opinions that were truncated to highlight the procedural issue. I was mystified reading the cases which seemed always to stop before getting to the substantive point. I can remember reading them to Ruth, saying “What’s going on here? Why doesn’t this case tell me what the outcome is?” I had a lot to learn. I did considerably better my second semester. My third and fourth semesters, I got the highest grades in the class, so I was proud of that. My memory of law school is of working all the time.

Ms. Garrett: It is a common memory, I think. How did you manage that with a baby and a wife? And then a second child?

Mr. Pollak: Our second child came in January of my third year. I’ve got to admit that the accepted practice then was that the man in the marriage did all of this outside
activity – my work was studying – and the woman kept the home and raised the children. Now I participated but primacy was given to the law school requirements.

Ms. Garrett: This baby in the house who was not sleeping at night. How did you manage with that?

Mr. Pollak: I can recall that there were times of that nature. I can also recall working on the Law Journal late into the night or into the morning studying. The physical capabilities of young people are strong and all that just rolls off your back. I have a regret for being the kind of person I am which is that I consider I have to work very hard to get to the level of achievement I mark out for myself. So I sacrificed a lot of the experience I would have had had I spent more time with the family. Insofar as there were demands working on the Law Journal, and there certainly were, I responded to them by devoting a great deal of my time to those activities. Some of my anticipations were that unless I put in extra efforts, I would fade, and I never wanted to do that.

Ms. Garrett: And never did.

Mr. Pollak: My perception is that that carried on through the younger lives of my children, devoting more of my time to work than to them. That was sort of expected of fathers. It is less so today and families and fathers are the beneficiaries. It is not completely gone.

Ms. Garrett: No, it’s not. Either expectations of what fathers should be doing by their employers or by their spouses. It is a constant tension.
Mr. Pollak: Yes. I think if my wife Ruth were asked she would say that she gave up a lot and had she been of a different generation she would have said to me more times perhaps than she did, “Look we have to have a different arrangement here. You’re making a big mistake and you’re losing for it. You should be part of your children’s lives to a much greater extent.” Because she handled those things.

Ms. Garrett: It was her job.

Mr. Pollak: Right. Schooling, housing, summer camps, working it all out. She worked it out wonderfully.

Ms. Garrett: I want to talk to you about your classmates, your professors.

Mr. Pollak: Let’s talk about my classmates. A good number of us were veterans. A good number of us had had experiences after college and that made for a law school class that was more mature and more diverse in background. That was a great strength. Many of my friends were of that stripe and they became close friends at law school. Many were married. Their wives became close family friends. That made for a richness and a strength of my law class. My law class was not diverse in two respects. It had only four women out of about 125 and it had only two blacks, the Goodlet brothers, twins. I regret to say that both of them left early. Possibly they left because their grades were not strong enough, but I’m not sure of that. I think that the Law School and we as classmates were considerably uninformed about how to make the Law School a good experience for minorities of different backgrounds and preparation. That those two young men got into the law school, marked them as candidates who would have been wonderful
participants at the bar. Somehow we all should have been smarter so that they could have remained.

The women in the class performed well and had good careers after but were not among the most distinguished members of the class in terms of achievement and leadership. I don’t suggest that that was due to their capabilities being less. They made it in a difficult climate. The leaders of the class were primarily those who bobbed to the top of the Law Journal, which you got on by your grades. The grades were I think in general deserved. That is, they weren’t handed out other than on some reasonable scale of performance. On the other hand, many members of the class who were not at the top academically went on to have very significant careers as lawyers, so grades didn’t mark only those who would be good lawyers.

The class ahead of us was a good class. It was a much younger class because the Korean War vets came back in my class. Many of the leaders of the class ahead became my close friends. One is Jerome Cohen, who has become the academic world leader on Chinese-Communist law. He trained and introduced a generation of scholars to that subject. Virtually all of the current law school leaders in that field were trained by him. He was Editor-in-Chief of the Journal for the class ahead of me. My partner Bill Dempsey was a Note and Comment Editor in that class and the most brilliant lawyer I’ve known. In my class there was Norb Schlei. He went on to be Assistant Attorney General in Charge of the Office of Legal Counsel in the U.S. Department of Justice in the early 1960s. He
was a partner at the Hughes Hubbard law firm and has had a distinguished career. Norb was the most brilliant member of our class, certainly one we all thought was qualified to be President. He never achieved an elected office, although he ran for Secretary of State of California and for Congress. My classmate Jon O. Newman, who was a Note and Comment Editor, has had a wonderful career and is still a Senior Judge on the Second Circuit. Arlen Specter was a member of the editorial board of the Journal. I edited his senior comment which was on various issues relating to imprisonment and probation. Arlen, of course, is a long-time Senator from Pennsylvania. David Isbell, a partner at Covington & Burling, Articles Editor of the Journal, served as a senior leader on the staff of the Commission on Civil Rights during the late 1950s. He was and is a very able lawyer and wonderful writer. Another senior leader of the Journal was Gerald Doppelt. He became a partner in a west coast San Francisco law firm and then I believe general counsel of an oil company. The other Note and Comment Editor was Richard Pershan. He became an estates lawyer in New York City. The most energizing members of the Law Journal staff were Schlei, Newman and Isbell. I was the Managing Editor.

Working on the Law Journal was the great experience of my law education, but the classes were a strong second. I had great professors, although the law school was in a time of transition and many of the older professors were moving on. Eugene Rostow, who was the third dean of my law school years, was in the process of repopulating the law faculty.
Ms. Garrett: Who were some of the professors who made an impact on your legal education?

Mr. Pollak: Fritz Kessler, my contracts professor, a wonderful professor in the great tradition. Harry Shulman who became dean. He taught me torts. Myers McDougal was an outstanding international law professor. He suggested the topic for my senior comment -- the constitutionality of the Expatriation Act of 1964, which removed citizenship from persons convicted of Smith Act crimes. The Smith Act prohibited seditious activity and was focused on communists. I spent a great part of my second year researching and writing this comment which concluded that taking away citizenship and making an individual stateless as a punishment for crime was cruel and unusual and unconstitutional. The Eighth Amendment had been very seldomly used. The comment set out all the legal history. Less than a year after I graduated from law school, a case called Trop v. Dulles [356 U.S. 86 (1958)] came to the Supreme Court raising the issue I had addressed in the comment, not over the Smith Act, but over one of the other expatriation provisions of the Nationality Act of 1940. The Supreme Court adopted my theories and struck the provision down as unconstitutional on grounds that it was a cruel and unusual punishment.

Ms. Garrett: And cited your comment?

Mr. Pollak: Right. That was the big deal for me. Now my classmate Jon Newman was then Chief Justice Earl Warren’s law clerk and that may have had something to do with it. It was very rewarding. The comment was quite different from my note,
written earlier, on the validity of the Third Avenue Elevated bonds in New York City.

Ms. Garrett: The note didn’t have quite the reception.

Mr. Pollak: No.

Ms. Garrett: You mentioned that your classmate Newman clerked. Did you ever think of clerking after law school?

Mr. Pollak: I did apply. I had two children. I applied to Justice Reed and Justice Clark. Those were the justices that the law school suggested. I remember going to Judge Jerome Frank for a recommendation. I took his course in Equity. He was a great judge on the Second Circuit and a great man. When I went to him for a recommendation, he said, “Well you write it and I’ll sign it.” That was agony. I just didn’t know what to do. I’m sure Ruth helped me. I interviewed with those justices and I didn’t get an offer from either. My now close friend John Nolan, who was then clerking for Tom Clark, told me much later that he and his co-clerk strongly recommended me and that I was the third choice, the two who got it and then me. My family knew D.C. Circuit Judge David Bazelon. I had a lot of principles, many of which I think were sort of juvenile. I did not apply to Bazelon, thinking that he might choose me because of family ties. The practice in that day was that law students went to clerking on the Supreme Court right from law school, and Norb Schlei became Justice Harlan’s clerk. Jon Newman clerked for Chief Justice Warren but clerked first for D.C. Circuit Judge George Washington. Ultimately, my classmate Mike Heyman, who was a close friend,
became a law clerk to Chief Justice Warren. Mike was on the Journal. Mike was a former Marine. We had been together at Dartmouth and in the naval program. He was a class behind me at Dartmouth. Michael became professor at Boalt Hall, then Chancellor at Berkeley and more recently head of the Smithsonian, a very illustrious career. His wife Terry is a friend. Of all these classmates, the most publicly acclaimed are Newman, Schlei, Heyman and Specter.

Ms. Garrett: Let’s stop there.
Ms. Garrett: Steve, when we left off the last time, you indicated that you wanted to touch on or comment a little bit more about your law school experience.

Mr. Pollak: In those days, one got on the Law Journal by grades, and my second semester grades put me on the Journal. You were assigned a note topic.

Ms. Garrett: You didn’t select it at that time? You just were given the topic?

Mr. Pollak: The student had to search for a note and maybe the officers made some suggestions, or the Note and Comment Editor. In any event, my Note was on the enforceability of the bonds of the New York Third Avenue Elevated in reorganization. A very short opinion of a capable district judge, Edward Dimock. I remember praying over every word. Then, a Note was probably ten pages of the Journal or a little less, with lots of footnotes.

The practice was for the student to proceed to write a comment, which was not necessarily about a case, but about a subject area. Professor Myers McDougal suggested to me a topic which was the legality and constitutionality of a statute passed just recently called the Expatriation Act of 1954, which took away citizenship of Americans who performed specified acts. Included in the acts was violation of the Smith Act, which proscribed advocacy of overthrow of the
government and various other subversive activities. It was a statute addressed to
communists primarily. It was a very good topic and I developed a lengthy
comment with new approaches to the issue of the legality of that kind of a law.
Particularly, I researched the decisions of the Supreme Court and other courts
respecting the Eighth Amendment’s proscription of cruel and unusual
punishment. I ultimately presented a thesis that taking away citizenship was an
added punishment in this instance for a crime of which the individual had been
convicted and that rendering the individual stateless by taking away citizenship
was historically cruel and unusual. As I think I mentioned before, soon after I
graduated, a case called Trop v. Dulles [356 U.S. 86] went to the Supreme Court
in which the very issue was presented. The Court, following theories that were
reflected in the comment, and, I’m sure, following briefs that were presented to it,
held a related denationalization provision unconstitutional as a cruel and unusual
punishment. So it was a rewarding topic. I worked very hard on it during my
second year at the Law School. The Editor-in-Chief, Norbert A. Schlei, became
my editor in respect to the comment. The final product was a very good one and
such credit as there is for it would go to me and to him as well. The comment
won a prize given by the Law School.

One more comment. I think the Law Journal experience was a major part
of my law school education. Classes were another part, but the Journal was
certainly a big part.

Ms. Garrett: And a positive part?
Mr. Pollak: Very positive. I became the Managing Editor which in those days was one of six
officer positions. That was in my third year. I had to read and ready for
publication every article or paper in the Journal.

Ms. Garrett: Your first job was in D.C. Was that always your plan to come to the District of
Columbia and work as a lawyer?

Mr. Pollak: I went through law school harboring the idea that I would ultimately go into the
family real estate business in Illinois. That was something that I knew my father
wanted and it influenced me. Each summer during law school rather than take a
job with a law firm or the government in the law field, my wife and I and our first
child went to Illinois where my parents lived and Ruth’s parents lived. I worked
in the family business in real estate. I earned money and I needed to earn money.
I now think that was probably an unwise use of my time, although it worked very
well because our parents, the grandparents of our daughter, Linda, got to see us
and their granddaughter. But I didn’t advance my experience in the law.

By the time I began interviewing for law positions, I had focused on
Washington and three firms there, Covington & Burling, Arnold, Fortas & Porter,
and a firm called Cox, Langford, Stoddard & Cutler, which ultimately became
Wilmer, Cutler & Pickering. Those three firms were considered by me to have
many graduates of the Yale Law School and to be congenial places to work. I
thought that they had good attitudes with respect to public service and pro bono
activities. It was my thought that I would go to Washington for perhaps three
years and then we would relocate to Illinois. Possibly I retained some thought
that I would go into the family real estate business. That never happened. I recall
during the second year of practice considering whether I would leave the law and
go to Illinois. That caused me some anxiety because I felt I was breaking from
what my father wanted. I’m not sure that I correctly read him. He probably
wanted what I wanted. In any event, it was never really in the cards that I would
give up the law.

Ms. Garrett: What did Ruth think about this three-year plan and then the ultimate decision to
stay in D.C.?

Mr. Pollak: I think that Ruth may have been more open to moving to Illinois. She and I often
talked about finding a home in Evanston, which was a near-Chicago urban area on
the lake, more urban than suburban. I can’t recall that she pushed to go to Illinois
or that she was particularly in favor of my giving up the law. I think she probably
was not. But I don’t recall her taking a position that it was other than a decision
for me.

I was influenced by many things in turning away from returning to
Illinois. One of them was that in my years growing up there, while the society of
young people was open and there were really no particular limitations imposed on
me as a Jew, my awareness was that in the adult world, there were religious-based
country clubs and that there was some ghettoization of Jews. I didn’t find that to
be true in Washington, and I think I was happy not to return to Illinois and face
the possibility of those limitations. I’m sure that there were similar limitations in
some strata in Washington, but coming into the law world as a young associate
and living first on the Shirley Highway in Virginia and then moving into the District and having a life among my peers, those limitations were much less or so perceived to be by me.

Ms. Garrett: Well, tell me some about what Covington was like when you got there, because that is where you ultimately decided to go. You got there, when, 1956?

Mr. Pollak: I came to work on September 18, 1956. I remember my perceptions in Illinois as I looked toward coming back to Washington. Whatever happened I had to be there on the 18th because I said I would be there. I remember having a perception that the law firm would be paying particular attention to when I arrived. Of course, they probably couldn’t have cared less. It was just my perception. I now recall that the summer after graduation from law school, I was present in Illinois with my wife and two children, Linda and David. David had been born in January of the year I graduated. That summer I worked partially at the real estate firm, but I devoted myself heavily to taking the bar exam.

Ms. Garrett: Which bar did you take?

Mr. Pollak: I took the Illinois Bar and passed it. It was a two-and-a-half-day exam. I consider that it was wasted time. I spent a great amount of time learning the bar review course, learning the intricacies of Illinois law on various subjects, and I don’t think I ever used any of that.

Ms. Garrett: Did you then have to take the D.C. bar when you came to Washington?

Mr. Pollak: I waived into D.C. and don’t recall there being any particularly demanding requirements. I remember traveling to Chicago and then driving out to Elgin,
Illinois, to be sworn into the Illinois Bar. In any event, I joined Covington & Burling, which was then a firm of maybe 40 lawyers.

Ms. Garrett: How did that compare to other firms? Did that make it a big firm?

Mr. Pollak: It was a big firm for that time period. Arnold, Fortas & Porter was smaller and Cox Langford was eight or nine lawyers. My close Yale Law School friend, David Isbell, and I had the same purposes of going to Washington and of seeking employment with those three law firms, Covington, Arnold & Porter, and Cox Langford. We each interviewed at each firm. Cox Langford was headed by Oscar Cox, who had been one of the very bright, able attorneys in the federal government during World War II. In the firm were Lloyd Cutler and Lou Oberdorfer, as well as others whom I came to know. That firm chose to hire one person, Sam Stern, who was coming off a clerkship with Chief Justice Warren and did not extend an offer to David Isbell or to me. We both received offers from Covington and joined Covington. I would like this oral history to record one story about the interview process.

When representatives of law firms came to Yale to interview in those days, they stayed in the courtyard where the law school was located. There were suites that had a sitting room and a bedroom. The interviews would be in the sitting room. Gerry Gesell, who later became a Judge on the District Court here, was there representing Covington. He must have interviewed David Isbell before he interviewed me. My memory is that I knocked on the door and it was opened by a robust man with white hair whom I had never met. I said, “Hello, my name
is Steve Pollak. I’m here for your 10:30 interview.” And the man said, “Come in. I’m Gerry Gesell. He pointed his finger at my chest and said, “I hear you think we don’t take Jews.” (Laughter).

Ms. Garrett: (Laughter).

Mr. Pollak: So that was the significant way the interview opened. Surely, I had discussed that question with David and he undoubtedly had asked about it. Of course, Covington had Jewish people among its partners, important partners. In any event, I was always happy with my selection of Covington. It was a good place to begin my practice. My first assignment there – I think there were as many as eight young lawyers, some off clerkships, who were assuming positions with the firm when I arrived. I can remember being intimidated by the fact that most of them had clerked and I had not. I often recounted in those years that my attorney peers introduced themselves as if their names were, “Hello, my name is John Smith. I clerked for blank.” I can also remember that the young lawyers went out to lunch and across the lunch table there were discussions which were like young male animals testing out their fighting skills. The lawyers would be raising questions that were going to the courts and presenting all of the arguments with respect to those questions.

My first assignment was to work with a young partner named Ernest Jeness, J-E-N-E-S-S, who had a burgeoning communications practice. He represented the Washington Post, TV and radio stations and other stations and he came to represent a new trade association called the Association of Maximum
Service Telecasters (“AMST”) that was composed of licensees of VHF channels. As I recall, its purpose was to address competition that was in the offing from companies obtaining UHF licenses, which were then just being issued; companies that were, because of technical limitations later overcome, less capable of providing good service. In any event, we at Covington filed lots of papers with the FCC on behalf of our clients on license renewals and in rulemakings, mostly a paper practice. Ernie Jenness seemed from my standpoint to want to put out a perfect product, which was not unusual, and I think he did do so, but he did not appear to take much pleasure in it, and the experience of us young persons was not particularly enjoyable. It may have just been the nature of work. I recall working on a renewal of the license for a TV station, Channel 9, held by The Washington Post. The requirements were such that we had a stack of typewritten papers about an inch-and-a-half thick and very technical and burdensome to prepare. It fell to me to select all those facts and display them. My feeling was that none of my law training fitted me for doing that compulsive task and that my experiences were not advancing in any direction that would be fruitful. I made an effort to get out of the communications practice and ultimately, maybe as soon as one year, I moved to working with Gerry Gesell who was a trial and appellate attorney mostly in the antitrust field. I proceeded to work primarily with Gerry from then until I left the firm to go into the federal government in November 1961. I had really outstanding experiences with Gesell.
Ms. Garrett: Tell me what he was like at that time. I knew him only after he had gotten on the Bench.

Mr. Pollak: Well, he was a dominating personality, not that he tried to be, he just was. He was a major figure at Covington & Burling. He took great pleasure in the practice of law. He enjoyed the competition that goes with the adversarial process. He was combative without being other than well behaved and pleasing to be around. He loved what he was doing and made it a great experience for those who worked with him. We had challenging work to do. He was very supportive of those who worked with him. He made it a learning experience and was promotive of the confidence of those who worked with him.

My first assignment with Gerry was to help prepare and try a criminal antitrust case. The United States had brought criminal price-fixing charges against five manufacturers of the then-new polio vaccine. We represented Parke Davis, which manufactured the vaccine at its plant in Detroit. The lead defendant, because it had the largest market share, was Eli Lilly. Other defendants were Wyeth, Pittman-Moore in Kansas City and Merck, Sharp and Dohme. It was a great case. It was presented before Judge Philip Foreman of the United States District Court for the District of New Jersey located in Trenton. The Government was represented by Louis Bernstein and Bernard Hollander, both of whom spent their careers almost entirely in the Antitrust Division and were excellent attorneys and straight shooters. The relationships between counsel were good. The evidence against the manufacturers was damning in that prices moved in unison
and were identical down to the fourth decimal place. The packaging was similar as were the terms and conditions of the sale. There was a lot of fact work. I remember going often to New York to deal with the document depository at the Dewey Ballantine firm and case preparation.

I want to recount the lineup of attorneys because it was unusual. Watching them work was an education. Eli Lilly was represented by the Dewey Ballantine firm. Governor Dewey was Eli Lilly’s lead counsel. He was seconded by a senior lawyer, Everett Willis, and a younger partner, Len Shapiro. There were three outstanding associates, including Bob Pitofsky, later Dean of the Georgetown Law Center and then Chair of the Federal Trade Commission. Dewey’s local attorney was former New Jersey State Judge Richard Hughes, who was subsequently Governor of New Jersey and then Chief Judge of the State Supreme Court. Parke Davis was the second largest producer and Gesell was its attorney. Our local lawyer was Thorne Lord, a sole practitioner. Thorne was head of the Democratic Party in New Jersey. We young lawyers joked that in any group picture, Gesell, Thorne Lord and Judge Hughes, each a strong Democrat, were at pains not to be photographed in chummy relationships with Governor Dewey who was the lead Republican at the time. Another lawyer in the case was Bill Piel of Sullivan & Cromwell, a great trial attorney. He represented Pittman-Moore and I recall his bringing a lot to various evidentiary presentations.

After five weeks of trial in which the Government put in its case, the indictment was dismissed on grounds that the Government had failed to prove that
the uniformity in prices and terms of sale was not the result of the Government’s deep involvement with the development of the vaccine. Judge Foreman held that it was the burden of the United States to negative all innocent explanations of the alleged uniformity and that it had failed to do so. It was a big win and the defendants never needed to put in their case. There was difficult evidence in the case in that the manufacturers had been meeting and talking together in the effort to bring out this new vaccine. It was a terrific learning experience for me.

There was a book at the time about the world of business competition. I remember reading it to find passages for Gerry Gesell to use in his argument to the court on the motion to acquit.

Gesell and I prepared Park Davis’ defense, with Gesell handling the in-court work. I had a responsibility to know the whole case, all the documents and to be master of all. Governor Dewey had partners Willis and Shapiro plus three associates, each of whom had a slice of the case. Gesell often commented negatively on the wisdom of having lawyers learn only a part of the facts. He thought that to be really useful, one had to be master of the whole case. I’ve always believed the same thing. When you are able to have a mentor, as Gesell certainly was, you tend to view law and practice issues like your mentor views them.

Ms. Garrett: So was it just you and Judge Gesell?

Mr. Pollak: Just the two of us.

Ms. Garrett: Unusual for a case of that size, certainly today. Was that unusual for the times?
Mr. Pollak: I don’t know. It was typical of Gesell. He thought he could do it and of course he could. Another aspect of Gerry was that he worked hard during the week. I don’t recall his working many nights except when he had a deadline. But on the weekends, he had a farm and he did not do law work. He went home. He did other things. As far as I could tell, he didn’t obsess about the issues presented in his law practice.

When the polio case ended, I was immediately jumped into representation of General Electric which was the subject of a grand jury investigation into price fixing and other antitrust violations in the heavy electrical equipment industry. While Gerry and I had been on the polio case, Graham Claytor, Gerry’s partner, had been handling the representation of GE. Gerry took it over and I worked with him for several years, until I left for the government in November 1961, on that big series of electrical industry cases brought by the United States that were criminal and civil in nature. The grand jury was sitting in Philadelphia. Robert Bicks, Acting Assistant Attorney General in charge of the Antitrust Division, was in overall charge, assisted by two outstanding attorneys in the Department of Justice, Gordon Spivack and Craig Wittinghill. It was the largest antitrust case to come along. My major responsibility was to prepare and take GE officials to the grand jury. My memory is that I took 42 of them and prepared and debriefed them. The company’s instructions to its officers and employees were to tell the full truth and I worked with the witnesses to do so. Generally, they recounted quite inflammatory and damning stories of price fixing and secret meetings that
are all part of history now. Again, there were outstanding attorneys who represented the various defendants.

Westinghouse was represented by Bruce Bromley of Cravath, Swaine & Moore. Judge Bromley, as he was called – he had been appointed to the New York State Court of Appeals with an interim appointment. The story goes that it fell to him to write an opinion in a case challenging a fair housing statute. I recall that he upheld the statute and, as a result of his ruling, he wasn’t named to a full term. He was always known as Judge Bromley, however. He was greatly talented and had a wonderful sense of humor. He obviously had, as did Judge Gesell, great talents in the acting line. Perhaps the best courtroom lawyers are great actors, and Bromley as well as Gesell were that. Both men were very likeable.

The electrical industry cases were presented before Judge Cullen Ganey of the Eastern District of Pennsylvania. Motions were presented before Judge Ganey. We attorneys would gather in Philadelphia the night before and all of the attorneys for the defendants and there were many – six, seven, eight companies, manufacturers. The lawyers would compare readinesses for the argument. I recall Gerry Gesell, after presenting a difficult motion to Judge Ganey, coming back where I was seated and asking me what my view was of his performance. I felt then, and I never had reason to doubt it later, that, like everyone else, he wanted reassurance after he presented an argument that he had done a good job. This to me was a window into his makeup, even though he had great confidence
in his ability.

There are two more stories about the electrical cases I’d like to tell. The first is of the Chairman of GE, Ralph Cordiner, an American corporate official of preeminence in the United States at that time. The president of GE was Robert Paxton. One group vice president, Mr. Burens, and many division vice presidents responsible for heavy electrical equipment products were indicted. The question was whether they were acting on their own or were the two top executives also involved in the conspiracy. Ultimately, Paxton was indicted on the testimony of senior executives who had been indicted. They said that Paxton had come from his office in New York to Philadelphia and instructed them on their conspiratorial activities. Gesell conceived the idea of going to the prosecutors, Wittinghill and Spivack, and saying to them, “Paxton denies the accusation and says he never made that trip to Philadelphia. I believe that the executives one rung down are lying about it. If you will tell me when he is supposed to have come to Philadelphia, I will take that period and three weeks or five weeks or whatever number of weeks around it and I will bring you proof that he was never in Philadelphia as they say. If I show you proof, I will expect you to dismiss the indictment.” I don’t know whether any government prosecutor would do so today, but they agreed. Roberts Owen and I, with Gesell, assembled all of the evidence of Paxton’s whereabouts. Being president of the company, his whereabouts were pretty heavily detailed, for example, whenever he went into the company’s lunchroom, it was recorded. So we amassed this tremendous amount
of detail and presented it to the United States. The prosecutors dismissed the indictment.

The other interesting story involves Ralph Cordiner who was never called before the grand jury or indicted. The United States Senate called him to testify. We at Covington prepared his testimony and worked on it with the company liaison, a very able attorney who had rusty red hair. Cordiner obviously was concerned. Late in the process, he retained Clark Clifford to represent him personally. Clifford came over to see us at Covington. My recollection is that he wore a double breasted suit and had a great big, colorful striped tie. We showed him what we had done and briefed him and he took it all in. Soon thereafter, we had another meeting with Cordiner and Clifford. My observation was that Clifford relied on what we had done and presented it up to Cordiner. I felt then that Gesell’s role was diminished unwarrantedly by Clifford. On the other hand, as I look back on it, Clifford had been a significant adviser to Presidents even then, and what may have been occurring was Clifford’s relying on what we had done but bringing to Cordiner his own experience and evaluation of the upcoming Senate hearing, and giving Cordiner the confidence to go ahead with both our product and Clifford’s advice. It taught me that attorneys can have significant roles tied to the judgments they make and the experience on which those judgments rest, even if they really aren’t doing the leg work of writing or reading or even evaluating facts and cases. It was another learning experience.
Ms. Garrett: Tell me, in addition to these cases which seem to have consumed a fair amount of your time at Covington, did you have any opportunities to do any of the pro bono work that had drawn you to the firm?

Mr. Pollak: I did. Let me just say that I had one other case that I worked on with Judge Gesell that pretty much ran its course and was a smaller case located here in the District of Columbia. Gesell was retained by Lykes Steamship Line, which had been sued by Bloomfield, a smaller, non-subsidized company. States Marine, like Lykes, was a subsidized steamship company. There was a requirement that subsidized companies had to disclose all of their ownerships and they were precluded from acquiring any line which was not subsidized, or at least had to have permission before doing so. When States Marine’s subsidy came up for renewal, Lykes, which was a competitor, opposed the renewal and Lykes’ attorney, Odell Kominers, head of a small maritime firm here in D.C., argued that States Marine had acquired, surreptitiously and without the government’s permission, a small unsubsidized line, Bloomfield Steamship Company. He made this assertion orally in argument before the Maritime Board. Bloomfield or States Marine or both sued Lykes for slander, saying the allegation was that it had committed a crime. Gesell was retained to defend the case. The lawsuit was before Judge Alexander Holtzoff in the United States District Court for the District of Columbia. The case was left for me to prepare. I remember going to New York to take depositions of the General Counsel and President of States Marine. I was probably four years into the practice, maybe less, and I had never taken a deposition. I prepared these
depositions and then was sent off alone to take them. I spent all day doing so. I felt utterly defeated by the witnesses. I had all my questions and documents ready and I kept getting the “wrong” answers, which were essentially denials of the acquisition and ownership. As the case later played out, and some of it played out after I had left for the government, I heard that the answers were shown to be less than candid. I couldn’t understand the flow of the testimony in light of the documents. The flow of course, was to maintain the total innocence of States Marine.

Later, we took the deposition of Warner Gardner, who had represented American President Lines in the same proceeding. Warner was a partner in Shea & Gardner, the firm I joined in 1969. It was the first time I met him.

Judge Holtzoff was short of stature and considered a tyrant in his courtroom. I know that when Gesell and I went to court, Judge Gesell advised me that Judge Holtzoff required everyone in his courtroom to have their suit jackets buttoned and to sit up straight, to do no talking, no reading and, of course, to stand up whenever addressing the Court and to be completely respectful, which he was at pains to be and so was I. Judge Holtzoff received several significant briefs from us. The case was argued on summary judgment, but may have been tried after I left the firm in 1961. In any event, it was the first experience I had in the United States District Court here. My recollection is that Judge Holtzoff ran a good court. It was a positive experience.
You asked about pro bono. Early on, after I had gone to Covington, I started devoting time to cases brought by the American Civil Liberties Union. I recall working with Jim Heller on a case in which Joe Rauh was involved. We were dealing with coerced confessions and exclusion of the confession from evidence as violative of the Fifth Amendment. I also recall representing the ACLU in giving testimony opposing an effort to impose on the City of Washington a curfew for young people. I also testified against a proposal for preventive detention. A wonderful partner at Covington & Burling, Charles Horsky, was a close colleague and participated among others in cases and matters that came in to Gesell. Their offices were back to back, with a doorway between, and Gesell would often open that door and consult Horsky on difficult issues. Horsky was active in the Washington Housing Association, which had a purpose of working for better housing for indigent people, supporting public housing and urban renewal. I began volunteering time with the Washington Housing Association which was then chaired by Horsky. I became a board member and over many years was very active with that organization. Later, I became its chair and participated with Reverend Channing Phillips in a corporation called Citizens for Better Housing, CBH, which was an organization that endeavored to purchase and rehabilitate housing for the poor. A wonderful man and attorney named Bruce Terris was active with that organization too. He was a lawyer with whom I served in the Solicitor General’s Office.
So I began immediately at Covington to be active in city and pro bono affairs. I cannot recall the firm ever raising any issues about that. My recollection is that I could do anything that I wanted, provided I was able to perform the work that was assigned to me and do those other things without a problem.

Ms. Garrett: Tell me a little bit about the firm culture when you got there. Were there minimum billable hours requirements?

Mr. Pollak: There were no minimum billable hours requirements. At the end of each year, in the month of December, each associate had a meeting with Edward Burling, Jr. He was not the most powerful partner, but performed this important function. At that meeting, he would tell you in a general way how you were doing and what your bonus for the current year and salary for the next year would be. I believe associates of equal seniority received the same salary. I recall that my annual starting salary in September of 1956 was $4,600. I think I received a small bonus at the end of the year and then it went up some. Maybe it went up to $6,000. I harbor the idea that bonuses were by seniority, but my memory is vague about that.

I found the firm socially quite congenial. It was somewhat old worldish. The senior partner was John Lord O’Brien, who was a great figure in American law. He was 90 I think when I got there, came to the office daily and was available and held in great respect by everyone. He was called by everybody “Old Mr. O’Brien.” Dean Acheson had returned from being Secretary of State.
He was there as was his son, David. Early in our time at Covington, David Isbell and I decided that we were not getting to know some of the more senior lawyers. We devised a plan of inviting them to go to lunch. We called Barbara, Dean Acheson’s secretary. I don’t remember her last name. Certainly, we called her by her last name then. We said we wanted to take Mr. Acheson to lunch. She was nonplussed by the request, but conveyed it. He accepted our invitation. David and I had a wonderful lunch with Dean Acheson, of which I remember nothing now. When I applied for and was admitted to the Supreme Court, Mr. Acheson – in those days, admission was moved in open court and granted individually by the Chief Justice – moved my admission and signed my certificate. My observation (possibly wrong) was that Dean Acheson, who was a major national figure, did not have a particularly robust law practice, probably because he had been away in the government so much and his clients probably went to others. I have the impression that he worked primarily on public issues and his memoirs. The dominant lawyers by my observation were Gesell, Tommy Austern who had a fair trade practice, Hugh Cox, who was a great trial lawyer in the antitrust field. Everyone at Covington & Burling thought that Mr. Cox, as he was called, was the best lawyer in the firm, although I’m not sure Gesell felt that way. My observation always has been that to be a great lawyer requires a lot of self-confidence. Gesell had that and it was very becoming to him.

Covington drew wonderful young attorneys. Among those who were there was Harris Wofford, a man of broad talents and interests who became a civil
rights activist and played a major role with respect to civil rights and the campaign of John Kennedy for the presidency. Later, he was active in launching the Peace Corps, president of Bryn Mawr College and ultimately a senator from Pennsylvania. In addition, there was Burke Marshall who worked with Gesell and was universally considered as good or perhaps the best, most talented, most brilliant young lawyer. He became a young partner in the late 1950s and was selected by John Kennedy to be head of the Civil Rights Division. Burke volunteered time on the Kennedy campaign in 1960 and I helped him. I asked to go with him into the Civil Rights Division, but he said he was keeping all of the staff that Judge Harold Tyler, who was head of the division under President Eisenhower, had assembled and that there wouldn’t be a job good enough for me to take. I didn’t go with him and a few months later had an opportunity to go join the Solicitor General’s office. After a lot of agony over the decision, I determined to do that. One vignette about that. I, of course, spoke to my primary mentors at Covington. Judge Gesell counseled me not to go. He said I was right on track to be a partner and said, “You’d be better served by staying.” Charlie Horsky counseled me the other way and said I should take the offer. Charlie had served in the SG’s office. Gesell had begun his career with the SEC. So both of them had served in federal government. In any event, I chose to go and was never, never sorry. I think Covington was an excellent place to begin practice.

Ms. Garrett: Were there many women lawyers who were working at Covington at that time?
Mr. Pollak: There was an absence of women. There were only small numbers of women graduating from law school. My recollection is that there was a permanent female associate, Amy Ruth Mahin, who practiced in the estates field. It seemed to me that she was not advanced to partnership because she was a woman. I don’t know that for a fact. No one ever knocked her work. I don’t think there were any women in my entry “class.” I don’t even recall any women in the entering groups after me. I know that when I came out of the Government to Shea & Gardner, there were no women at Shea & Gardner. And while Frank Shea was noted for seeking the best talents around, that did not extend to the best talents of women because we hired men and I think it took a decision to change what had been a policy not to hire women. The first woman here at Shea & Gardner was Mary Fitch.

Ms. Garrett: Did you play a role in that decision or in the policy change?

Mr. Pollak: I can only say I think I must have. I don’t remember the specifics. I think that the thinking then of Frank Shea and possibly other leaders of the firm was that, with all of the traveling the male lawyers had to do, if women were brought into the firm, there would be occasions where the lawyers would get involved emotionally with the women and that would be a threat to marriages. Of course, now one would ask why should women be the ones who are burdened by those concerns. Any number of other things could be said about that as well.

Ms. Garrett: And when was Mary Fitch hired?
Mr. Pollak: Soon after I came in 1969. Her husband was a lawyer, and he became a professor at the University of Chicago and she relocated to Illinois. When the policy changed, Frank Shea applied his high standards to seek the best young lawyers regardless of gender, and we began hiring lots of women, and they worked out wonderfully. I think the first partner was Elizabeth Gibson whose husband, Bob Mosteller, was a public defender. They relocated to North Carolina where he became a professor at Duke Law School and she at the University of North Carolina Law School. Clinton endeavored to nominate her to the Fourth Circuit, but Senator Helms and others blocked it or said they would block it. She is a wonderful attorney. We’ve had many outstanding women attorneys here including Wendy S. White, a former partner, who is now Vice President and General Counsel of the University of Pennsylvania.

Ms. Garrett: We have been going a while here and I think we’ve wrapped up with your Covington experience.
Ms. Garrett: Steve, you read the transcript from your last interview. Is there anything that you wanted to add to what we discussed at that time about your career prior to entering the government?

Mr. Pollak: No.

Ms. Garrett: Then let’s talk about the Department of Justice. Tell me how you came to work there.

Mr. Pollak: In the early summer of 1961, First Assistant to the Solicitor General, Oscar Davis telephoned and asked me whether I would be interested in working in the Solicitor General’s office. The office was nine attorneys then and two, maybe three, of them, including Bill Doolittle and Wayne Barnett, had been at Covington & Burling. I think it was Wayne who suggested me. I said to Oscar that I was interested and proceeded carefully to consider whether I wanted to do it if I was offered the job. I recall almost nothing about interviews I’m sure I had with Oscar and with the SG, Archibald Cox. I received an offer and, after a lot of soul searching, accepted. I went to work in the SG’s office around November 15 or 18, 1961. It was a signal decision in my life and was absolutely correct even though I do not consider myself a solid fit as a brief writer in the SG’s office. My
talents are more related to human contact and oral presentation and tactical concerns, including oral argument. Nonetheless, I took the job. Brief writing was not one of my longest and strongest suits, and I thought in a Calvinistic way that taking a job in full-time brief writing with some oral argument would be good for me.

Ms. Garrett: And was it?

Mr. Pollak: I thought I could think through the problems well. Another major activity in the office was providing memoranda to the Solicitor General on whether to seek or oppose certiorari or take appeals. That was a fascinating side of the office where one learned the length and the breadth of what the government does and what the issues that come to the Supreme Court are. I thought I was strong in that realm. In any event, it was a great experience and I never was sorry that I did it.

Ms. Garrett: Tell me a little bit about how the SG’s office ran, who you worked with and the kinds of cases that you worked on when you were there.

Mr. Pollak: The SG’s office was located on the fifth floor of Justice, along Ninth Street. Solicitor General Cox had a fine office at the southeast corner of the building on the fifth floor. He had an intern, a young person who came immediately from clerking on the Supreme Court and generally stayed a year, whose office was along Constitution Avenue moving from east to west. The rest of us, of which there were seven or so, had our offices going from south to north along Ninth Street, and mine, I believe, was 5613. There were one or two attorneys who had offices across the hall facing on the inner court. I was the last office going down
from south to north. Next to me was a permanent person, a long-time employee in the office, who cite-checked and, you might say, policed the briefs to make certain that they were all technically correct. The Office took immense pride in having its briefs perfectly produced and they always were. It was much more complex then. We sent them to the Government Printing Office which gave us marvelous service and could turn them around overnight no matter how long they were. The only SG I served as Assistant to the Solicitor General, which was the title of all of us, was Archibald Cox, a former professor of law at Harvard and a simply super Solicitor General. He set high, high standards which he applied to himself and to all of us, and had respect across the length and the breadth of the government and great sway on positions the United States took at the Supreme Court. He was assisted in managing the office by a First Assistant, Ralph Spritzer, who was a career employee and had a responsibility as the second reviewer, the ultimate reviewer before Mr. Cox, of all briefs and memoranda in particular subject matter fields. Before Spritzer, that person was Oscar Davis, a long-time employee attorney who was named to the Court of Claims by President John Kennedy shortly after I got to the office, and served with distinction on that Court (later known as the U.S. Court of Appeals for the Federal Circuit). As the newest member of the office, I was responsible for organizing the going away party for Oscar.

Ralph Spritzer stepped into Oscar’s job and there was a Second Assistant who assumed Ralph’s position when Oscar left. That was Daniel Friedman,
Danny as we called him. Danny had responsibility for certain areas of government, including antitrust. He had come from the Antitrust Division. Dan later was named to the U.S. Court of Appeals for the Federal Circuit and served with Oscar on that Court. There were no other titles in the office. The rest of us were called Assistants to the Solicitor General and each of us had an area of emphasis. Wayne Barnett was the tax reviewer and expert. Bruce Terris had civil rights and I’m not certain who had what other areas, although I came to have a responsibility for underwater lands and boundaries. At one point in my service, I reviewed with and for Mr. Cox issues relating to the ownership of “mud lumps” in the Louisiana-Texas area where the Mississippi runs into the Gulf. There was an issue whether the Tidelands Act of whatever year, perhaps 1949, had deeded those mud lumps to the states, or whether they remained in the possession of the federal government. There were millions of dollars in oil under the mud lumps and the states of Louisiana and Texas, I understood, wanted them. That issue was presented to President Kennedy and he asked Cox for an opinion on the meaning of the statute. I read all of the legislative history which was voluminous because there had been a filibuster. Believe it or not, I never was able to find that the issue had ever been consciously addressed by the Congress. It was amazing. I can remember calling it “casus omissus.”

People came and went in the Office. In addition to those I’ve named, I served with Phil Heymann who became a professor of law at Harvard and later head of the Criminal Division in the Carter Administration and Deputy Attorney
General with Janet Reno in the Clinton Administration. I served with Frank Goodman, who became a professor of law at the University of Texas, and Nathan Lewin, who later was Second Assistant in the Civil Rights Division when I was Assistant Attorney General there. I don’t recall serving with any women attorneys in the Office while I was there, which was a reflection of the times.

Cox’s SG was a wonderful office. We, of course, worked on our own separate matters, worked very hard, long hours, and applied high standards. Generally, the people in the Office went to lunch together, often to the Federal Trade Commission cafeteria on the seventh floor of that nearby building. Mr. Cox, as all of us called him, ate with us on Friday. I learned about the government’s law offices and the Department of Justice offices in that job. I related to the appellate sections of the various DOJ divisions and the independent agencies. There were outstanding career lawyers in government service, many of whom I know today. There was Beatrice Rosenberg, who was Deputy Chief of the Appellate Section of the Criminal Division. The Chief was Carl Erdley. Those were accomplished attorneys. At the NLRB, the Appellate Section included Norton Come, who was universally respected, and the draft briefs that came from him and the NLRB were generally the best of the independent agency briefs. The government was excellently represented. Harold Greene was head of the Appellate Section in the Civil Rights Division. He had an outstanding set of brief writers and thinkers and was the best of the breed. Mine was a rewarding position to be in.
Ms. Garrett: What was it like to appear before the Supreme Court?

Mr. Pollak: Well, it was scary until you actually stood up and then it was just exciting and as stimulating an experience as I have ever had. I enjoyed every argument. I recall that I always knew my case up one side and down the other. That is not to say I made the best arguments that could be made. I wouldn’t be the judge of that, but I considered it my responsibility to be ready for whatever questions the Court had and I think I always was. I argued nine cases while I was in the Office, and before I had my first case to argue I argued a few in the circuits, mostly tax cases that the Tax Division boosted over to me as a result of my friend John B. Jones, who was First Assistant there. Mr. Cox often argued two cases at each sitting, sometimes even three. A sitting was two weeks long. His capability to do work was surprising because, at the same time he was preparing and presenting oral arguments, he was editing and writing major briefs and making decisions on certiorari and appeals and reading prodigious amounts. It never seemed too much for him. The arguments of his that I heard were brilliant.

Mr. Cox did not micro-manage the work of his assistants. When I argued my first case, he attended. Afterwards, he gave me two words of advice that I have always remembered. He said, perhaps because I did otherwise, but I don’t recall, that if one was arguing second, he recommended making the argument that you had prepared and not changing the argument you prepared because your opponent had taken some unexpected tack. Second, he said that whether first or second in the sequence of argument, he thought the advocate should always open
with the advocate’s statement of the issue to be decided. As I recall it, he never gave me any other advice on my arguments. Of course, I could learn something and did from the editing of my draft briefs by my colleagues in the Office and by Mr. Cox.

Ms. Garrett: Were there any memorable moments with any of the justices when you had your arguments?

Mr. Pollak: I recall Justice Frankfurter being extremely active in questioning. I argued a tax case that involved the precedential effect to be given to Internal Revenue Commissioners’ letters. I believe that my position (that is, the government’s position) was that they were not to be afforded precedential status such as one would give a court decision. I remember making a metaphoric reference comparing the number of letters to the number of snowflakes that fall in a heavy snow, and remember the Court lighting up at the reference.

I recall arguing a case later in my time at the Office, which was about three years, involving a member of the Air Force who had been disciplined. He was represented by Sid Dickstein and David Shapiro who have since built a fine firm in town. They had then just a firm called Dickstein & Shapiro. In the course of the argument, perhaps in preparation for the argument, I recall identifying that there was some element of facts that really was pivotal to the outcome that was not in the record. I identified that in the argument, and the Court remanded the case with instructions for the Air Force to address the gap in the record. It was a situation where I thought the traditions of the Office were that we serve the Court,
and so identification of the gap was called for even though it might lead to an outcome that might not be a win for the United States. It was a firmly entrenched tradition that all cases going to the Supreme Court were reviewed for error by the Office and, where an outcome favorable to the government seemed unwarranted, Mr. Cox would confess error, although that was rare.

Ms. Garrett: I would be interested to hear if you have a sense of whether the way the SG’s office works within DOJ has changed since your time there.

Mr. Pollak: I don’t really know. I have an awareness that Paul Bender, who served in that Office when I was in the Civil Rights Division in the 1960s, returned in the Carter Administration in a position loosely referred to as the “political deputy.” I think the First and Second Assistants took on the name of Deputy Assistant Solicitor General in later years. The Solicitor General in my time was a presidential appointee, as the rest of us were not, and could be expected to have had communications with the Attorney General or even the President with respect to Administration concerns about a litigation that could have political ramifications. I don’t think that was improper, but it was rare. The Office never conceived of itself as being swayed by politics. And I saw a lot of the Office through the end of 1968, when Thurgood Marshall had succeeded Archibald Cox. He succeeded Archibald Cox after Johnson succeeded Kennedy. I never found the Office influenced by politics, although I think on the mud lumps issue President Kennedy hoped that the issue would come out in favor of the states. I had a perception that the members of the Senate and the House from Texas and
Louisiana considered that a matter very dear to their hearts. I don’t know whether that was a consideration that influenced Mr. Cox. I’m doubtful that it did in those terms.

Ms. Garrett: What was the conclusion?

Mr. Pollak: The conclusion was that the mud lumps were the possession of the states. That can be identified because Mr. Cox’s opinion on which I worked is in one of the bound volumes of the Reports of the Opinions of the Attorney General.

I don’t know whether the Office has changed. My feeling is that its members continue to conceive of themselves, as Lincoln Caplan wrote, as the “Tenth Justice.”

Ms. Garrett: Did you ever have any arguments before the D.C. Circuit when you were in the SG’s Office?

Mr. Pollak: I never did. I don’t recall what my earliest argument was in the D.C. Circuit. One of the early ones that I recall was in a case I was handling for the United Mine Workers of America Health and Retirement Funds concerning the legality of a provision in the collective bargaining agreements that provided for funding of the health benefit plans and pension plans that was challenged as a “hot cargo” clause and a boycott violative of the antitrust laws, the Sherman Act, and the labor laws. It strikes me that I had earlier arguments before that Court, earlier than 1980 or ‘81. My client won in the D.C. Circuit, but the decision was reviewed on certiorari in the Supreme Court and reversed 6-3, opinion by Justice White. It was called *Kaiser Steel Corp. v. Mullins*. 
I have had a number of arguments in the D.C. Circuit.

Ms. Garrett: When you were working in the SG’s Office, did you have any interaction at all with Attorney General Kennedy?

Mr. Pollak: Yes, I did.

Ms. Garrett: Tell me about that.

Mr. Pollak: The first time I had any sight of him up close was a Sunday evening in 1962. It must have been fall of 1962 when James Meredith was brought on to the campus of the University of Mississippi to register as a student. A friend of mine, a law classmate, Howard Willens, was First Assistant in the Criminal Division. He telephoned me when I was having dinner Sunday evening, 7:30 or so, and asked if I could come to the Attorney General’s Office to lend a hand. There were problems respecting Meredith and there was need for some help. I said of course and I went down to the Department.

I’d like to tell one other memory I have of the SG’s Office. We had many appeals that the Criminal Division wanted to take and many briefings or certiorari issues that came from the Criminal Division. They often involved issues of civil liberties. The Criminal Division would be defending positions of the police and the FBI, the prosecutors, against challenges under the Constitution, the Fourth Amendment, the Fifth Amendment. We in the SG’s Office would make our own judgments under the precedents and sometimes would conclude that the federal behaviors or state prosecutorial behaviors or police behaviors didn’t meet the constitutional standards. This could put us at odds with the Criminal Division.
One day Jack Miller, Herbert J. Miller, head of the Criminal Division, sought a meeting with the SG’s Office. We all gathered in Mr. Cox’s office and Jack Miller came and addressed us about the need for strong enforcement of the criminal laws. He brought – the issue may have been in respect to protection of federal witnesses, because he showed us a set of large photographs of – as I recall it – prosecution witnesses who had been killed and were shown in bloody circumstances as a part of his presentation that we should be tougher about our positions.

Ms. Garrett: Did it affect the positions the SG’s Office took on criminal matters that came up?

Mr. Pollak: I think each one was called on its own facts. It was a relevant consideration to know that if the issue was witness protection, it wasn’t theoretical, that if protection was breached, the witness might be killed. One of the good things about the SG’s Office was its independence, so we had to reach our own judgments.

In any event, I went to the Department that Sunday evening. Attorney General Kennedy’s office was on the fifth floor down the hall to the west along Constitution Avenue from the SG’s office. It was a large office with a large desk, wonderful rugs on the floor, paintings on the wall. There was an outer office in which there were two secretarial desks. Then still another outer office. I probably didn’t know any of the coterie of people there that Sunday evening. That may have been the first meeting I had up there. There was an open phone line to the Administration Building on the campus of the University of Mississippi
where the Justice Department persons enforcing the court order for admission of Meredith were under siege by segregationists bent on keeping him out. I, along with Ramsey Clark, then Assistant Attorney General in charge of the Lands Division – he became Attorney General after Lyndon Johnson became President – manned an open phone line through the early morning with the University’s Administration Building where the federal officers were holed up. On the other end of the phone line were Deputy Attorney General Nicholas Katzenbach, who was the senior federal officer on the scene, and other Justice Department leaders who were there with him, including John Doar, First Assistant in the Civil Rights Division, Louis Oberdorfer who was head of the Tax Division, and my friend and law school classmate Norbert Schlei who was head of the Office of Legal Counsel. They were waiting for federal troops to come from Memphis under General Abrams. I believe that the President, along with Robert Kennedy and Burke Marshall, who was head of the Civil Rights Division, was having conversations with Mississippi Governor Ross Barnett.

More than one time in those hours, Marshall and Robert Kennedy would leave the Department of Justice and go to the White House, meet with the President and then return. It was tense. My impression of the Attorney General was that he was in good communication outward from the Department to the President, good communication with the DOJ people at the University of Mississippi, and with the people there in his office. He was calm and he was in full command of the situation, which he handled in a quiet and orderly manner. I
didn’t see it all, but I saw a lot of it. Abrams was long delayed in coming, and the siege of the administration building was quite heavy and defended with tear gas from the Federal Marshals and the members of the Border Patrol. The federal people were running out of tear gas and one or more men of the Border Patrol that I came later to know when I was in the Civil Rights Division were sent in a truck to get more tear gas. They hadn’t returned and my memory is that the senior officer present there, Katzenbach, asked for permission to open fire with live ammunition if the siege became more threatening. My memory is that the request for permission was presented more than one time.

Ms. Garrett: To whom was it presented?

Mr. Pollak: Well, it was presented over the phone line that I was manning and I would present it back or the phone would be picked up by Robert Kennedy. In any event, of course, the only decision that could be made to do so would be made by or in concert with the President. I never heard any discussions with the President, but I knew what was conveyed. Even with the tear gas the defense of the federal personnel was extremely difficult. The truck came amidst a lot of hostility of a physically and potentially injurious nature and drove through that and brought in more tear gas at a moment when I think the supply had run out. Permission to use live ammunition was never given. I thought that that was an outstanding judgment by the federal leaders, the President, Robert Kennedy and Burke Marshall. It would have been a far more searing experience and dividing
experience for the country had lethal force been used and persons died or been wounded.

Of all the involvements in history that I have had, that evening produced something the whereabouts of which and even existence of which I have no knowledge, but it is a document that I think history deserves. I was maintaining this phone from let’s say 9:00 p.m. until 2 or 3:00 in the morning, maybe later, and because of the significance of the communications, I kept a full log of all the communications, the time and what was said and the speaker. I know that Ramsey did the same when we shared and spelled one another. That log seems to me to be an historically significant document, but I don’t know what ever became of it. I have thought that maybe it is at the Kennedy Library in Massachusetts, but I don’t know.

Ms. Garrett: Have you ever gone to look?

Mr. Pollak: No. I never followed up on it. Finally, Abrams and the troops arrived and matters cooled down. It taught me one lesson: movement of the military is not instantaneous. The President was calling in the most urgent terms for the movement of the troops there.

Ms. Garrett: And how far did they have to go to get there, do you know? Was it across the states?

Mr. Pollak: Memphis to Oxford. Oxford is where the University of Mississippi was. I think it’s more like an hour and a half, something like that. It took a long time. I recall phoning Sol Lindenbaum, who was a career attorney and longtime assistant in the
Attorney General’s Office and a wonderful person. I called him at home at about 4 or 4:30 a.m. to come in and work with me in drafting a declaration for the President federalizing the Mississippi Guard. I think that was the occasion when I did that. I had more than one all night of activities at the Department of Justice during one crisis or another. My observation was that Robert Kennedy performed very well there. I think the outcome of the Meredith crisis was the proper one, that the federal court orders were enforced. That is what it was all about. The Court had ordered that Meredith be admitted and the state and its governor were not obeying the order and not protecting the campus from those who would prevent Meredith’s admission.

I had more contacts with Attorney General Kennedy, but not many. The next contact I recall involved me more closely for a longer period with him, but I was never what I would call an intimate colleague of his. He was committed to having a domestic peace corps which would be focused on assisting the disadvantaged in the United States. At his urgings, President Kennedy designated a cabinet level Task Force on a National Service Program. The push to carry out the mission was Robert Kennedy’s. He did it primarily through staff persons at the Department who were part of an office dealing with juvenile delinquency. A working task force was created, that is, personnel who had offices on Jackson Place near the White House. It was run by a friend of Robert Kennedy’s named David Hackett who had been the model for Phineas in A Separate Peace by John Knowles, a book about boys at a prep school. Kennedy and Hackett had
attended Milton Academy together. The task force was engaged in developing legislation creating a domestic peace corps and supporting its passage by the Congress. It came under attack from Representatives H.R. Gross of Iowa and Sam Devine of Ohio, two Republican, fiscally-conservative members, who attacked the task force, contending that it was a lobbying effort and that budgeted federal revenues designated for use by cabinet departments were being unlawfully reprogrammed to the task force. Robert Kennedy, my understanding is, asked Deputy Attorney General Katzenbach to get a lawyer for the task force to defend it against those charges and to make certain that it was proceeding in ways which were legally sound. He may have had other purposes, including providing the Task Force with legal advice as to how it could make its presentations to the Congress more effective. Katzenbach had been a professor at Yale Law School during my first year or so, and I knew him some. He asked me if I would do it. It was then close to or at the end of the ‘62-‘63 term of the Supreme Court. In the SG’s Office, we were looking toward summer briefing, but not any further arguments. The Attorney General’s request wasn’t one that could be turned down lightly, so I did it. I assisted the Task Force through late August when the Senate passed the service program bill 44-40. That was not a big enough margin to assure passage in the House and the bill died in that Congress.

I returned to the SG’s Office for the 1963-‘64 term. But in the course of serving as counsel to the Task Force, I saw something of the Attorney General and met with him one or a few times. I have a memory of one meeting in which I
reported to him on what the Task Force was doing. I’m sure he had reports from others. His friend Hackett was running it. Richard Boone was there who had been in the Department’s Office of Juvenile Delinquency. I have the strong recall that Kennedy’s interest was merits oriented and intelligent and quite of a no-nonsense nature. He wanted to know what was going on. He wanted to be sure that the Task Force was focused on a program which would be of real assistance in Appalachia and in the pocket areas of poverty. I formed a very positive view of him.

Ms. Garrett: You mentioned during your tenure in the SG’s Office, crossing paths in some respect with a couple of individuals who later served on the District Court here in D.C., Harold Greene and Lou Oberdorfer.

Mr. Pollak: Yes.

Ms. Garrett: Tell me about them at that time.

Mr. Pollak: I had met Oberdorfer when I interviewed at Cox, Langford, Stoddard & Cutler. He was there. That was in probably 1955-‘56. Lou was head of the Tax Division. Lou was from Birmingham and had close associations there. He had clerked for Justice Black. His wife Elizabeth came from down that way, Montgomery. Robert Kennedy looked to him for knowledge of the South in connection with racial issues and relied on him, as did Burke Marshall. All the while Lou was running the substantial Tax Division which was responsible for all litigation relating to Internal Revenue Code matters, as well as tax legislation of concern to the Department. He was, in fact, a right-hand colleague of Robert Kennedy.
I have one story about Byron White. I was in the Department when he was the Deputy Attorney General. I was working way late at night and must have been working with people including the Deputy. It may have been on some crisis or another, but I recall walking down Tenth Street, along the west face of the Department with White. We were talking about influencing the course of the government. He pointed up towards the building and said, “We’ve got about as much chance of doing that as moving this building off its foundation.”

(Laughing). It’s a memory. I also remember that I did speak to him when I was named the head of the Civil Rights Division. He said to me, “Well, that will grow you up.” I didn’t have much interface with him, but always had high regard for him. Byron White was a major force in staffing the leadership of the Department of Justice for Robert Kennedy. He graduated from Yale Law School. Byron helped identify the best from that school, and that included Burke Marshall, Lou Oberdorfer, Bill Orrick, and Nick Katzenbach.

Harold Greene was head of the Appeals Section of the Civil Rights Division. I did not have any real relationship with him while I was in the SG’s Office. I came to know him when I joined the Civil Rights Division in March of 1965. We crossed paths in the Division for a portion of that year until he was named to the Court of General Sessions by President Johnson. I had a big role in presentation of the Voting Rights Act to the Senate, and Harold was a primary drafter of the statute. I was new to the substantive area, would look to Harold for guidance, and came to know him well.
Ms. Garrett: What was he like?

Mr. Pollak: I have spoken about him at various occasions at which he was honored, including when his portrait was hung at the District Court. My views of him are reflected in the remarks that I’ve given about him. He had assembled an outstanding office of appellate lawyers, an office that drafted briefs of excellence in the shortest possible space of time, because the pace of civil rights events and litigation didn’t allow any extra margin of time. Issues were always being presented in one court and then in an appellate court right away, like the question whether the state of Alabama could prevent the Selma-Montgomery march from taking place.

Harold had a sterling reputation in the Department. He was a leader by example and by intellect. He was full of enjoyment in what he was doing. He had a mischievous smile and often made statements of a nature to go with his countenance. He was just an outstanding member of the Civil Rights Division and an outstanding lawyer for the government. To set him on the course of being a judge was a wonderful decision for the country and great for Harold. He was cut out to be a judge. Harold and his appellate people drew these great civil rights statutes, the 1964 Act and the Voting Rights Act of 1965, based upon the facts that the litigation in which the division was involved produced. The statutes were well drawn because they stemmed from facts which had been hammered out on the harsh anvil of that litigation. In voting, for example, the department would win a case, but then the procedures of the defendant would be changed so that the registration of minorities would still be denied. The Voting Rights Act was drawn
to cure that and did. While credit goes to Harold, there are a lot of persons to whom it goes. Harold was one of those few at the center.

Ms. Garrett: He was also similarly involved in the drafting of the Civil Rights Act of 1964?

Mr. Pollak: Probably even more so, or at least equally so. I wasn’t there for that statute which had been presented in 1963 by President Kennedy to the Congress. It did not succeed in passage until Kennedy had been slain and succeeded by Johnson. Harold and the Division had a major role. Of course, pieces of that statute were added at the urgings of the Congress, particularly, the equal employment provisions in Title VII. The Department had a lot of concerns about those provisions, as reflected in the legislative history, concerns that they would sink the statute.

Ms. Garrett: Gender was one that was added?

Mr. Pollak: Right. The Virginia Congressman, Judge Howard Smith, I recall, head of the Rules Committee. He thought it would sink the statute, but he was wrong.

Ms. Garrett: It worked out to the benefit of many.

Mr. Pollak: It did. In any event, the Department was the major supporter of those great statutes and Harold and his people had responsibility for assembling the written record and drafting the testimony. As Nick Katzenbach has said, when he would testify on the Hill in support of the Voting Rights Act, he would testify from a written text prepared by or under Harold Greene’s direction without ever having read it before delivering it. He had that measure of confidence in Harold Greene.
I’m sure the testimony was outstanding. Harold was a very enjoyable person to relate to.

Ms. Garrett: Did you continue your interaction with him after he became a judge?

Mr. Pollak: I did. In 1967, I became President Johnson’s Advisor for National Capital Affairs. In that position, I had a lot to do with the local court system. Harold was Chief Judge of the then Court of General Sessions. When Dr. King was slain and riots broke out in Washington, I was head of the Civil Rights Division. The Civil Rights Division was looked to by the President and the Attorney General to assist in addressing the riot conditions and the administration of justice in those mass arrest situations. I related directly to Harold in his conduct of the Court of General Sessions. Then, for all the years after, I made it a purpose to see him for lunch. With our wives, we shared social occasions. In all my time, I had only one case in front of him.

Ms. Garrett: How did that go?

Mr. Pollak: It was a case for the UMWA Health and Retirement Funds. I think it went through discovery. We had various motions presented to the Judge. Ultimately, it settled without the merits being decided, as did most of those cases, of which there were many. Harold was so quick on the bench. I often talked to him about what he was doing on the court. When I was going to present remarks at the hanging of his portrait, I spent time reviewing his papers in relation to the AT&T case and talking to him about that. Both he and his wife were hurt by the criticism leveled at the outcome. Some people were saying he was busting up the
finest telephone service in the world. I thought he did a wonderful job and a great thing for the country. In any event, he was applying the antitrust laws to the facts presented to him by the parties.

Ms. Garrett: Some people said he had a reputation of being rather difficult in the courtroom and in chambers. Did you witness any of that or hear any of that?

Mr. Pollak: No. Like a number of the judges, I think he felt restive under the flood of criminal drug cases. He was committed in opposition to the Sentencing Guidelines. I think he hated what they required him to do. He probably was short with advocates who he thought were presenting positions that were not entitled to credit. He probably was not happy when bored and perhaps may have been short with people under those circumstances. But I wasn’t there and don’t know about it.

Ms. Garrett: You talked a little about Lou Oberdorfer, Judge Oberdorfer. Did you continue to have any interaction with him after he became a judge in the District Court?

Mr. Pollak: I had important litigation in front of him for the International Ladies’ Garment Workers’ Union. I represented the ILGWU. The Reagan Administration had conducted an informal rulemaking leading to the lifting of certain regulations enforcing the minimum wage/maximum hours provisions of the Fair Labor Standards Act and adopted in the 1930s as part of the New Deal – the regulations banning homework in the needle trades and several other industries where “sweat shop” labor conditions had been endemic. We brought suit for the ILGWU challenging the rulemaking order lifting the ban on homework as “arbitrary and
capricious” in violation of the Administrative Procedure Act. The case was styled *ILGWU v. Donovan*. Judge Oberdorfer ruled against me a couple of times in that litigation. We appealed and the Court of Appeals reversed him. The Judge never held it against me. I have always been friendly with Judge Oberdorfer. He was President of the D.C. Bar. I was later on. He and I at different times were co-chairs of the National Lawyers’ Committee for Civil Rights Under Law. We went to Lawyers’ Committee meetings together in New York City before he was on the bench. I knew him professionally and knew him socially. Starting in the early 1990s, I worked quite closely with him in connection with my heading up the Oral History Project of the D.C. Circuit’s Historical Society of which he has been the chair. It has been a close relationship with him in the 1990s and now, the 2000 decade.

The two judges that I was closest to personally were Judge Gesell, who had been my mentor at Covington, and Judge Harold Greene. I always made it a point to see them for lunch periodically because the bench is such a cloistered place. I saw them year in and year out and considered them friends. I was always fascinated by the lives they were leading as judges. I don’t know if I have spoken that much about Gesell as a judge.

Ms. Garrett: You haven’t. Would you like to talk some about him?

Mr. Pollak: I have had this long litigation for the UMWA Health and Retirement Funds over the legality of the clause in the collective bargaining agreement that required contributions to the Funds on coal purchased. As I mentioned earlier, it was
challenged as an unlawful “hot cargo clause,” that is, a clause aimed at encouraging or forcing non-union mining operators to unionize. My responsibility was to defend the legality of the clause. There were many litigations brought challenging the clause and many litigations brought by me for the Funds to collect unpaid royalties required by the clause that led to challenges to the clause. Those cases were multidistricted in the Western District of Pennsylvania after we lost a case in the Supreme Court, *Mullins v. Kaiser Steel Corp.*, reversing a D.C. Circuit decision sustaining the clause on one particular theory. There were 50 or 60 individual lawsuits involving millions of dollars. I presented one of those cases to Judge Gesell and, as I said earlier, one to Harold Greene. I also litigated the same issue in cases before June Green, Joyce Hens Green, Tom Flannery, and Stan Harris. In the Court of Appeals, I presented the issues to Malcolm Wilkey and Abner Mikva. I just can’t recall all of the judges who heard the issues. I was litigating in Birmingham, Alabama; Pittsburgh, Pennsylvania; Beckley, West Virginia; Richmond, Virginia; Springfield, Missouri; Columbus, Ohio, as well as the District of Columbia – everywhere, before many, many different judges. In any event, I presented the case to Judge Gesell on our theories, but couldn’t quite convince him on motions to dismiss or summary judgment. Previously, in the multidistrict proceedings, the issue of the legality of the clause on its face was presented in the Third Circuit and the court held the clause was not illegal on its face. So then we had many, many cases in which operators contested the legality of the clause as applied to their
circumstances. One of those cases was presented to Judge Gesell, involving the
Youghiogheny & Ohio Coal Company situated along the Ohio River. It was fun
to litigate that case before Gesell. He addressed whatever issues you presented to
him. I recall his saying to me in one of the lunches I had with him -- I didn’t have
lunches when I had a case in front of him, and that goes for Harold Greene as well
-- that he thought that whatever issue was presented to him, he owed the parties a
memorandum setting forth his reasons for his ruling. And he did that.

Gesell was a master administrator, he knew how to delegate when he wanted
to delegate, and he knew how to lead. He would have made an excellent
Secretary of Defense back before he ever was a judge. I think he had some hopes
of being asked to hold a high position in the Kennedy Administration. I believe
he was asked if he wanted to be head of the Criminal Division.

Ms. Garrett: By President Kennedy?

Mr. Pollak: Well, by somebody. But he did not consider that was something he wanted to do
at that stage of his life.

Ms. Garrett: Did the Department of Defense come up with him?

Mr. Pollak: I don’t know that it came up with him other than in my mind. He was named to
the bench at about the same time that my nomination as Assistant Attorney
General for Civil Rights was announced. That was a coincidence.

Ms. Garrett: Is there any more that you want to say about Judge Gesell on the bench?

Mr. Pollak: There is so much that one could say about him. He was an outstandingly effective
attorney in private practice. Anybody who had him as their lawyer was fortunate.
All the time that I worked with him I never heard him express a hankering to be a judge, but it was a master stroke that put him on the bench. He was I think an outstanding judge and was really cut out to do it. He was restive as a judge with the flood of drug cases and equal employment cases. When significant criminal jurisdiction was moved from the District Court to the Superior Court in 1972, Judge Gesell didn’t approve of that. He didn’t want to lose the more significant matters that his Court was dealing with. He expressed to me one time a concern that he wasn’t on the federal bench to be a personnel administrator, which is what he thought many Title VII cases involved. He had strong views. He was impatient with formal trappings of life and bureaucracy. Some aspects of service as a judge made him impatient, but not the carrying out of the business of being a judge and administering justice.

Ms. Garrett: Anything else on Judge Gesell; any anecdotes that you want to share?

Mr. Pollak: No. He just was a great trainer of me and made my life in the law richer and more rewarding and enjoyable. My major mentors have been Gerry Gesell and Archibald Cox. They knew how to practice law, how to cut square corners, and were great minds. They were very confident men. I was fortunate to serve with them in one capacity or another. I worked with many great lawyers and persons: Burke Marshall, John Doar, Harold Greene, and my partners here at Shea & Gardner, Larry Latto, Bill Dempsey, Wendy White, Tony Lapham. I’ve been fortunate.

Ms. Garrett: I think we had almost finished our discussion of your time in the SG’s Office.
Mr. Pollak: Right.

Ms. Garrett: I think you had just returned from your time with the Task Force on the National Service Program and you were there.

Mr. Pollak: I came back. I handled my responsibilities in the SG’s office. Kennedy was slain. Life hobbled along and President Johnson asked Shriver to head up an effort to achieve a broad anti-poverty program. The bill was drafted under the direction of the Office of Legal Counsel at Justice which was then headed by Norb Schlei, my law school classmate. That had gotten underway probably in early 1964 and was part way along, Schlei asked me to draft the portion that would create a domestic peace corps for inclusion in the bill. I did that while still serving in the SG’s office and continued to have some relationship with the legislative effort insofar as assembling the material for support of that portion of the legislation dealing with the domestic peace corps. The lawyers for the Task Force on the War Against Poverty, as it was called, headed by Shriver, were Murray Schwartz who later became a dean of UCLA Law School and was at the time a professor there, and Harold Horowitz who was or had been General Counsel of HEW. Hal had been on the faculty at the UCLA Law School before joining the Kennedy Administration. Murray would fly in each week from L.A. to spend some of his time helping Shriver. When those two men returned to the law school in 1964 in the later spring, I succeeded them as Shriver’s lawyer and then worked with Shriver to support presentation of the legislation to the Congress. There were three of us who were the supporting personnel. Two were
in the Bureau of the Budget, Ann Oppenheimer and Chris Weeks. We were the
working staff. I pulled away from the SG’s office and started doing this full time.

Ms. Garrett: Were you still employed by the SG’s Office and detailed to this task force?

Mr. Pollak: That is what it must have been. Adam Yarmolinsky was Shriver’s deputy and
Shriver had a charming capability of pulling major figures into his activities.
There was a whole cadre of persons with national names who were working with
him in dealing with the Congress, but the paper materials and inside efforts were
handled by Weeks, Oppenheimer and myself, as I recall, with direction from
Shriver and Yarmolinsky. As matters went along, I worked with members of the
Congress and dealt with drafting the statute and developing its legislative history.
There’s a story I’ve related elsewhere, probably in the oral history I did for the
Archives back in 1969: Congressman Frank Thompson of New Jersey was a
major supporter of the legislation and was a major figure on the Education and
Labor Committee of the House which held hearings on the bill. He and I thought
up the name of the domestic peace corps, VISTA. He thought of the name and I
gave the letters their meaning, which was. “Volunteers in Service to America.”
We did that one day in his office. I brought the name home to my children and
they laughed and said, “Dad, that can’t be the name, VISTA is a car wax.”
Anyway, it became the name. I had very close associations with the persons on
the House Education and Labor Committee as a result and with various Senate
people. Some of the old National Service Program people came over and worked
on the poverty bill. Dick Boone was a major figure on the community action
portion. That was a whole activity until the bill passed in the summer of ‘64. Then I worked with Shriver on getting a budget appropriation which passed in late August 1964. Then we launched the program. I had a major role setting up the law office and hiring attorneys.

Ms. Garrett: And this was with the Office of Economic Opportunity?

Mr. Pollak: Yes. The location of my office kept shifting because we had temporary quarters. First, I remember being at the corner of M and 15th Streets, the southwest corner of M, across from the Madison Hotel. It was reportedly a building in which there was a brothel in World War II. Then our offices moved to 19th and M. Shriver brought in the Counsel to the Senate Labor and Public Welfare Committee, Donald M. Baker, to be General Counsel and he named me Deputy General Counsel. Don was a wonderful colleague. I hired Jim Heller, Tony Partridge and Jim Siena as attorneys, got them to come on board, and we helped create the poverty program. I was disappointed that Shriver didn’t name me the General Counsel, but my zeal for the program and for the challenge of creating it was not diminished. I knew I was a walking encyclopedia of the legislative history and the meaning of the statute. I had wonderful files of the development of the legislation which I left at the Office when I went to the Civil Rights Division in March of 1965.

At that time, about March 1965, Robert Kennedy had resigned as Attorney General. He was running for the Senate. Burke Marshall, who headed the Civil Rights Division, was retiring, and John Doar, his deputy, was succeeding him.
Nick Katzenbach who succeeded Kennedy as Attorney General asked me if I wanted to interview to be Doar’s deputy. I had always wanted to be in the Civil Rights Division. Originally, I wanted to go there in 1961 with Burke Marshall. I said yes I wanted to interview and did so. John Doar offered the job to me, and I took it. I felt conflicted about leaving the poverty program in its infancy, and I thought I would not have done so had I been General Counsel but that as Deputy I could bow out. I wanted to be in the Department of Justice and thought I was more of a litigation lawyer anyway. I wrote a letter to Shriver explaining my decision and will attach it to this history.

There were fascinating issues that Don Baker and I dealt with at OEO, sometimes in the middle of the night, when Shriver was wanting to make grants and get the program going. We were writing memoranda on whether grants could be made to church-related organizations. Don was a strong Catholic as was Shriver and we were battling out those issues, drawing those lines.

Ms. Garrett: I wanted to ask you a little about that since you had some experience with the issue. What are your thoughts on how that issue was developed, particularly in the current Administration now being referred to as grants to faith-based programs?

Mr. Pollak: I have always had a strong belief in the separation of church and state called for by the Constitution. The poverty program had maybe six titles establishing operating programs. Title I created the Job Corps. Title VI enumerated the powers given the central management; and created VISTA. The question whether
religious-related organizations could be recipients of funds came up primarily in connection with community action grants pursuant to Title II. I don’t remember exactly where we drew the line, but we concluded that the Constitution did not bar funding of programs fighting poverty that were managed by religious-related entities. That’s my recollection. Shriver wanted that outcome, not because he wanted to fund religious organizations, but because those groups -- and I’m using the term “groups” loosely because often they were created especially to be recipients of OEO grants -- were committed to serving the poor and what we wanted to do was to get programs going that would serve the poor. I recall battling through the issue with Don Baker in the middle of the night because Shriver was announcing grants in the morning. I’m sure that the archives will include the memoranda that we sent to him on this issue.

But I want to relate one thing that seems relevant also to today’s issues. There is much talk about wanting locally-based organizations to make their own decisions. We had money to fund community action activities. Many of the would-be applicants came to us at OEO and said tell us what to do. Tell us what we should apply for and we’ll apply. They didn’t know what they wanted. They needed the leadership of the federal government to get it going. That has always influenced me in thinking that the federal government has a call on outstanding minds to create these programmatic activities. To push the programs out of Washington and out of the federal government into the states is often a sacrifice.
of substance. On the other hand, states have more call on good personnel today than then. I’m not a dogmatist on that issue.

I had a lot of contact with Shriver who was a man with a million ideas. He was a good leader for that effort. Another person who was active in community action was Lisle Carter, whose son Steve Carter is a well-known professor at Yale Law. Lisle later became President of the Federal City College and president of a consortium of black colleges in Atlanta. At the time we were working together at OEO, Lisle perceptively said that what the poverty program was about was breaking the bonds of the federal bureaucracy and forcing the federal government into activities which the bureaucracy was not doing and was unwilling to change to do. He said what OEO was really about was to get these activities going which then at a later point would be absorbed into the old line departments and have futures there. In a lot of respects, that is what happened, except for the community action program, which I think got axed because it was not beholden to political leaders across the country and because it was fighting for the poor. I know that Mayor Daley of Chicago (the first Mayor Daley) had objections to giving any money in Illinois or at least in Chicago to community action organizations unless it was given under his auspices. I think he succeeded requiring the money to be devolved as he wanted. He had that clout. It was a lot of “réal-politique.”
Mr. Pollak: Since we last met, I had a telephone call from Charlie Ferris. He was a main aide to Majority Leader Mike Mansfield and played a significant role in the Senate’s crafting of the Mansfield-Dirksen compromise which became the Voting Rights Act of 1965. I participated with Charlie and others in that effort. Charlie, who was calling to obtain some facts about those events now almost 40 years ago for a speech he was giving, recounted a marvelous story which I would like to record for history.

He said that after the Selma-Montgomery march and President Johnson’s pressure on the Congress to pass a statute to assure that Blacks could register and vote without discrimination, Majority Leader Mansfield learned that Attorney General Katzenbach had been up to the Senate and met with the Republican Minority Leader, Senator Everett Dirksen. Mansfield understood that Katzenbach had reviewed with Dirksen the terms of the bill that President Johnson wanted the Senate to pass. Mansfield was, according to Charlie and the press at the time, a man of few words and a man of an iron will, and he was obviously miffed that the
Democratic Attorney General had not met with him. He instructed Charlie to prepare a workable piece of voting rights legislation one page long that would be his bill, Senator Mansfield’s bill. Charlie took him seriously and left the meeting without any idea of what he would do. It seemed to him impossible that he could craft on one page an entire voting rights act, when the current bill or the bill that had passed the House was 62 pages. Mansfield instructed him to have nothing to do with the Department of Justice.

Charlie recounted that Burke Marshall, who had been at Justice as head of the Civil Rights Division since 1961, had left the Department and was waiting at Covington & Burling before joining IBM as its chief lawyer. He called Burke and got together with Burke and Harold Greene and they worked up a bill that they typed single spaced and crammed as much on a page as they could and also changed or eliminated provisions. He said there were a lot of findings recounted in the draft and they got rid of those. He then took that bill to Mansfield and he also encouraged Katzenbach to come up and make his amends with Mansfield. As Charlie told it, the confluence of a second Katzenbach visit and the draft that Marshall, Greene and Ferris had worked on broke that log jam. I had not known any of that history.

Ms. Garrett: You were involved in the drafting of the Voting Rights Act and sort of the shepherding of it through the legislative process, is that right?

Mr. Pollak: My involvement came following the Selma-Montgomery march, which was at the end of March in 1965. When I returned to Washington, perhaps in early April,
the Attorney General asked me to represent the Administration in working with the Senate on getting the voting rights bill to the floor. It was in that role that I participated in the development of the Voting Rights Act. I participated in the meetings with the staff of Senator Dirksen. There were three led by Neil Kennedy and including Bernie Waters and Clyde Flynn. Those were the Dirksen people and there were also Bill Welch of Senator Hart’s office, Charlie Ferris representing Senator Mansfield and myself. Sometimes Senator Philip A. Hart sat in on our meetings. We went through the draft bill, S. 1564, reported favorably by 12 members of the Senate Committee on the Judiciary. Senators Eastland of Mississippi, McClellan of Arkansas, and Ervin of North Carolina adopted statements of two witnesses who labeled the bill unnecessary and invalid. As I recounted in the oral history I did in 1969, the Dirksen staffers called upon the small drafting group to review every section and subsection of the bill, one by one. There came to be significant changes in the order of the sections. So, many changes in the order of the provisions and some changes in substance were hammered out, and I played the role of scribe. Again, as I have recounted elsewhere, I had scissors and I had scotch tape. It was long before computers. And I had the draft bill we began with. As the group negotiated through the bill, I would scissors out the old provisions. I would scotch tape them onto yellow paper in the order that they were being considered, give them the new section and subsection numbers, give them the new editings right on the yellow pad. As provisions from the old bill were not incorporated in the new bill, I left them in a
pile underneath my chair. Then at the end of the negotiation session when we had
gone through a particular portion of the bill, I would pick up the leavings from the
floor and ask the assembled group whether a provision, which I would read out
loud, was intentionally meant to be omitted or whether it needed to be included in
order to make the procedures have cogency. Very often, all in the room agreed
that an omitted provision should be incorporated and we would either find the
place to incorporate it or leave it for our next meeting to determine how to
incorporate it. So, in the end, among the things that I did in scissoring up these
provisions was to assure that anything we didn’t include was intentionally
omitted. I came to believe that the Dirksen representatives were committed to
having an effective Voting Rights Act; that they really didn’t have a position that
it should be significantly different in substance from the bill approved by the 12
Senators on the Senate Judiciary Committee, except in some more limited ways,
one of which I can recount. But they did want the bill to be changed in its
appearance because it was important as a political matter for the Republican Party
to be able to say it had played a major role in the crafting of the Voting Rights
Act. It was in that series of meetings that the change in appearance was
accomplished.

Now, a substantive change that I recall was made and that was a major
matter of discussion at the very highest levels -- certainly Attorney General
Katzenbach, certainly Senator Mansfield, certainly Senator Dirksen – involved
the poll tax. S. 1564 and the House bill (H.R. 6400) provided that no state shall
deny any person the right to register or vote because of a failure to pay a poll tax. Senator Dirksen’s people opposed that and the compromise was that the bill would direct the Attorney General immediately to bring lawsuits to have the poll tax struck down as violative of the Constitution wherever there was a poll tax. There were poll taxes required by state law in Virginia, Mississippi, Texas and Alabama. The bill, with that revised provision and other changes agreed to in the working group, was then introduced by Senators Mansfield and Dirksen, adopted by the Senate, concurred in by the House, and signed by Johnson on August 6, 1965. On the day after it was signed, the Justice Department was ready and filed suit in Mississippi seeking a declaration that the poll tax was invalid under the Constitution and an order enjoining its enforcement. Three days later, we filed similar suits in Alabama, Virginia and Texas. There were other substantive changes in the voting rights bill worked out by the group.

Ms. Garrett: And one of those cases made it up to the Supreme Court, didn’t it?

Mr. Pollak: In point of fact, that is not so. The cases that were brought by the Department of Justice were presented before three-judge federal district courts. The suit against Texas was styled United States v. State of Texas. I presented that case and tried it. It was decided February 9, 1966, by a three-judge court in an opinion by Circuit Judge Homer Thornberry. The Court held that requirement of a poll tax as a precondition to voting was an unjustified restriction on one of the most basic rights guaranteed by the Due Process Clause of the Fourteenth Amendment. The Court placed significant reliance on the finding of Congress stated in
Section 10(a) of the Voting Rights Act of 1965, and Congress’s declaration, based on those findings that the constitutional right of citizens to vote is denied by the requirement of payment of a poll tax. The opinion is reported at 252 F. Supp. 234.

I was also responsible for presenting the Virginia and Alabama cases. Someone else in the Civil Rights Division presented the Mississippi case. I do not believe the Alabama, Virginia and Mississippi cases were ruled on. Before any of those cases could be heard by the Supreme Court, a case brought separately by the American Civil Liberties Union called Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966), was decided by the Supreme Court. The Court held the poll tax unconstitutional. That then was the final denouement of the poll tax. The Harper decision reached an opposite conclusion from an earlier Supreme Court decision, Breedlove v. Settles [302 U.S. 277 (1937)], which upheld the poll tax. I put major effort into the Texas case spending a large amount of time as First Assistant in the Division in Texas developing the proof for that case.

Ms. Garrett: How did you develop the proof for that case? Are there any interesting stories that emerged from either the litigation of that or the Virginia or Alabama cases?

Mr. Pollak: There were a number of Civil Rights Division attorneys who worked with me on these poll tax cases. Alexander Ross, Gerald Jones, David Norman, and others helped on the Texas case. I retained Dagmar Hamilton as a special Justice employee. She was an attorney whose husband had been a Washington attorney...
and had relocated to Austin, Texas, where he was a professor of law at the University of Texas Law School. Dagmar helped find witnesses in the state of Texas who could testify to the burdens imposed by the poll tax on the poor and Blacks. We did many things that I thought were creative. There was no legislative history kept at the time the Texas Legislature adopted the poll tax, so we couldn’t go to the legislative history to show that the poll tax was adopted with a discriminatory intent to preclude voting by Blacks, but we believed that was the case. We determined to present to the Court as proof of the discriminatory intent contemporaneous newspaper articles that quoted members of the Legislature. We researched back in the archives of the post-Civil War period when the poll tax was adopted by Texas and found news articles which, sure enough, reflected the anti-Black intent of the members of the Legislature. We got all of them sealed with big red wax seals attesting their authenticity so that we could put them before the Court. We did and the Court accepted them as proof at the trial.

We made an effort to present to the Court facts respecting poll tax payments and racial information with respect to most of Texas’s 256 counties. That was a tremendous task. It was our intention to present proof that the poll tax denied equal protection of the laws to the Blacks. Our theory was that because of state supported discrimination against Blacks – segregation and unequal funding of education and other public facilities and other state-supported discrimination – Blacks had lower incomes than whites and this condition made it more difficult
for Blacks as a class than whites as a class to pay the poll tax and qualify to
register and vote. The state’s poll tax was a small dollar amount, $1.75. We
identified a woman in the Social Security Administration named Mollie
Orshansky who had developed the facts leading to the identification of the
“poverty line” for family income. I prepared Mollie to give a deposition in each
of the four cases. She testified to the barrier the poll tax imposed upon persons of
low income. The development of those lines of proof was interesting and
challenging.

Ms. Garrett: The amount of $1 or $2 or $4.50 in today’s terms doesn’t sound like much
money, but at the time, the economic scale was somewhat different?

Mr. Pollak: Right. The question for any individual or minority individual was, “Do you want
to spend that money to cast a vote or for food or housing?”

There is a story that can be found in the deposition of Ms. Orshansky in
the Alabama case. The reason there were depositions was that these
constitutional cases were heard by three-judge courts, generally made up of two
appellate judges and one district court judge. The judges wanted the trial to be
presented to them on paper with depositions and documents and briefs and
proposed findings of fact. In the Alabama case which was defended by Governor
Wallace and the state, we, the Department of Justice, noticed the deposition of
Ms. Orshansky to take place in the United States Courthouse in Montgomery,
Alabama. We ascertained that Judge Frank M. Johnson, Jr., who was the
managing member of the three-judge court, along with appellate Judges Rives and
Gewin, would be in the courthouse so that if there were disputes, we could take them to the Judge. In any event, there were several lawyers or at least two representing the state. One of them, named Kohn, represented Governor Wallace. On cross-examination of Ms. Orshansky, this exchange occurred. First, Ms. Orshansky was an unmarried woman of some years. She had gray, somewhat thinning hair. In the course of his cross examination, Mr. Kohn asked her whether she had ever dated, as he said, a “Nigra.” Just what his purpose was, I’m not sure, but he may have been hoping to show that she either was prejudiced or considered that Negroes were not sufficiently intelligent to have dates with. She answered his question by saying, “No.” He then demanded, “And for what reason?” Her answer, spoken softly, was, “I was never asked.”

Ms. Garrett: That’s brilliant.

Mr. Pollak: There were other lines of proof in these cases. We went around Texas hunting for witnesses who could say, particularly minority witnesses, who could say that the poll tax was a burden to their voting. We would not have embarked on the Mollie Orshansky line of proof if we had found what we were looking for in witnesses living in the State.

Waggoner Carr was the Attorney General of the state of Texas and he presented the state’s case at the trial. I and my team got all of this extensive proof ready to submit to the Court. The state wasn’t objecting to our proof; at least I don’t recall that they tried to keep it out, except for the newspaper clippings reporting the debates when the poll tax was adopted. The trial was held in District
Judge Adrian Spears’ courtroom in Austin. I remember going into the men’s room alone just before the Court convened and thinking to myself, “My, am I really doing this? Is all of this really going to happen without some terrible outcome?” Because I thought the proof was so extensive, I wondered how it would all go in. My recollection is that it went in pretty readily. I draw a blank on what Texas put in. The trial consumed half of that day. Then, we retired to prepare our briefs. I have the briefs at home. We wrote them on long paper. Our brief was more than 100 pages and we had a compendia of exhibits and findings that filled five or six additional lengthy documents of 50 to 100 pages each. My recollection is that the Court promptly rendered a decision. The Voting Rights Act became law on August 6, 1965. The District Court decision came down in February 1966. We filed the case, tried it, briefed it, and the Court decided it unanimously in less than seven months.

While the Texas Court recognized the facts we presented and ruled against the poll tax, it did not accept some of the significant legal conclusions we drew from the facts. It found that the primary purpose of the 1902 amendment of the Texas Constitution requiring payment of a poll tax was the desire to disenfranchise Negroes and poor whites but held that this invidious purpose more than 50 years ago was not alone sufficient for declaring the tax unconstitutional. It recognized that the dual structure of Society in post-Civil War Texas resulted in the denial of equal opportunities to Blacks. The Court held that this evidence did not establish that the poll tax discriminates against Blacks in violation of the
Fifteenth Amendment or the Equal Protection Clause. It said that in the last 20 years the record showed no overt use of the poll tax to deprive Blacks of the right to vote and no instances of outright discrimination. Fortunately, noting that the right to vote is one of the fundamental personal rights protected by the Due Process Clause, the Court reviewed each of the suggested justifications for conditioning that right on payment of a poll tax and found none sufficiently compelling to sustain the tax. In reaching this conclusion, the Court noted that Texas had abandoned the most reasonable means for collecting the tax and so rejected funding of the government as a justification. It concluded that the tax infringes on the concept of liberty protected by the Due Process Clause and constituted an invalid charge on the exercise of “one or our most precious rights – the right to vote.”

We went through the same drill in Alabama and Virginia. I remember arguing before the three-judge panel in Alabama, and recall my father and my secretary being there. Having a date to argue the Virginia case the following day in Richmond, I chartered a plane to take us from Montgomery to Richmond in time to present the next case. That’s the only time I ever did that.

Ms. Garrett: So your father had come in from Chicago?

Mr. Pollak: Right.

Ms. Garrett: How wonderful.

Mr. Pollak: Yes.

Ms. Garrett: Was this the only argument that he saw of yours?
Mr. Pollak: I think that he may have come down when I had Supreme Court arguments in the SG’s Office, or one of them. I’m sure he did. But this was the only Civil Rights Division case that he attended. And he must have attended my arguments in Montgomery, Alabama and in Richmond, in both of those cases. That’s a nice memory for me.

Ms. Garrett: He must have been very proud.

Mr. Pollak: Well, I’m sure he was. That is what fathers do.

Ms. Garrett: True enough. Coming back to Washington on the Voting Rights Act of ’65, what interaction if any did you have with the broader civil rights community surrounding the passage of the Act and its implementation?

Mr. Pollak: My recollection is pretty dim. I had interactions with Clarence Mitchell who was the NAACP’s representative in Washington and was then or soon thereafter referred to as the 101st Senator. Clarence was a Baltimore person, came from a significant and well-respected Baltimore family. I had great regard for him as a person and for his integrity, for his knowledge and for the constructive contribution he made to the development of the civil rights legislation. His lawyer on these matters was Joe Rauh and I may have had some contact with the two of them respecting the Voting Rights Act. But I don’t recall that I had contact with leaders of other civil rights organizations. I think those contacts fell more to the Attorney General or to John Doar who was the Assistant Attorney General in charge of the Division. I recall myself working more away from public contacts. I recall having contacts with some of the Senators, but not a large
number. But certainly Senator Hart of Michigan. Some with Senator Mansfield, the Majority Leader.

Ms. Garrett: You came to the Civil Rights Division after leaving OEO in March of ‘65. Is it correct that the Administration’s civil rights activities were being consolidated in the Department of Justice around that time?

Mr. Pollak: There was a committee under the chairmanship of Vice President Humphrey that was concerned with civil rights. Its staff leader was David Filvaroff. Wiley Branton, who had been a significant civil rights leader in Arkansas and had played a significant role in civil rights advances, had come to Washington and was working with that committee. In addition, there was the Civil Rights Commission, which was a statutory body created by the 1957 Civil Rights Act. It was a fact-finding body. Reverend Theodore Hesburgh, President of Notre Dame, was a member of the Commission, John A. Hannah, President of Michigan State University, was chairman, and it was a player. Those were the three governmental agencies, using the term loosely, that were concerned generally with civil rights. It was the view of the Attorney General, John Doar, and myself that the Civil Rights Division, because of its litigation experience in the South, was in the best position to develop for the Administration and for the President, the facts and to recommend policy positions and legislative positions on civil rights. We thought -- and here I refer to myself and the others I’ve named -- that the Humphrey Committee was less well-informed, not being out in the field --
although not less well motivated -- and in addition was more open to the pressures of the civil rights community.

So, to the extent the Attorney General and the Division had any say in the matter, we were desirous that the President look to the Civil Rights Division for his counsel respecting civil rights positions. And that is the way it developed. Ultimately, Wiley Branton became a Special Assistant to the Attorney General, and the Humphrey committee withered away. The Civil Rights Commission continued to hold hearings, developing significant facts on civil rights issues and those factual records became the text for recommendations of needed legislation and for pressuring federal departments and agencies to act more positively on civil rights.

It was the subject of much debate during the ‘60s and often criticism of the Kennedy and Johnson Administrations that the government, particularly the Department of Justice, was not sufficiently responsive to the concerns of the civil rights community. The view of those of us in the Division was that the job of the civil rights community was to press for as far-reaching action by the government as it could achieve and the job of the government was to make judgments in the interests of the good of the nation. To do that, we had to assess each issue on the facts and the merits. We respected the members of the civil rights community but we were not ready to act only at their bidding. I think that’s the right posture for the government to take in that situation. My view is that the Kennedy and
Johnson Administrations were committed to achieving objectives that were key to ending discrimination on account of race.

Later, in 1968 when I was Assistant Attorney General and Ramsey Clark was Attorney General, the women’s movement began to contend for an adjustment in commitment of the resources of the Department of Justice to apply more resources to the elimination of discrimination on account of gender. That collided with our priorities on elimination of discrimination on account of race. I recall a meeting that the Attorney General and I had with all of the leaders of the women’s movement in the Attorney General’s large office. My recollection is that the leaders of all of the women’s organizations were there. I recall Congresswoman Bella Abzug with a big hat, which was her trademark, Jane Hart, Senator Hart’s wife, Dorothy Height, President of the National Council of Negro Women, Betty Friedan and perhaps eight others were there.

Ms. Garrett: Gloria Steinem.

Mr. Pollak: Gloria Steinem was there. They were all there.

Ms. Garrett: How did that meeting go?

Mr. Pollak: I don’t think any transcript was taken. One of the women leaders said to Attorney General Clark, “Mr. Attorney General, we believe discrimination against women” – this was in 1968, soon after Dr. King had been slain. It was after the riots in the urban areas, unrest among Blacks. The leader of the group said, “Mr. Attorney General, we believe the number one problem in civil rights is discrimination on account of gender.” I think it’s fair to say that the Attorney General and I were
not of that view. We believed that the number one problem was discrimination on account of race. But it was a consciousness-raising meeting for me and an important one. At that time, the Civil Rights Division had probably between 80 and 90 attorneys, so we didn’t have a lot of person-power to address civil rights problems across the United States. Race and gender discrimination being, in those days, the major areas as to which the Department had statutory jurisdiction.

Ms. Garrett: Interesting. And that was after you became the AAG?

Mr. Pollak: Right. By then I had become the Assistant Attorney General.

Ms. Garrett: Let’s back up for a second to your first term there when John Doar was the Assistant Attorney General for Civil Rights. What was it like working for John Doar? You’re smiling.

Mr. Pollak: Yes, well, John was a revered leader in the Division. He was in total control of the Division. Nobody went anywhere or did anything without John’s approval. He had attorneys out in the South -- all over the South -- and there was a great deal of travel out of town by Civil Rights Division attorneys. The focus of the division in 1965 and ‘66 was on Mississippi, Louisiana, Alabama, with lesser focus on the other states of the Old South and still lesser focus on areas outside the South, probably very little focus. When I joined the Division, the Division had under 50 attorneys, so there wasn’t much margin for law enforcement broadly across too many states. John went south himself all the time. He was often out of town and it fell to me to manage the Division from Washington. He managed it either through me and others or directly by telephone with care and attention.
wherever he was, even though those were days before cell phones. The most difficult cases, criminal and civil, he supervised and prepared and tried them as Assistant Attorney General. I thought he was an inspiring leader. Everyone else who was in the division and the Department thought the same thing, at least as far as I knew then or now.

One of his great achievements was not a particular trial, but the prompt and virtually flawless implementation of the Voting Rights Act. The Voting Rights Act brought about a sea change in the governing of the electoral processes, of registration and voting. Setting and implementing the qualifications and procedures for registration and voting had always been the prerogative of the states. The Voting Rights Act gave the authority to the United States in the States and counties covered by the statute. The statute set qualifications for registration and voting. It provided that the Attorney General could send in what were called “examiners” to register persons in states and counties where less than 50% of the voting age population had voted in the last presidential election (reflecting that state and local authorities had been discriminating); that the Attorney General or the U.S. District Court for the District of Columbia had to approve any changes in practices or procedures for voting before they could go into effect. All literacy tests or other tests for registration were proscribed in those states and counties. All of those new statutory provisions had to be communicated to the county officials who managed registration and voting in all the geographical areas covered by the statute. Then, if they wouldn’t comply with the new law, action
had to be taken to put in examiners or, when elections came, actions had to be taken to have “observers,” poll watchers, on the scene. Where votes were denied, lawsuits had to be brought so that the rights of minorities were vindicated. On the day or the day after the Voting Rights Act was signed, Attorney General Katzenbach sent an explanatory letter, the division had prepared, to the responsible official in every county covered by the new statute. Each probate judge in Alabama, the local authority responsible for voting and registration in every covered county, got one. Over 500 such letters were sent, maybe more. They told the local officials what the law provided, told them if they obeyed the law they would not have any federal personnel come in to their jurisdiction, but if they didn’t, they would immediately have federal personnel there. The examiners and observers were personnel of the Civil Service Commission. In advance of the statute becoming law, under John’s direction, we worked with John Macy who was the head of the Civil Service Commission. We worked with Wilson Matthews of the Commission to set up all of the procedures for putting in examiners, what they would do, and what the rules would be. We had all of that ready to go on the day the Voting Rights Act was signed. The right findings were written up and Attorney General Katzenbach certified nine counties for examiners. In the week that followed, examiners were put into perhaps 10 to 15 additional counties. But it was always selective, based upon the facts. Justification memoranda were written to the Attorney General to establish that each examiner appointment recommended by the Division was warranted.
One of John’s fundamental principles was that the federal government would act to send in federal examiners only where the state and local authorities were unwilling to apply the law fairly and without discrimination. His theory was that the federal government would oust the local authorities of their responsibilities only where they were unwilling to comply with the law because in the long run, his view was, the local authorities would have to be relied on to do the job. Where local authorities were willing to obey the law, examiners were not assigned. I think that was a major success of the Voting Rights Act. There was no federal occupation of these responsibilities except where the state pressed forward with discrimination. Three months after the statute passed, the Civil Rights Commission published a study – “The Voting Rights Act . . . the First Months” – that, I recall, criticized Attorney General Katzenbach for not assigning examiners more broadly across the South. I always thought the report was mistaken. The results of the policy we followed in enforcing the Voting Rights Act proved not only the success of the legislation, but the success of our policy of selective assignments. When the Voting Rights Act was passed, we had a notebook, indeed, I’ve got a copy in my library, that collected the facts on registration of Blacks and whites in each of the covered areas. In Mississippi, six percent of the Blacks were registered in 1965. We kept the statistics up to date every week or so and within a short period of time, Mississippi was up over 50 percent Black registration. Local authorities were doing the registration in the large majority of counties. I recall it was John’s view that most local authorities
were committed to applying the law: If you told them what the law was, they would comply with it once the pressures of state government to discriminate were removed.

John was inspiring in all respects and an enjoyable colleague to work with. Much as he had a hand in everything that was going on, he gave his colleagues full authority to do their work. His standards were very high and everyone tried to meet them.

Ms. Garrett: You mentioned that an award was created carrying his name.

Mr. Pollak: Yes.

Ms. Garrett: Tell me a little bit about that.

Mr. Pollak: During the Clinton years, on the 35th or 40th anniversary of the Division, there was a ceremony announcing that the Attorney General had determined that the highest award for performance by a division attorney would be named the John Doar Award. That was universally acclaimed. I did not serve in the Civil Rights Division while it was headed by Burke Marshall, but in acclaiming John’s performance as Assistant Attorney General, I would add that John thought that the leadership of Burke Marshall through the period 1961-'65 was outstanding. He revered Burke and looked to Burke during his tenure as Assistant Attorney General for advice and counsel. I, too, hold Burke Marshall’s leadership of the government on civil rights in the highest regard. I consider that his position on the restraint that the federal government should show in approaching civil rights law enforcement, founded on fundamental principles of federalism, to have been
deeply influential throughout the 1960s and pivotal to the restoration of order in the desegregating South. I agreed with his views, which were subject to a lot of criticism. During the period when he was Assistant Attorney General, the civil rights organizations were having sit-ins and other significant activities in the South which led to attacks on individuals and civil rights organizations. Many people thought that the federal government should have taken over the police function in communities where these attacks were occurring. It was the view of Burke and John Doar in those days that the federal government could not and should not do so. I think that was the correct view, except where compliance with the orders of a federal court was at issue as in the case of the admission of James Meredith to the University of Mississippi or the Selma-Montgomery march where the Alabama guard was federalized. There are occasions in law enforcement where supervening federal authority is proper. But in general, and this has interesting parallels to problems we are now facing in Iraq, if we are going to have a civil society that is able to navigate on its own, Uncle Sam can’t step in on the way and take it all over.

Ms. Garrett: We’ve seen problems with that in Afghanistan recently. Hopefully we are not due for a repeat of that in Iraq. These interviews are taking place against a fairly turbulent global backdrop but they are about a much more turbulent domestic time, I think it’s fair to say.

Mr. Pollak: John Doar was also a major player in advising the President and Department of Defense with respect to urban riots and the handling of those situations.
Ms. Garrett: Did you have any involvement with the Administration’s role in the developing policy or determining a course of action with respect to any of these riots during your first stint in the Civil Rights Division?

Mr. Pollak: The riots in the Watts section of Los Angeles occurred, I recall, in that 1965-66 period. I did not have a role in Watts. I don’t recall a particular role with respect to urban unrest. I had a role when I went to the White House as the President’s Advisor on the National Capital Area. I was there from February 1967 through probably October of 1967. The summer of 1967 was the so-called “hot summer,” meaning that there were concerns about unrest in Washington and elsewhere. The President charged me with responsibility for keeping Washington cool in the summer and having programs for young people. I worked with Deputy Secretary Vance and General Counsel Paul Warnke of the Department of Defense and we got buses and programs for young people. I hired Bruce Terris, who had been in the SG’s office with me and was active in city affairs, to play a major role in working to keep the city cool. I carried those learnings with me back to the Department when we faced the riots following the slaying of Dr. King in April 1968.

Ms. Garrett: I’d like to ask you about your time as the Advisor to the President for National Capital Affairs, but I want to make sure that you have finished up with anything you wanted to highlight for your first stint in the Civil Rights Division from 1965 to early 1967. Was there anything you wanted to add about that time?
Mr. Pollak: I was impressed with the caliber of the people working in the division, from John Doar down. I would record for history that John who joined the Division as First Assistant to Harold Tyler at the end of the Eisenhower Administration, had ties, of perhaps six years standing, with leaders in the division in whom he had great confidence, particularly D. Robert Owen who was John’s right hand person and a leader in the division; David L. Norman, who was blind and was a major leader in the division and a major thinker; and St. John “Slim” Barrett, who was the Second Assistant when I joined the Division. John relied heavily on those three. He had great regard for Harold Greene who was head of the Appeals and Research Section. I don’t think John ever felt as at home with Harold, not to say that he didn’t have equal respect for him. The other three men were on the fact development side of law enforcement and Harold was on the law side, the legal argument side. John felt more at home with the facts. There were significant numbers of others who were outstanding and John played them all like the notes on an instrument. He knew where their strengths were and how to use them.

In the fall of 1966, President Johnson set up a cabinet level committee or task force to develop his human resources or human relations legislative program for the new Congress which would be seated in January 1967. Ramsey Clark, then Attorney General, was the head of it. Ramsey asked me to be the working head. Every cabinet secretary or agency that had a relationship to human relations named a working member. We reviewed all possible legislative initiatives that the President might propose. I devoted a lot of time and effort to that activity and
had some paralegal assistance. Primarily the committee work fell to me to do. I
developed and Ramsey then reviewed and approved notebooks of
recommendations. In the end I had a single lead notebook of recommendations in
the field of housing, civil rights, education, and other human relations areas. I had
underlying notebooks that had large amounts of materials for each
recommendation that had come out of the departments. I mention this both
because it was a major undertaking, but also it had a major effect on my life. It
fell to me to present the materials to the President’s Special Assistant for
Domestic Policy, Joseph Califano, and the Counsel to the President, Harry
McPherson. I did so, and my guess is that the work product was considered by
them to be excellent. So when the President’s Advisor for National Capital
Affairs, Charlie Horsky, was ready to return to his law practice at Covington &
Burling, Califano and McPherson settled on me to succeed him. They knew me
because of that Task Force report.

Ms. Garrett: What was your reaction to being tapped for that position? Was it something that
you were wanting to do?

Mr. Pollak: I endeavored not to do it, and consulted Ramsey who was close to the President
and Barefoot Sanders who had been the Acting Deputy Attorney General under
Ramsey, and then had gone to the White House to head up the congressional
relations office. I asked them to try to get me out of that invitation to come to the
White House. I wanted to keep doing what I was doing in civil rights. I recall
Ramsey and Barefoot, who were perfectly ready to support me in what I wanted,
saying, “Well, if the President ends up asking you, you don’t have any choice.”
So, ultimately that’s the way it worked out. I recall thinking that the District of Columbia job was too narrow a portfolio compared to what I was doing in the Civil Rights Division. Califano and McPherson, with whom I dealt – and I considered their views essentially the same – then agreed that the President would ask me to be his Advisor on the National Capital Area and also his Special Assistant responsible for relations with HUD. I knew something about housing. So, there came a day when I was asked to come over to the White House and the President met with me and said, “I want you to come take responsibility for the District of Columbia and you will also have responsibility for HUD.”

So, I moved to the White House. I had a rewarding time there. I wasn’t sorry, although I didn’t want to go. It is a fact though, that I never had any responsibility for HUD, so that was all either a fake or window dressing. Secretary Weaver related to the President through Califano and I’m sure he was damned if he was going to relate to the President through me. And I’m sure Califano didn’t want it either, so it never came to pass. I had plenty of responsibility for concerns of the National Capital Area. My most major responsibility was that the President had presented to the prior Congress a full home rule bill for the District of Columbia and Horsky had worked for its passage. It had failed to pass. My guess is that the President was ready for Horsky to go because the bill had failed. The President wasn’t one to accept failure of something he put his heart into. So, when I got there, the President,
with the advice of the Bureau of the Budget, was taking a different tack. That was to present to the Congress a reorganization plan, because it was constitutional then, under a statute that provided that a plan of reorganization would become law if neither House vetoed it. A one-house veto would bar the plan. The plan was to change the District of Columbia government from its then weak, three-commissioner form to an appointed mayor/commissioner and an appointed city council.

The President said to me, probably when he offered me the job, “I want you to work on that as a first priority matter. I want you to get the plan fully developed,” because it was still somewhat nascent. “I want to know whether the Congress will accept it and if the Congress will accept it, I’ll send it up and then I want you to support it and get it approved.” I worked greatly on that, but on many other things as well. The major creator of the plan was an expert in public administration who was an Assistant Director of the Bureau of the Budget named Harold Seidman. Harold died within the last year at a very elderly age. He was brilliant about public administration issues and he and the Bureau of the Budget staff drafted an outstanding plan to reorganize the District Government. It was the President’s feeling that if the government was reorganized to the form of a mayor and a city council who were appointed by the President, it would be very easy then to propose legislation to make these offices elective. Of course, the President, as he was so often on domestic matters and domestic legislative matters, was 100 percent correct. That’s what happened.
I had a major legislative portfolio for the President in that Congress. Even though this was during the height of the agony of the Vietnamese War, the President was vitally interested in this reorganization and devoted himself to it. I remember one time that I met with him, I’m sure with his legislative liaisons, who were Barefoot Sanders and Mike Manitos, Henry Hall Wilson and Larry O’Brien, and a coterie of people that related to the House and the Senate for him. He said I think primarily to me, “I’m not going to send this plan to the Congress unless I know that it’s going to be approved, so I want you to go up there and meet with every Congressman” -- maybe he also said every Senator, but I remember every Congressman – “and find out whether they’ll support it.” Well, that was kind of an impossible order since there were so many, 435. I made it my business to go and see all of the people who had any responsibilities related to the District of Columbia, appropriations people, District committee people and a broad range of people. The other legislative experience I had had before that was the Voting Rights Act. By that time the plan had been developed, I had prepared good talking papers. I found that Republicans and Democrats alike were willing to deal with the issue on the merits. I had a good product to sell and they bought it.

I remember one amusing event. I tried and tried and tried to see John McMillan, who was a senior congressman from Virginia, Chair of the House District Committee, and a power in the House. He never would see me. He wouldn’t give me an audience. He never returned my calls.

Ms. Garrett: Why not? Do you know why that was?
Mr. Pollak: I think that he wasn’t anxious to do anything that the President wanted and he wouldn’t see me. It was clear why I wanted to see him. I wanted to talk to him about this plan. I don’t know whether the plan had been set up by then, maybe it had been, but in any event, the plan was not sent to the District Committee because it was a reorganization plan. It was sent to the Government Operations Committee, and McMillan certainly didn’t like that. Well, there developed a characteristically House seniority brouhaha because McMillan complained that the President had not talked to him, that he hadn’t been communicated with. But I had all the records of my repeated efforts to see him and we spread those out and it just silenced him predictably. That was rewarding.

I dealt with a whole cast of characters that related to these District matters who were just almost out of “Guys and Dolls.” Some were for, some against. In any event, when things moved along, the President invited all the interested people to the White House and talked to them about the plan. He then called to the White House all of the legislative liaisons of all the departments and said to them, “I want you to fan out with all of the people on the Hill and support this plan.” It was a characteristic Johnson effort, amazing in light of all of the things that were on his plate. They did and it ultimately came to a vote in the House, and it passed. I remember John Erlenborn of Illinois, a Republican, was good on the bill and Frelinghuysen, a Republican of New Jersey, was good on the bill. Democrats, many Democrats were good. And it passed and we didn’t even need to bring it to a vote in the Senate. With the House vote, it was accepted in the
Senate and by late summer I was involved in trying to identify people to be named to the City Council. I did that working with John Macy, head of the Civil Service Commission. I give the President credit for identifying and selecting Walter Washington as the Mayor. I would like to say I pushed him to name a minority to be Mayor of the District of Columbia, which had a majority minority population, but it was his doing, not mine. I was not involved in proposing candidates for Mayor. I searched all over the District, which I knew pretty well, for candidates for the City Council. I would give the President memoranda which would name seven or nine -- whatever number there were to be -- individuals as candidates, and would give thumb nail sketches as to their ties to the community and their characteristics, woman, minority, region of the city in which he or she lived, and other variables. Those memoranda, and of course, all of the materials, are in the Johnson Library. The President was merits oriented. He wanted a good city council.

There’s a somewhat famous story about how John Hechinger came to be selected as the first chairperson of the City Council. The President was going to name Max Kampelman, who was very able and certainly deserving, but at about the moment that he wanted to have the name so he could make the announcement, there came some publicity that raised questions about Max’s involvement with some machinery deal for India. I don’t think it reflected adversely ultimately on him. He has had an illustrious career since. But at that moment, there was sort of a bubbling up of that story and the President determined, as he often did, that he
wasn’t prepared to go with Max. But he wanted to name the people the following day. One of the names on the list was John Hechinger, head of the hardware store chain and long-time District resident and leader. Califano said to me that I should go get with Hechinger and ask him if he would accept the appointment. That was about 7:00 or 7:30 at night. If you work in the White House, there’s no time of the day when you’re not on call. I was at the office, so I tried to reach Hechinger and he was at the opera with his wife. At about the time the opera was getting out, I drove over to the Hechinger’s house and met them when they returned from the opera. I said, “The President would like you to be the Chair of the City Council. Are you willing to do it if he asks you?” Hechinger and his wife considered it. I’m sure John has recounted this publicly. I can’t recall whether they took it under advisement overnight or told me then, but at least by the next morning he said he would do it and the President announced the Mayor and the City Council that day. That was a fascinating experience.

What I had learned in this job was that the government of the District of Columbia was weak. I believed that it was meant to be weak so that the power of running the city could reside with the House District Committee where southern congressmen were dominant. There were many players in governance of the District, each of which had a slice of power. Because of that, the government was weak. There were the three Commissioners, one of whom was the general in charge of the Corps of Engineers of the U.S. Army, the so-called Engineer Commissioner, and two Commissioners appointed by the President.
was the District Committee of the House, the District Committee of the Senate, the District Appropriations Subcommittee of the House, the District Appropriations Subcommittee of the Senate and then there was an Assistant in the White House. My feeling was that because of the many persons and entities that had power, the government was exceedingly weak. So when the reorganization plan was approved, I urged the President to put my job out of existence, to rely on the Mayor, and to try to aggrandize power in the Mayor and the City Council. The President either took my advice or made his own decision. In any event, he put my job out of existence and on the day that the White House was holding a reception in honor of the newly named Mayor, City Council and Deputy Mayor, I was going through the receiving line with my wife to greet the President, Mrs. Johnson, Mayor Walter Washington and members of the City Council. I got to the President and he took me aside right there in the East Room or wherever it was and he congratulated me on the job I had done and said, “I’m going to name you the head of the Civil Rights Division.” That was the first I knew of it.

Ms. Garrett: What was your reaction to that?

Mr. Pollak: Well, I have a photo that shows my wife and me. Of course, we looked happy and stunned.

Ms. Garrett: I have a couple of other questions about National Capital Affairs and then we might want to wrap up for this session.

Mr. Pollak: I did a lot of other things as Advisor for National Capital Affairs, but that was the biggest.
Ms. Garrett: Well, are there any other things that you want to mention?

Mr. Pollak: There were other legislative initiatives. I had a tally list and kept track of them and dealt with them. We were creating and funding the new Federal City College and Washington Technical Institute, which were ultimately combined into the University of the District of Columbia years later. I spent time dealing with that. There was a Pennsylvania Avenue Development Commission, and I was endeavoring to assist it in shaping up Pennsylvania Avenue. There were any number of significant legislative matters. There were administrative issues.

There was a large tract of land at the northeast gateway to the city which I believe had been a reform school for boys that was coming available. The question was what kind of plan for redevelopment would there be. I had been a student of housing and redevelopment and had been active in the District of Columbia through the Washington Planning and Housing Association which I had chaired. I may even have chaired it just before I moved to the White House. I was away for a weekend when the redevelopment issue came up. Califano’s office in particular one of his major assistants, Larry Levinson, had had to deal with it over the weekend. I had been developing support for having a balanced community there of middle income housing and public housing which was clearly the way to go. I came back and found that Levinson had given at least preliminary approval to a plan for placing public housing only on the area, which would have been a mistake in my judgment. I took hold of that and got it back on
track, which was just one of many kinds of things that I was responsible for doing.

One of the other things that came up during my time was the reservation of the land that is between 34th Street and Connecticut Avenue that is now occupied by embassies and the University of the District of Columbia. It had been the site of the Bureau of Standards which moved to Maryland. I shepherded that plan. I dealt a lot with GSA and with the District Government and as I say had spent a major amount of activity dealing with the hot summer. The President always talked about his Assistant as the “Mayor” of the city and, because of the weakness of the government form, not in the weakness of the people who were running the District, the White House had a great deal of real power over the District. I remember we gathered together a large group of governmental officials who were to deal with the hot summer of 1967. We used to meet every week or so in the Indian Treaty Room in the old Executive Office Building and coordinate them to get some of the activities and jobs done. The city was calm that summer, a credit to the city and to Bruce Terris and others who worked to make it so.

The White House was a good place work but you worked awfully hard. I went to work early and worked late. I had a wonderful office on the first floor of the Executive Office Building in the southeast corner. It was the office of the Secretary of War in the Lincoln Administration.

Mr. Pollak: It was gorgeous. It opened on a secretarial space and then the next office to the north was Betty Furness’. She was the President’s Assistant for Consumer Affairs. She had advertised GE refrigerators on the television. Judge Gesell’s daughter, who had worked as a paralegal in the Civil Rights Division, worked with me as a Special Assistant, Patsy, and I brought my secretary from Justice. I communicated with the President primarily in his “night reading.”

Ms. Garrett: What do you mean?

Mr. Pollak: I could do my job with making up my own mind and keeping the President informed. Whenever I had a significant decision that needed to be made, I wrote him a memorandum identifying the issue and the relevant considerations and presenting a box that he could check yes or no, or I need more information. I would put the memo in his night reading and in the morning I would have an answer. I admired his energy and commitment because he was responsible for the whole government and he had Vietnam going on all the time I was in the job. I always heard from him the very next morning.

Ms. Garrett: Impressive.

Mr. Pollak: Very impressive.

Ms. Garrett: You had mentioned to me at another point a headline that appeared when you were named as the Advisor to the President for National Capital Affairs. Can you recount that?

Mr. Pollak: There was a headline saying, “Stephen Who?”

Ms. Garrett: That was it.
Mr. Pollak: Right. I have the article at home. I was not a public figure when named and I
don’t suppose I was a public figure when I finished. I think I did a good job and I
think the Post editorialized favorably when I left the job. In any event, I was very
fortunate in being able to return to the Civil Rights Division.

Ms. Garrett: Did you give any value then or subsequently to seeking a position in the District
government?

Mr. Pollak: The President asked me if I wanted to be the Deputy Mayor, or maybe Califano
said he wanted to propose me as the Deputy Mayor. I urged him not to because I
didn’t want to get in the same position that I had gotten into in respect to the
White House job in the first place. I think the suggestion was made that I could
be the Chair of the City Council, but I didn’t want any of those positions. Not
that I didn’t think they were challenging, but I thought that my place was in the
Civil Rights Division and that was what I was best qualified for. So I was never a
self-seeker for positions growing out of the White House job. Ramsey Clark must
have talked to me about the Civil Rights Division position. John Doar was
preparing to try the case of those police officials of Neshoba County, Mississippi,
charged with slaying three civil rights workers in 1964. He was going to try it in
the fall of ‘67. He had expressed his desire to leave the Division as soon as that
trial was over. Ramsey was looking for a successor and that’s how my
appointment by Johnson came about. I returned to the Department of Justice. I
assisted Walter Washington in getting him informed to become the Mayor and
worked actively to help him transition into the position. There was also help
provided to him by Ben Gilbert who was an editor of the *Washington Post* and a friend of Walter’s and Bennetta’s, Walter’s wife. Bennetta was a major figure in her own right and had been head of the Job Corps at OEO. Walter was an excellent selection for the first Mayor.

I returned to Justice in October 1967 as a Special Assistant to Attorney General Clark. John Doar was in Mississippi. I pretty much ran the Division until John’s trial was completed successfully. My recollection is that he did not pick up the work of the Division after the trial ended, but moved to become the President of the Bedford-Stuyvesant Corporation, an effort sponsored by Robert Kennedy to try to do something about the unfortunate conditions for minority youth, including the economy, in Bedford-Stuyvesant, a part of New York City.

Ms. Garrett: Okay, we’ve been going about two hours and I think we’ll wrap this up for today. Thanks, Steve.
Ms. Garrett: Steve, when we last left off, we were talking about your time in the White House and I think there were some issues that you wanted to touch on before we wrapped up with that moved on.

Mr. Pollak: After I had been working in the White House for a number of months, Ruth and I received an invitation to join the President and Mrs. Johnson for dinner in their personal quarters. It was exciting to both of us to contemplate. We went to the White House. It was a lot easier then than it is today. I’m sure all I had to do was to show may pass and we parked probably on West Executive, which was between the old State House and the White House. We rode the elevator to the Johnsons’ living room on the second floor where they were serving hors d’oeuvres. The President and Mrs. Johnson were there and the guests included Robert McNamara and Margie McNamara whom we had known from skiing in Aspen, Howard K. Smith and his wife – he was an ABC television broadcaster – Barefoot Sanders, the President’s Legislative Assistant, and his wife, Jan, the Attorney General Ramsey Clark and Georgia, Arthur Krim, who was a major donor, a film executive I believe from the West Coast. Perhaps that makes up the group. All were close friends of the President and Mrs. Johnson. It felt like a
family affair. I recall the President’s teenage daughters, Luci and Lynda, entering in at one point. One jumped into the President’s lap. I have a memory of the President spending considerable time talking with Howard K. Smith and McNamara because Howard K. Smith was going to leave the following day to go out around the country and speak in support of the President’s program in Vietnam. The President was fixated on Vietnam that evening and was encouraging – that’s too mild a word – exhorting Smith to be strong in drumming up support. The President’s concern with Vietnam and single-mindedness about it was disturbing. He seemed so captured. But the dinner was extremely pleasant and we felt welcome over the evening. I remember that the food was excellent, which I knew from having dined in the White House Mess while on the job. Dessert was cherries jubilee. I don’t have other recollections of the evening. Possibly I dictated a memo afterwards just to record what had gone on, but I haven’t found it. If I do, I’ll attach it.

I had one other somewhat personal exchange with the President and Mrs. Johnson. When I was named to be the Assistant Attorney General in charge of the Civil Rights Division, the President was making several other nominations, including Erwin Griswold to be Solicitor General and Edwin Wiesel to be Assistant Attorney General for the Civil Division. All the nominees, along with the Attorney General and Barefoot Sanders, who was then the Acting Deputy Attorney General at Justice, traveled by Jetstar to the President’s ranch and he spoke about each of us to the press. Then we had lunch served Texas ranch style
and I sat next to Mrs. Johnson. I remember the table cloth was very colorful. I dictated a memo of that day and attach it to this history. Otherwise, my relationships with the President were all professional.

Ms. Garrett: What was LBJ like in this more intimate atmosphere?

Mr. Pollak: Well, he was what comes across when you read the biographies, larger than life. He was a big man, forceful in his manner of speaking, used to being at the center of attention. I didn’t find him overbearing. I had no experiences with him in which, and most of those experiences were professional, in which he misbehaved. He took reasonable positions in respect to what I was doing and sought to be well informed and to act in a knowledgeable manner. I would give him very high marks in the performance of his responsibilities in the areas where I was working.

When Reorganization Plan No. 3 – my major responsibility was to present this plan to reorganize the District of Columbia government to the Congress – survived the vote in the House in August 1967, which meant that the Senate would follow suit and there would be no veto of the Plan and it would become effective, I was in my office in the Old Executive Building and the phone rang and whoever handles those things said, “the President’s calling.” I felt in the strongest way the need to stand up out of my chair to talk with him on the phone.

Ms. Garrett: Did you?

Mr. Pollak: Yes, I did (laughs). He was calling to say well done and how pleased he was. So, his personal force carried through strongly to me.
Ms. Garrett: Even over the telephone, you stood up and no one was around to know whether you were sitting on the floor or the chair?

Mr. Pollak: Yes.

Ms. Garrett: Is there anything else you want to touch on from your time at the White House?

Mr. Pollak: There were hundreds of experiences. I considered that the job had total call on me. I often think of that time as I’ve looked at the White Houses of Carter, Reagan, Bush I, Clinton, and Bush II handling events since then. As Special Assistants to the President, we considered that we were not open to subpoena from the Hill. We were part of the President’s personal staff. We considered that our records and materials were personal to the Presidency and not subject to subpoena. There have been great changes in that regard. It’s probably harder to be a part of the President’s staff today than it was then, although the challenges were great then. They seem doubly great today in 2004 with Iraq. I felt extremely fortunate to have had the experience in the White House. I felt extremely fortunate to hold the job at a time in which my only charge was to conduct my responsibilities to the best of my ability as I saw the interests of the President and the interests of the country. I never was asked to take a stance that caused me to have some concern whether it was the right thing to do, not ethically, but, I mean, an unwise position. The whole presidency was looking to me to advise on what should be done in all the areas for which I was responsible and if my presentations and recommendations were sound, the President and staff would follow them. I suppose that’s pretty unique in terms of the totality of what
goes on in the White House. It may be that the nation's capital was shielded from politics because there just wasn’t that much politics involved, although creating a self-government for the District of Columbia was certainly a political event.

Surely, the District Committee and virtually all the Virginia Congressmen opposed it. In any event, it was a great opportunity to perform a public service.

Ms. Garrett: You mentioned that you considered that your papers and some of the work you did as not having been subject to subpoena. Was there any attempt while you were working in the White House to have you come and testify about a matter?

Mr. Pollak: There never was. With respect to matters of concern with respect to the District of Columbia, I not only had all of the substantive responsibility for the President, but I was the chief lobbyist. I was the communicator to the Hill.

Ms. Garrett: Do you want to talk about that transition? How you came to end up back at the Department of Justice?

Mr. Pollak: Well, I know that I have spoken of how it came to pass that I moved from my job in the White House to the Department of Justice. I spent October, November and December as a Special Assistant to Ramsey Clark, but in effect was running the Civil Rights Division while the Assistant Attorney General, John Doar, was in Mississippi trying the case of the slayers of the three young men who were murdered in the summer of 1964 in Neshoba County.

My time in the Division began again in October and I was confirmed after a brief hearing before the Subcommittee of the Senate Judiciary Committee chaired by Senator Ervin. Even though Senator Ervin had significant differences with the
legal positions of the Civil Rights Division, the hearing was without incident.

Senator Hart came and spoke in my favor. I was confirmed and Justice Brennan swore me in, in the Justice Department on the third of January of ‘68. It’s significant that Attorney General Ramsey Clark said to me early on that he thought the days of the Assistant Attorney General, or the First Assistant John Doar, walking the clay roads of the South were past, that there needed to be someone pretty much on duty running the Division in Washington and directing it and, he thought, putting more attention on the recently enacted equal employment law. He was not speaking pejoratively of the prior heads of the Division. His priority was to emphasize, more than had been the case, enforcement of the equal employment laws and to reach for a new fair housing law.

While I was Assistant Attorney General the number of attorneys in the Division came up to 100 for the first time. We had an excellent and experienced staff of attorneys. There were few women, due primarily to admissions to law school. However, we were fortunate to have outstandingly capable women who were paralegals, rather than attorneys. We called them “research analysts” and they performed a myriad of tasks assisting the attorneys in preparing their cases for trial. It was like having additional attorneys without degrees. Many of these women married men in the Division, and many later became attorneys – outstanding attorneys. But the effects of gender bias in society were certainly a reality.

Ms. Garrett: In spite of the mission of the Division, it was a mirror of the times as well?
Mr. Pollak: Yes, it was. There were no limitations on hiring women and the Division did and
I did hire women attorneys. But there were fewer of them coming to be hired
because there were fewer going to law school then.

Ms. Garrett: Looking at it globally, I’d be interested in your views of what you thought about
that job coming into it, the head of the Civil Rights Division, what you thought
about it then and what your view of it is now.

Mr. Pollak: I have often said in an exchange with my wife that government is a young
person’s game. There are senior positions in the United States government that
you and I know about from observing the incumbents on television and they’re
often in their 50s or 60s, but I think that the working arms of the federal
government are really young people. When I became Assistant Attorney General,
I was 39 and I had been the First Assistant in the Division for a couple of years. I
aspired to the job and I was not over-awed by the responsibility. Looking back, it
seems to me that it was probably a much more daunting responsibility than I was
giving it credit for, but it seemed a natural thing to do after doing the First
Assistant’s job. One of the things that I came to believe after I held the job was
that I satisfied myself that I was doing the best possible job that I could do by
working unstintingly at doing the job. That meant working from early in the
morning until late at night and working six to seven days each week, putting
nothing ahead of the job. The priority was always the job. Nothing did I consider
too small to have my attention if it came across my desk or to my attention. A
pleading, a particular brief or decision to do or not do something. After I got out
of the government, I thought that working hard, unstintingly, is not necessarily the
best measure for performing a top government job well.

Ms. Garrett: What do you mean?

Mr. Pollak: One still may need to put in that kind of time, but I have come to feel that in that
job I was called on possibly to do less but to think more. One can mask the
inability to address and resolve some major issues by saying, “Well I’m working
all out, I’m working so hard all the time.” What the job really calls on one to do
is to try to set priorities, to try to identify the most difficult problems and to try to
figure out how to address them and to task people you are working with to
provide you with the materials necessary to finding solutions. I’m not prepared to
point out deficiencies in my administration, although I’m sure there were
deficiencies because of the nature of the problems, but it seems to me mature to
have that view of what running a Division of the Department is. It isn’t enough to
work hard.

Ms. Garrett: When you say mature, do you think it’s the kind of maturity that comes with
experience in the government, sufficient experience within the government itself
or rather is sort of a natural byproduct of simply having been out for a certain
number of years working and practicing and being a lawyer?

Mr. Pollak: In part it comes from experience in government. But in private practice, I’ve
made “to do lists” and I’ve had sequences of time in private practice where I just
couldn’t believe that I could live until the end of the week because I had so many
things to do. The Assistant Attorney General in charge of the Civil Rights
Division never had all of the work on his plate. It wasn’t I who had to do all the work, but I had an endless number of responsibilities and decisions that were coming up all the time. I wonder whether I had the best plan for performing them all. I can tell you when I got out of the Department, in the almost 40 years since then, periodically I have been asked to make talks. For one, I looked at the first half of 1968. The first half of 1968 was one crisis after another, all the way up until June. The ones that come most immediately to mind are the slaying of Dr. King which set off riots in major cities and less than major cities across the United States, including the most serious one in Washington, D.C. Then in June, there was the slaying of Bob Kennedy. There were other events that I noted in that talk – the Poor People’s Campaign, which Joseph Lowery and Ralph Abernathy, who were Martin Luther King’s successors at the helm of SCLC, and Andy Young brought to Washington in the spring of 1968, after Dr. King’s death. The Civil Rights Division was responsible for seeing that the encampment on the Mall south of the reflecting pool was protected and safe, and it was responsible for setting up meetings with representatives of all the departments of government from which the Campaign sought redress. There were the marches on Washington contesting the Vietnam War where the Civil Rights Division was responsible for helping to get the government in a position and the localities in a position to handle mass arrest situations. It became amazing to me that the Division was able to march along and do its normal responsibilities of enforcing the civil rights laws, along with the added burden of these crisis events.
Senator Everett Dirksen who was the Republican leader who supported civil rights legislation always made it a requirement that lawsuits that were permitted to be brought on voting, schools, employment, and fair housing, had to be presented to and signed-off on by the Attorney General, so we had major justification memoranda to present to the Attorney General. All of that marched along and did itself during that crisis time. Oh yes, we also had responsibility for conducting and directing the FBI in searching for the slayer of Dr. King.

Ms. Garrett: That must have been interesting work. Were you personally involved in that?

Mr. Pollak: Absolutely. The memoranda that went to the Bureau came out of the Civil Rights Division. I remember that the Canadian Mounted Police found James Earl Ray in North Africa, as I recall. He was brought back to Britain and Attorney General Clark sent the head of the Criminal Division, Fred Vinson, to Britain to work out extradition. We drew the extradition papers in the Civil Rights Division. I can remember going over them with Nat Lewin, the Second Assistant. We faxed them to Britain. I remember talking to Fred Vinson on the telephone. I remember him saying that the women in Britain were wearing these amazing skirts, which later came to be known as miniskirts. That was the first that he had ever seen of them and I think it was the first I ever heard of them.

It was a natural reaction for me to think that work was the only answer to administering the law fairly and effectively because literally there was no time to do anything but work. After Dr. King was slain, Attorney General Ramsey Clark slept in a bed above the level of this office – there’s a bedroom up there – for
three days and we worked virtually around the clock. I remember going home early in the morning and coming back again early in the morning. Ramsey went to North Carolina to make a long-scheduled speech. We talked about it beforehand. He was determined to give a speech saying that it was wrong to shoot looters, and I thought it was courageous of him to give that talk at the height of the crisis. And he was right. I remember working with Chief Judge Harold Greene of the local courts to have lawyers on duty all around the clock so that people could be arraigned and the processes of justice would go on. It was an exciting time. The caliber of the people who worked in the Division was outstanding and the priority of the Attorney General was the work of the Civil Rights Division. When we had to have more attorneys, he would draw on the other divisions to give us additional help. We were monitoring elections in the southern states with federal observers and providing examiners to register people. Voting processes were still under siege in certain areas and we were dealing with the enforcement of the Voting Rights Act. We were bringing the first equal employment cases. The Fair Housing Act was enacted in April 1968 and we were working at and developing the first fair housing cases.

Ms. Garrett: And all of this with 100 attorneys, or did that number grow?

Mr. Pollak: No, no, that was the high water mark. I had learned of running the Division from John Doar who was both running it and also handling individual cases on his own, and in some instances prosecuting criminal cases. While I was Assistant Attorney General, I assumed responsibility for bringing and litigating an equal employment
case against pipefitters’ and sheet metal workers’ unions, maybe also the plumbers’ unions, in St. Louis. I traveled out there to present the case. I also handled personally another equal employment case in Cleveland.

Ms. Garrett: How did you manage that, handling cases personally plus running the Division?

Mr. Pollak: It was what I learned in watching Mr. Doar. I considered that having my hands into a couple of the cases meant that I would be attuned to how the cases were being prepared and presented and I would know better what was going on in this new field of the Division’s responsibility, so I did it. Then late in the year, there was a major voting case involving the preclearance requirements of Section 5 of the Voting Rights Act, *Allen v. State Board of Elections* [393 U.S. 544, 554-57 (1969)], in the Supreme Court. I participated in briefing it for the United States as amicus and then argued it. It was decided favorably to Section 5 after I had left the government. Also in May 1968, the *Green v. New Kent County* school case was decided. The Supreme Court struck down “freedom of choice” plans, saying that minority students were entitled to schools, not white schools or black schools. The Division had 525 school cases on our docket and we were responsible for bringing the cases forward to comply with *Green*. When the case came down, Burke Marshall, who had preceded John Doar as Assistant Attorney General and was revered by me and by others as the father of the modern Civil Rights Division, came by my office. I said, “Burke, this major decision came down calling for non-racial schools, all grades and faculty, and we have 525 pending cases. What advice do you have for me?” He looked at me and he said, “You
know much more about this now than I do. You’ll have to make up your own
mind.” Well, I’m sure he was right.

Ms. Garrett: That’s interesting because it does speak to the youth of the Civil Rights Division
as an entity within government and how much of it was being invested as this
legislation was cast and came into your hands.

Mr. Pollak: It is correct to talk about the 1957 to 1968 period as the “Second Reconstruction,”
because those great fundamental laws were enacted in that period, particularly the
Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing and

Ms. Garrett: And all of which you had some hand in, either in the development of the
legislation or the implementation of the law or both?

Mr. Pollak: I had a hand in the development of the legislation of 1965 and ‘68. There was a
Fair Juries Act of 1967 and I had a hand in that. I had a hand in implementing
those statutes as well as the 1964 Act, particularly the equal employment
provisions of the 1964 Act which became effective July 1, 1965. I had no hand in
the drafting or enactment of the ‘64 Act. I wasn’t there. I wasn’t in the Division
then.

The Department was a good place to work. It appeared to me to be
devoted to enforcing the law in an even-handed manner, to bringing cases that
were justified. It all looked good. Perhaps it wasn’t all that good, just because
nothing ever is, but that is the way it looked to me. And I meant with respect to
the other divisions, too. Ramsey was an excellent Attorney General. He was committed, fair and well regarded. He too worked hard.

Ms. Garrett: What sort of relationship did you have with Attorney General Ramsey Clark when you were the AAG of the Civil Rights Division?

Mr. Pollak: I had a very close working relationship with him. Except for some kind of semi-personal occasion where somebody was leaving the Department and there was a dinner or something or a holiday gathering or something, I don’t recall exchanging social dinners with Ramsey and his wife Georgia, but I considered myself a close friend of theirs and of him. I often ate with him on the roof of the Department. We’d climb up a little rickety stairs and sit on the roof and look out over Washington and talk over what we were doing.

Ms. Garrett: Who even knew that there was a stairway up to the roof?

Mr. Pollak: I don’t know. There was then. I had worked closely with him when I was First Assistant and he was the Deputy A.G. He was much more closely connected to President Johnson. When I faced the need to go into the White House, I counseled with him and he gave me the best counsel he could as to what I should do. As Assistant Attorney General, I was constantly communicating with him on the problems that were at hand. I think he had confidence in the kind of materials I gave him and he approved of what we were doing. He gave me the advice that I’ve referred to about prioritizing equal employment. He was certainly strongly supportive of continuing what we were doing in voting. I never have had an occasion either then or since to know whether in his unspoken mind he would
have wished me to do something other than I was doing. If he did, he never told me. Of course he had senior staff meetings which are customary in the Department and I attended those. The heart of the Department in terms of the Attorney General’s concerns, I thought, was right in the Civil Rights Division. He thought that’s where it was, although there were plenty of other important activities going on in other parts of the Department.

Ms. Garrett: Did the FBI – ?

Mr. Pollak: I want to make just one more comment. Some time when I was in the White House, I believe, Warren Christopher was named Deputy, so I knew Warren well as the Deputy and related to him all during the time I was Assistant Attorney General. I think that he was there during some considerable period that John Doar was Assistant Attorney General. In running the Division, I would deal with Warren on legislative matters because the Deputy had the legislative responsibility, but Warren didn’t have anything to do with running the Division. I dealt only with the Attorney General.

Ms. Garrett: Was there an Associate Attorney General?

Mr. Pollak: No. And my access was with the Attorney General. I could and did see him anytime I needed to. It was probably a much simpler line of communication.

Ms. Garrett: One can only imagine what it is now. I was going to ask you a question and I don’t know what you can tell me about this, but did the FBI handle investigations for the Civil Rights Division?
Mr. Pollak: The FBI handled investigations for the Civil Rights Division. During Burke Marshall’s and John Doar’s time, they were at pains to educate the Bureau in what they needed in order to prosecute civil and criminal civil rights cases. The FBI was our investigative arm and in the early years of voting rights cases, John Doar and his staff developed investigative requests that were like scripts and ran 50 pages, so that the Bureau had detailed instructions as to what we needed and wanted.

Ms. Garrett: Why was that level of detail needed with the FBI, because of the novelty of the issues?

Mr. Pollak: I can only surmise because this was going on when I got there in March 1965. It was true that these were new avenues and the attorneys in the Division were learning their way through what they needed. There is no question that there were elements in the Bureau that were hostile to what the Division was trying to do, but I didn’t consider that the leadership of the Bureau was hostile to us. It was prepared to carry out investigative requests, but to some extent, may have either asked or telegraphed that it preferred to have detailed requests so that it was not left to its own to do what we wanted, but rather had our instructions.

Ms. Garrett: Did the hostility among some elements in the FBI ever present itself in a particular case in any troubling way?

Mr. Pollak: I can refer to two instances. As First Assistant, the instructions were that requests for investigation that we wanted from the Bureau needed to be presented in Washington by memoranda to J. Edgar Hoover. If you were in the South carrying
out a responsibility, it was not open to go to the local FBI office and ask for assistance. You had to go through Washington.

Ms. Garrett: And that was unusual for requests to go through Washington?

Mr. Pollak: Well, I don’t know that it was unusual, that is the way it was. John Doar made it a point to tell me that I should not expect to go to the Jackson, Mississippi, office to obtain assistance. The Bureau had opened a Jackson, Mississippi, office in the early 1960s, especially to work on civil rights matters. Roy Moore was in charge. He was committed to enforcing the civil rights laws. I think the Bureau dealt with the civil rights requests by requiring the T’s to be crossed and the I’s to be dotted.

In the aftermath of the capture of James Earl Ray, I was with the Attorney General when he called J. Edgar Hoover’s liaison to come to his office. Hoover had announced the capture of Ray and Ramsey thought that the facts had been withheld from the Attorney General’s office so that Hoover could make the announcement. Ramsey presented that to the liaison, and Ramsey and Cartha DeLoach, the liaison, then expressed strong differences over the behavior of the Bureau. Ramsey asked whether the liaison had failed to be candid with him when Ramsey had asked him a direct question as to whether Ray had been captured. My memory is that the liaison said that if it required lying to serve the interests of the Bureau – lying to the Attorney General – then he would lie. I trust that that was remedied soon thereafter.

Ms. Garrett: One can hope. Interesting. Any other details from the Division’s relationship with the FBI?
Mr. Pollak: No. I think that it was a responsibility of the Division to find ways to utilize the
great investigative engine of the FBI. The engine was not immediately available
to the Division. It had to be harnessed through requests and it fell to us to draw
good requests to get it done. I think that was a workable way to do it.

Government isn’t for sissies and we were expected to know what we needed and
wanted and to write it down.

Ms. Garrett: And that’s what you did.

Mr. Pollak: And that’s what we did, right.

Ms. Garrett: Was J. Edgar Hoover’s office in Justice?

Mr. Pollak: It was on the fifth floor of main Justice, halfway down Ninth Street, between
Constitution and Penn. He came in every morning and rode up the elevator that
was right outside my office on the first floor at the corner of Ninth and
Constitution. To my knowledge, I don’t think I ever met with him while I was
there.

Ms. Garrett: I understand that J. Edgar Hoover’s office subsequently became the offices for the
Civil Rights Division?

Mr. Pollak: I know it did, because I once visited there. There must have been a lot of ghosts
in that office (laughs).

Ms. Garrett: If walls could tell stories.

Mr. Pollak: I did have occasion once to call on J. Edgar Hoover in his office, but I can’t
remember what it was for. I remember going in to that old office, but I can’t
recall whether I was in the Civil Rights Division at the time. I dealt a little back
in 1964 or so with an Assistant Director named William Sullivan. I think he must have thought I was a possible source of information because he seemed to befriend me. It was when I was working on the poverty program. He called me up to go to lunch. I remember another one of the lead people of the FBI, an Assistant Director named Rosen, who had responsibility for civil rights matters. We in the Division dealt with him. I thought he was cooperative and supportive of what we were doing in the Civil Rights Division.

Ms. Garrett: Do you have any idea what the relationship is now between the FBI and the Civil Rights Division?

Mr. Pollak: Absolutely none. When you get out of government, you rapidly cease knowing anything about it.

Ms. Garrett: The doors close behind you don’t they?

Mr. Pollak: They really do.

Ms. Garrett: Tell me about some of your colleagues in the Division.

Mr. Pollak: I had great colleagues. There was a natural selection of people who wanted to serve in the Civil Rights Division. A number of young attorneys came from the South, the Deep South. There was George Rayborn from Mississippi. He’s a prosecuting attorney in Philly. His wife became an equal employment lawyer practicing with one of the good firms in Philadelphia. George has always called me Mr. Pollak, even years and years afterwards. If I see him now, he calls me Mr. Pollak. The First Assistant, D. Robert Owen, joined the Division probably in 1959 or ‘60. He was John Doar’s right hand person and outstanding. David L.
Norman, who became a Superior Court judge, was some of the brains behind the Division’s approach to various doctrines that had to be put in place before there was legislation. Harold Greene is justly famous for his many accomplishments. His staff included outstanding appellate lawyers. A woman named Battle Rankin lives in Delaware. Howard Glickstein who is a Dean of the law school at Truro, New York. David Rubin became Deputy General Counsel of the NEA. Alan Maher, Gerry Choppin. They were all on Harold Greene’s appellate staff. A man who’s justly famous as a law professor, Owen Fiss, came from clerking for Justice Brennan to be a Special Assistant to John Doar. He stayed on and worked with me and became head of the Appeals Section. Maceo Hubbard, an African-American, was head of the Eastern Section, Frank Dunbaugh, head of the Southern Section, Frank Schwelb, who is on the D.C. Court of Appeals, became head of the Eastern Section, and Brian Landsberg, who is a professor now at McGeorge Law School, was the head of the Education Section and then the Appeals Section. Brian’s wife, Dorothy Landsberg, was an outstanding paralegal. John Rosenberg was head of the Western Section. Jim Turner was head of the Central Section. Chad Quaintance was an outstanding attorney and leader. I’ve not named all the outstanding attorneys and paralegals with whom I served, but these were very capable trial attorneys who could put a case together. Because many of the times district courts that we were litigating in front of were hostile, the Department had to make doubly fine records and often won only on appeal.
Ms. Garrett: Do you think that as the receptivity of the courts to civil rights cases changed the nature of the lawyering changed?

Mr. Pollak: Well, it certainly didn’t change in my time. I put a high priority on making outstanding records in each case. That was the way the Division was schooled. I don’t know how it developed after we were gone. John Doar always used to say that he wouldn’t stand for having “Gee Whiz” lawyers, lawyers who wanted to come into court and say, “Gee whiz, Your Honor, we certainly got the right side of this case and we ought to win.” He wanted lawyers who found the facts and presented them as a basis for prevailing on the law and that was my own credo.

I observed when I joined the Division that John Doar, the Assistant Attorney General, manifested what I saw as an independence from the civil rights organizations. It seemed to me that those organizations felt – somewhat erroneously – that we in the Division were never doing all that we should do and that we were not adequately supporting their efforts. That had been a big thing in the first half of the 1960s when there was violence against civil rights workers and the Department was seen as unwilling to become a national police force to protect them. There was hostility to the Department. I thought then that I was observing some hostility by the Department to certain activities of the organizations. I now think that that was a misperception on my part. I believe that the attitude that I was perceiving was that we were the United States Government and it was up to us to reach our own judgments on what cases were brought and on what facts motivated us to bring cases. We weren’t doing the bidding of one side or the
other. We were making our own independent judgments. There was in John Doar a great respect for what those organizations were doing and the courage with which they were doing it. It’s been some comfort to me to reassess my own reactions to that picture. The Department had more legal resources than the civil rights groups. There was a statewide school case brought in the U.S. District Court for the Middle District of Alabama before Judge Frank M. Johnson called \textit{Lee v. Macon County}. The Court put the United States in that case as an amicus because it knew that the civil rights organization didn’t have enough staff to prepare the case and we did. I think our independence was needed as we went before the courts. We weren’t in the pocket of people who were litigating on the same side, we were independent. I don’t think it meant that we were hostile to them or what they were doing.

Ms. Garrett: As the AAG for Civil Rights, did you have direct dealings with civil rights leaders?

Mr. Pollak: Some, but not a lot. Burke and John had been known to and walked with some of those giants of the movement. My job description didn’t really require me to do it. There were occasions in which our paths crossed. Sometimes, as I remarked at a prior session on the meeting we had with the leaders of the women’s movement, people would come in and I would meet with the Attorney General and with them. Mostly, I just worked away doing our thing. We had laws to enforce, a mission to carry out and I just worked at it and those people may have met with the President or met with the Attorney General. If they met with the Attorney
General, I was with them. When Dr. King was slain, the Attorney General sent me to Memphis where there was going to be a march two or three days after the death and the day before the funeral. I went down there and was the President’s representative in terms of dealing with nationalizing the Tennessee Guard and the whole fabric of trying to maintain civil order. I’m confident that I met various people at the time I was there. I never had occasion to meet Dr. King.

Ms. Garrett: What were your feelings when you were sent down to Memphis for the march, because it was a potentially volatile event, right?

Mr. Pollak: It was.

Ms. Garrett: What were you thinking about that?

Mr. Pollak: I was consumed by the mission. I considered that my major responsibility was to work with the local authorities, Governor Ellington, the leadership of the Tennessee Guard and the federal officials. I can’t remember whether we had federal troops there, I believe not, or whether we relied on Tennessee Guard to assure that the march could go off peacefully, that there was no violence against the marchers, and that there was no eruption out of the march that would bring about violence. Our purpose was to have armed force available but unseen in the event there was trouble. I’m sure there were other people that felt it as well, but I felt as if I was in charge for the President and the Attorney General. I got there very early in the morning because everything was beginning to happen and about the time the march was about to begin, I looked around toward the line of march. I was on an upper story of a downtown building along the line of march, and I
I saw a tank rumbling down a side street toward the line of march. I thought that was the last thing we wanted. I called down and said, “Get that tank out of there,” or “Get that back out of sight.” And so the tank went rumbling off out of sight, and the march and the Memphis Police and the Guard all cooperated and the march went off without incident. It was a good day in those sad times, and it was the right thing. They were able to demonstrate their grievances. As soon as that day was over, I went to Atlanta where the Civil Rights Division had responsibility for liaison on the street with those seeking to maintain order there for Dr. King’s funeral.

Ms. Garrett: What was the reception like with the local officials you were dealing with in that time?

Mr. Pollak: Well, it was excellent in Memphis and I think it was the same in Atlanta. That’s my recollection. It was tense. It was certainly tense in Atlanta, particularly, but, as much as it may sound sophomoric, we had a job to do that was all-consuming and so we just did that job. We did it all to the exclusion of thinking of anything else, and the job was again the same thing, to see that the funeral procession could go ahead, could go where it was to go, that there wouldn’t be interference and that the civil authorities would be carrying out the job of maintaining order for the funeral. We were restoring the civil fabric of the country.

Ms. Garrett: What did your wife, what did Ruth think about your launching yourself or being launched into hot spots at moments like this?
Mr. Pollak: I think that the major thing she thought was that she had a lot to do at home. She may have worried about it, but I had never considered that my job was dangerous. It just didn’t seem that way. It was all-consuming. The most difficult call that I handled was one night while I was First Assistant. I was asleep and a telephone call came in from a small town, Greenwood, Mississippi. Some black young people had gone to a movie theater to desegregate the theater. When it came time to go home, there was a mob outside. Someone either in the theater or outside was calling to ask me what they could do or what I could do to assure the safety of the young blacks inside the theater.

Ms. Garrett: And what was the answer?

Mr. Pollak: I thought that was really scary. What I believe happened was that I urged them to be cautious and not rush out of the theater. I spoke to the Bureau and asked whether they could intercede with the local police to see if there could be a police presence brought on the scene. I can’t tell you how it all came out but there was no report of violence.

Ms. Garrett: Let me ask you this. How old were your kids at this time?

Mr. Pollak: When I became First Assistant, my youngest, Eve, was 3 and Roger was 6, and David was 9 and Linda was 11, so 11, 9, 6 and 3. When I left government, they must have been 14, 13, 9, and 7.

Ms. Garrett: Did your kids, particularly the older ones, have an understanding what your work was?
Mr. Pollak: I thought they did. I thought Roger did who was my third child. I have a photograph of Roger at the swearing in by Justice Brennan. My father was there and he and Roger are looking at the commission the President had signed. There was a lot of sacrifice that I asked the family and Ruth to make. Ruth thought that I needed somehow to get away from some of it and we bought a place in Rappahannock County in 1965 which she scouted out for that purpose. That was good, I went out there occasionally.

Ms. Garrett: How often did you go out there?

Mr. Pollak: I don’t recall. It had nothing on it for a time, so we would go out there and camp in a tent. We went out there and roamed around often enough. We go now about every other weekend. The period of my government service from 1961 to 1969, which was a period when my children were really young, indeed Ruth had our youngest in 1962, was a period in which I was working all the time. I lost a lot. Ruth carried a lot and I think I asked a lot of her and the children. I missed a lot of their childhood and they missed having more of me. It’s just not any longer a one-way thing. Women are government leaders and asked to make similar sacrifices. The non-government spouse in that situation is asked to do a great deal, and the government spouse misses out on a lot of wonderful family activity.

Ms. Garrett: Do you have any recollection about how you talked to you kids about these enormous and historic events that were occurring around you and with you?

Mr. Pollak: I recall talking to Linda or David’s eighth grade class about what the Civil Rights Division did. I took my son Roger with me for a trial of a race case in the
Northern District of Mississippi in the early 1970s when I was representing the NEA. The children had a good awareness and feeling for the purpose served by the Division, equality and equality before the law and non-discrimination.

Our kids seemed to have a pretty good idea about what I was doing. I don’t know that I was making it all seem as significant to them as it was to me. It’s a heady experience, government. I can remember being present on the Meredith March from Memphis to Jackson and each day going along and then staying in very rural out-of-the-way motels and watching it all happen. There were a lot of interesting and challenging things to do. I don’t know that it struck me at the time they were fun, but in the larger sense they were captivating. I consider myself very fortunate to have had the opportunity.

The men and women in the Division have all gone on. Some stayed and had careers in the government, in the Division, but many of them went on and had interesting and rewarding careers of one sort or another outside government. It was a great bunch.

Ms. Garrett: We’ve talked a fair amount about the cases and some of the issues that you confronted as you came in as the AAG of the Civil Rights Division. Were there any pieces of legislation that you wanted to touch on that were particularly prominent that you developed or played a significant role in your time as AAG?

Mr. Pollak: Well, I think I’ve alluded to them. I remember having a major debate when we were drawing the Fair Jury statute with Attorney General Clark. His view was
that you didn’t have to be able to read to be a juror, and I think that’s the way we drew the bill, and it became law.

Ms. Garrett: Did you disagree with him on that point?

Mr. Pollak: I had to be persuaded, but I don’t recall that we were in disagreement at the end.

As enacted, the Jury Selection and Service Act of 1968 authorized the chief judges of the district courts to recognize a person as qualified to serve as a juror unless he or she was unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out the juror qualification form. In developing the provisions of the jury bill, we worked closely with then District Judge Irving Kaufman who was the chair of the committee on juries of the Judicial Conference of the United States.

In January 1968, President Johnson asked the Congress to enact several pieces of civil rights legislation in addition to the jury selection bill. Primary planks that became law were the Fair Housing statute, Title VIII of the Civil Rights Act of 1968, and the bill to strengthen federal criminal laws penalizing violent interference with the exercise of civil rights which was passed as Title I of that Civil Rights Act. The problem we were working to address in what became Title I was left by the Supreme Court’s 1945 decision in *Screws v. United States* [325 U.S. 91]. The Court was reviewing an indictment charging county police officers in Georgia with a conspiracy to violate a Reconstruction Era civil rights statute [Section 20 of the Federal Criminal Code, 18 U.S.C. 52] making it a crime under color of law to willfully deprive a person of any rights, privileges or
immunities secured by the Constitution or laws of the United States by reason of the person’s race or color. The Court was concerned that the statute’s terms were unconstitutionally vague and set no ascertainable standard of guilt. To save its constitutionality, the Court interpreted the term “willfully” to require proof of a specific intent to deprive a person of a federal right made definite either by the express terms of the Constitution or laws of the United States. Over the years, satisfaction of Screws posed a difficult problem of proof – described to me in law school as requiring a showing that the defendant had in his head at the moment he was striking a black person or a white person aiding a black person a specific intent to take away a specific civil right of the person.

So Louie Claiborne, who was in the Solicitor General’s Office, and I drafted a new section of the federal laws protecting against criminal interference with civil rights, now codified as 18 U.S.C. 245, to specify precisely the various actions proscribed; for example, interference with any person because he is or has been voting or qualifying to vote or is or has been enrolling in or attending any public school. Congress enacted the bill just as we drafted it. It also passed the historic Fair Housing Act as well.

Louie Claiborne was a lifetime member of the Solicitor General’s Office with whom I served 1961 to 1964. In his later years, he resided in Britain, the home country of his wife, where he became a barrister and Queen’s Counsel. He continued to serve as an attorney in the SG’s office during periods when he returned to the United States.
Ms. Garrett: How on earth did he manage that?

Mr. Pollak: He did. He was so outstanding. He was such an outstanding lawyer. He’s now deceased, I am sorry to say, but he was there when I was in SG’s office and became a friend. He was a wonderful lawyer, a delightful man. It was a great privilege to work in the SG’s office when I did because there were only nine of us, including Archibald Cox who was an outstanding Solicitor General; Oscar Davis, who became a federal judge, succeeded by Ralph Spritzer as First Assistant; Dan Friedman who became a federal judge as Second Assistant; Wayne Barnett who became a professor of tax law at Stanford and then the University of Washington Law School; Frank Goodman who also became a professor of law; Philip Heymann who became a professor of law at Harvard and later Deputy Attorney General; Nat Lewin who later served as my Second Assistant in the Civil Rights Division; Bill Doolittle who became a private attorney here in D.C.; and Bruce Terris who created a special small private law firm representing “good” causes. That’s probably the whole of the office. All wonderful lawyers.

Ms. Garrett: Ever since, you have kept in touch with a number of the folks you worked with?

Mr. Pollak: I have, although I haven’t been in touch with them in a year or so. I knew them all well. We were so close. We generally had our meals together and we often ate at the Federal Trade Commission cafeteria on the 7th floor. Archibald Cox ate with us every Friday and sometimes we would eat with him on Saturday because we all worked Saturdays. We often ate at a restaurant where the Hoover Building
is on the north side of Pennsylvania – Harry’s Raw Bar. Being in the SG’s office
is a totally all-consuming job because you always have a big brief on your desk.

Ms. Garrett: Before a big court.

Mr. Pollak: Yes.

Ms. Garrett: We’re winding into the end of your term of Assistant Attorney General.

Mr. Pollak: I think so. When Nixon was elected, Richard Kleindienst, the Deputy Attorney
General designate, interviewed me as he did all the Assistant Attorneys General,
and he later communicated the message that President Nixon would accept my
resignation, so I submitted my resignation. I don’t know whether I would have
been willing to serve had they asked me to stay on, but I put my resignation in. It
was accepted and I was out at noon on January 20. My successor was confirmed
and in office on January 20, 1969, at noon.

Ms. Garrett: Slightly different than the pattern in recent administrations.

Mr. Pollak: Right. He had been confirmed and everything. My last act was to tell the guards
at Justice that Jerris Leonard, my successor, was indeed to be permitted to enter
the Department of Justice. I went home and had nothing to do. I had not had an
interview with a law firm. I hadn’t spoken to anyone about work. I had no job. I
had nothing.

Ms. Garrett: Was that because you had been so consumed with your work?

Mr. Pollak: I didn’t consider that I wanted to have anything to do with anybody about a job
while I was in office, but in addition, we worked full bore up to the moment I
went out of office. We brought a lot of suits, made the whole engine go, and then we were out.

Ms. Garrett: Then you and Ruth took a vacation didn’t you?

Mr. Pollak: John Rosenberg and his wife Jean came to live at our house, and Ruth and I took a couple of weeks. John was a lead attorney in the Division, and Jean, a super research analyst. We went skiing in Aspen and then we went to Mexico, but that was a little after I got out of the government. I negotiated with John Gardner who was head of the Urban Coalition, he wanted me to come on as his deputy and with Bill Gorham who was President of the Urban Institute who wanted me to become his deputy. The Urban Coalition was supported by management and labor. The labor movement apparently believed that John Doar and I were anti-union because we had brought equal employment cases against unions. The unions we sued had very poor records in terms of non-discrimination. We were not anti-union, we were pro-non-discrimination. In any event, when the labor movement objected, Gardner withdrew his offer. I guess he counted on funding from labor unions. Gorham pressed his offer, but wisely, and with some reluctance, I turned him down. I remember buying him a bottle of Napoleon brandy and giving it to him as a gift when I turned him down. I did so feeling that my calling was to be a lawyer.

After I had been in the government for a couple of years, Gerry Gesell, with whom I had worked at Covington & Burling, told me I should come back, and suggested that the firm would not necessarily take me back if I stayed longer.
Of course I did. Although Covington was beating the doors down to hire Ed Zimmerman who had been head of the Antitrust Division, they were not interested in hiring me. My colleague at Yale, Bill Dempsey recommended to Frank Shea that Shea & Gardner hire me. It was an outstanding and well-respected firm of perhaps 20 lawyers, all with great academic and practice credentials. I went to lunch with Frank and Bill at the Metropolitan Club. On the way back we walked along H Street, the firm’s offices were at the corner of H and 15th, we were standing on the northwest corner waiting for the light, and Frank said, “Well, I hope you’ll join Shea & Gardner. We’ll bring you into the partnership as the youngest partner and I’ll pay you what you would have earned at the Department if the raise which Congress had enacted had been in effect before you left.” which it was not. I said, “Well that sounds fine to me,” and so I had a deal.

Ms. Garrett: Well it sounds like there was a little more parity between government and private salaries at the time.

Mr. Pollak: Probably so. He was offering me something like $28,000. I didn’t think the money made any difference. I felt that I would make my own way as a partner, that the future would take care of itself.

Ms. Garrett: Well, it’s worth noting because in this day and age starting associates can command over $100,000 per year, right out of law school.

Mr. Pollak: Right.

Ms. Garrett: Well, in the government they don’t make anywhere near that.
Mr. Pollak: Well, there was more parity certainly.

Ms. Garrett: Interesting. That’s for somebody else to explore. Did you want to add anything else?

Mr. Pollak: Let me just say this. Immediately after my leaving the Department, someone I didn’t know from the Archives called and asked me to do an oral history, so I did four sessions with the Archives. I think they are a valuable contribution. Certainly valuable to me. One thing that didn’t come through on the tape was that in giving those histories over those four days, it emphasized to me how much I had lost by having to give up that work.

Ms. Garrett: Bittersweet.

Mr. Pollak: I felt pretty much adrift. That was my mental state as the questions were put to me by the Archives person. Transition out of government is demanding because you’re dealing with national problems because of the office you hold and then you’re just a newspaper reader.

Ms. Garrett: Physical withdrawals is how I described it.

Mr. Pollak: Right. You have to learn to live with it.

Ms. Garrett: All right, Steve. Why don’t we wrap up this interview here and we’ll pick up at our next interview with life in the private sector.

Mr. Pollak: Right.
Ms. Garrett: When we last spoke, at least for purposes of our interview, you had just left the government, and I wanted to start today talking about your entry into private practice. What the change was like, what you anticipated from the firm, and how it unrolled for you.

Mr. Pollak: Do you want me to memorialize on the tape the attachment of a memorandum that I did the night of September 29, 1967, of a flight to President Johnson’s ranch where he announced his intention to nominate me head of the Civil Rights Division?

Ms. Garrett: Yes, why don’t you do that.

Mr. Pollak: I thought the experience was sufficiently noteworthy and memorable that I dictated a memorandum on my return home. I brought it along and decided to make it an attachment to my oral history, so I’m passing it to you.

Ms. Garrett: Okay, great. That will be attached with the other materials.

Mr. Pollak: After the election of 1968, which was won by Richard Nixon, Richard Kleindienst was designated to be the transition chief for the Department of Justice and may have been nominee-designate to be Deputy Attorney General. He called me, and I understood all the other presidential appointees in the department, and
interviewed us about our positions and intentions with an understanding that the
President-elect would let us know whether he would invite us to stay on in his
Administration or ask for our resignations. There was no indication requested,
and I gave none, whether if asked I would stay on. Early in 1969, I received word
that I would not be asked to remain, and I tendered my resignation effective at
noon on January 20. That’s the way my service in the Department came to a
conclusion.

I had had no discussion with anyone about post-government employment
up to that time, and no one had sought me out to have any discussion about post-
government employment. I was unemployed and feeling quite deprived and adrift
after the activity of government and the responsibilities of government, which
were very much to my liking. The very week I left government, Archives
telephoned and asked if I would sit for an oral history. I did so, and that history
ran over four days in one week, January 27, 29-31. The history is in the Johnson
Library and can be accessed on the Internet. I have a copy also.

The major question for me when I came out was whether I would seek a
position in a law firm or seek a position in a social activist organization. It turned
out that John Gardner, who had been Secretary of Health, Education and Welfare
in Johnson’s Cabinet, was running an organization then known as the Urban
Coalition. He asked me to come in and talk with him and ultimately asked
whether I would take a position as his deputy. I said I would consider it. At the
same time, Bill Gorham, who had also been an official in the Department of
Health, Education and Welfare, was running something called the Urban Institute, which exists to this day. Incidentally, the Urban Coalition morphed into Common Cause, which also exists today. Gorham’s organization was engaged in research relating to urban problems, whereas Gardner’s organization was actually working with urban communities to address their problems and better the lives of the residents. Gorham wanted me to become his No. 2. I considered seriously both offers.

After a time, Gardner advised me that he couldn’t follow through on his offer. He explained that his funding came one-third from labor unions, one-third from management or corporations, and one-third from the public. The unions, he said, had objected to his hiring me. Their explanation was that John Doar and I were anti-union. Their evidence was that we had brought civil lawsuits alleging employment discrimination against building trades unions. I was left with the offer of Bill Gorham, which I seriously considered. My wife Ruth and I took a long-delayed vacation in February or early March 1969 while both jobs were still on the table. We went skiing in Aspen, and then to Mexico City and Cozumel. It was on that trip that I learned – I think we were passing through Dallas – that Gardner’s offer, or almost-offer, was withdrawn. On my return, I began thinking more definitely about law firms.

I had agonized over Bill Gorham’s offer and interest in bringing me into the Urban Institute. Its work was exciting. Bill was broadly capable, had broadly capable colleagues, but in the end I concluded that I wanted to be a practicing
lawyer. Bill’s office was on L Street around 19th or 20th, and I made an appointment with him. He didn’t know what I was going to say. There was a liquor store in the ground floor of his building. I bought a bottle of outstanding brandy, Napoleon brandy, and took it with me as a gift. I told him I wasn’t going to take his job and I felt his regret and my own. It was, again, a decision that was the right one for me.

Ms. Garrett: So, then you started at Shea & Gardner as their youngest partner. What was your practice like?

Mr. Pollak: I didn’t have any clients, and no one ever talked to me about being a client. In the five-plus years at Covington, I can’t recall that any clients came to me. Now, Frank Shea assigned me my first piece of work, which was an interesting problem of the Democratic Party. The Party had been represented by Bennett Boskey and Ellis Lyons who had a small firm. The Party had published, I believe in connection with the 1968 or 1964 election, a glossy Fortune magazine-size book of ads by corporations and other supporters and questions were being raised respecting improper fundraising. Ellis Lyons, I think, was handling it. It seemed to be headed toward litigation, and Bennett and Ellis asked Frank Shea if he would take it over. Frank said he would. Frank had a rule of practice, which at least he gave verbal support for, that anyone who would pay his fees would be represented. Frank asked me to work on it and so I bore deeply into everything about the collection of these funds and the presentation in the magazine. My memory is that one way or another, we resolved the problem favorably to the
That kept me busy. I believed in the client’s position. I think that, like a lot of lawyers, I generally believe in my clients’ positions, but most of the clients who have come to me have had positions that looked in the directions that I believed in or that were congenial with my social and ethical outlook.

Frank was certainly interested in whether clients would come to me. It was a small firm and he was taking a chance in bringing in a partner who hadn’t begun with the firm. I think all the other partners had moved through from associate to partner.

Ms. Garrett: How many partners were there at that time? You said there were about twenty lawyers.

Mr. Pollak: Maybe there were under twenty. I think that there were probably ten, eleven, something like that. Many had been Supreme Court clerks. Frank had been Dean of the Buffalo Law School. He had been an Assistant Attorney General in charge of Alien Property, the precursor of the Civil Division. Warner Gardner had been Acting Solicitor General and First Assistant to the Solicitor General at Justice as well as Solicitor of Labor, Solicitor of Interior, Acting Deputy Secretary of Interior. He and Frank had started the firm in 1946 and had hired many Supreme Court clerks. Frank was known for being a good judge of lawyers and seeking to hire the best quality.

Frank always counseled me to have patience. “Clients would come,” he said, “it didn’t matter; the firm was happy to have me on board and we’d have plenty to do.”
Ms. Garrett: What kind of practice did you envision yourself developing at that point, when you started off with no portfolio?

Mr. Pollak: I envisioned a litigation practice. I had no desire to turn my civil rights experience into representations of persons or corporations or unions charged with violating the new civil rights laws. I never sought that kind of practice and almost never did it. Indeed, the only defense-related work that I ever did in civil rights was for the railroads which were a client of the firm, one of the first clients of Shea & Gardner. The firm represented the National Railway Labor Conference, which was the collective bargaining representative of the railroads for national bargaining with the unions. Certain railroads had been charged with employment discrimination by the Department of Justice. I think I had brought cases against railroads, or at least those cases were in preparation during my time in the Division. The railroads asked me during the 1970s to counsel with the National Railway Labor Conference respecting the equal employment laws. I recall preparing memoranda and meeting with the railroads. Out of that came a representation in a private employment action, a class action against the St. Louis Terminal Railroad which I defended along with John Rich, my partner, a younger partner. It was presented before Judge Harlington Wood, of the Alton Division of the United States District Court for the Southern District of Illinois, who went on from the District Court to the Seventh Circuit. There was a large amount of discovery, and we put up a very active defense. We had appropriately aggressive counsel for the plaintiffs, and ultimately settled the case at a modest figure which
we considered a very good settlement. Those were the only times in a long private practice that I was approached to represent persons or corporations defending themselves against complaints of employment or other civil rights violations.

Early in my return to Shea & Gardner, Northwest Airlines telephoned me when I was in Chicago for something – maybe on a case – and flew me on an empty 747 to Minneapolis and interviewed me about becoming its counsel on equal employment matters. I thought that was an exciting possibility. I must not have fit their bill because I left and never heard another word.

I thought my practice would be a litigation practice. I didn’t have any idea what field. I knew my way around the courts. I engaged in no marketing. I just did what came along. Then David Rubin, who had been in the Appeals Section of the Civil Rights Division when I was there, and had moved to the Civil Rights Commission as Deputy General Counsel or General Counsel, had left government and become Deputy General Counsel of the National Education Association and counsel for the NEA’s DuShane Fund, the focus of which was protection of teacher rights. David called me and said that the DuShane Fund and NEA wanted to have a special counsel representing the organizations on desegregation issues affecting education. He asked me to get my thoughts in order, possibly writing them down, and to come to Puerto Rico, where the DuShane Fund Board was meeting, to be interviewed.

Ms. Garrett: When was this?
Mr. Pollak: Early 1970 or late 1969. I had joined Shea & Gardner on March 18, 1969. I went to Puerto Rico. The lead person for NEA in heading up the group for which I would be serving as counsel was a black man named Sam Ethridge. I remember making a presentation before him and others. I recall feeling that the desires of NEA in respect to school desegregation appeared to be somewhat diffuse. I was uncertain whether I had made an effective presentation and what the outcome would be. Very shortly, or maybe while I was still in Puerto Rico, I was advised that NEA wanted to go ahead with me, and that began a full decade of representing NEA in school desegregation and teacher desegregation litigations in the Supreme Court and the federal appellate and district courts. It was one of those representations that anyone – at least of my stripe – dreamed of. During that decade, Shea & Gardner, with me at the helm, had amicus briefs in the Supreme Court in virtually every case affecting school desegregation, all the race cases. We represented NEA in numerous related proceedings in the lower courts. There was a great Supreme Court case in that period involving the separation of church and state in funding of education. Lemon was the petitioner. Ralph Moore, who had clerked for Chief Justice Warren, was one of my partners at the firm. He took the lead in drafting that brief.

David Rubin was deeply committed to school desegregation. Richard Sharp, one of the younger associates, and I teamed up working with David on all of these briefs. The Civil Rights Commission had come out with a report on “Racial Isolation in the Public Schools,” even with desegregation, and we worked
on briefs in the Michigan case, *Milliken*, involving racial impaction in the center city and white schools in the suburbs and the power of the courts to award interdistrict relief. The issue was whether state action had caused the racial makeup of the largely black center city district and the almost totally white surrounding suburban districts, so that the court was empowered constitutionally to order interdistrict busing for desegregation. The issue came down to whether the existing segregation in the public schools of Detroit was caused by state action or was the result of non-state action, so-called de facto segregation. We were presenting arguments drawing on all the factual evidence to try to show that the racial makeup of those schools was the result of state action, de jure, rather than de facto.

Besides the appellate litigation, NEA retained me to represent teachers in school discipline situations. Some of those I litigated. One involved a teacher in Dade County, Florida. A lot of Shea & Gardner lawyers were kept busy with these NEA-funded litigations.

The decade saw two of what I would call great trial-level, and in one instance, appeals cases. I’d like to put them on this record.

One of the very earliest assignments that NEA brought to me was to challenge efforts that were percolating in Deep South school systems to use standardized tests and minimum scores on those standardized tests to requalify teachers in public school systems following orders of the courts that the faculties must be desegregated. Where school systems had maintained black faculty for
black students and white faculty for white students, the court orders meant that black faculty would be teaching white and black students alike. This was considered unacceptable by school boards and teachers in some school systems. NEA sought me out for two systems in northeastern Mississippi that resorted to ETS – Educational Testing Service – tests with a minimum qualifying score to requalify their teachers. One system was the Starkville Municipal Separate School District which for the fall of 1970 required all of its teachers to make a minimum score on the Graduate Record Examination. A second school district just down the highway from Starkville, the Columbus Municipal Separate School District, employed the more appropriate National Teachers Examination with a minimum score to requalify all its teachers. The black teachers scored low on these two tests, probably at levels that were 50 percent of the scores posted by the white teachers. Although many of the black teachers had taught for long periods and taught with high approval ratings, the institution of the testing meant that they were going to be fired. Mixed race groups of teachers complained to the NEA, and the NEA asked me to represent them. David Beers, my partner at Shea & Gardner, and I went to Mississippi to find local counsel. We hired Hal Freeland out of Oxford, and we came home and drafted complaints and filed lawsuits before the United States District Court for the Northern District of Mississippi, Judge Orma Smith.¹ I spent a great deal of time in Mississippi interviewing these

¹ Armstead v. Starkville Municipal Separate School District, 461 F.2d 276 (5th Cir. 1972), affirming 325 F. Supp. 560 (N.D. Miss. 1971); Baker v. Columbus Municipal Separate School District, 462 F.2d 1172 (5th Cir.)
teachers, learning the cases, and then deposing officials of the school systems. We had preliminary injunction hearings before Judge Smith, and we prevailed. The use of the tests to quantify teachers for the 1970-71 school year was enjoined. Along the way, I worked with the Educational Testing Service, including their expert on these examinations whose name was James Deneen, as well as Winton Manning who rose high in the organization. ETS believed that the uses being made of the tests were not appropriate. That was particularly so with the GRE, but it was also true of the NTE which had not been drawn to test for effectiveness of experienced teachers. I had Deneen and Manning as experts supporting the plaintiff teachers and made this full record; had the superintendents of each school district on the stand before the Court examining them as to why they were doing what they were doing. I had my teachers on the stand. The school districts appealed to the Fifth Circuit and we briefed and argued the cases and the Fifth Circuit affirmed the rulings of the District Court. I do not recall that certiorari was sought.

Subsequently, we brought two state-wide federal court actions, one on behalf of the South Carolina teachers, and the other on behalf of the North Carolina teachers, challenging institution of requirements that all teachers take the National Teachers Examination and make a stated score. Each state laid on the test score requirement coincident with court orders for desegregation of faculties.

These two cases were presented to three-judge district courts. The managing judge for the North Carolina case was United States District Judge Tam Craven who later went onto the Fourth Circuit. We prevailed in the North Carolina case. However, the state school superintendents had learned a thing or two from the Mississippi litigations and had configured the use of the test more to ETS’s standards. This was particularly so in South Carolina where ETS was represented by Wilmer, Cutler & Pickering.

It’s worth saying something about that. Winton Manning, whom I had presented as an expert in the Mississippi cases, asked if I would represent ETS in what he correctly anticipated would be a series of challenges to its examinations on racial grounds. I looked at the situation and advised him that I thought that soon enough ETS and my client NEA were going to be on opposite sides of this issue, so that I shouldn’t represent ETS. I recommended my Yale Law School classmate Howard Willens at Wilmer, Cutler. So it turned out in the South Carolina case that Wilmer, Cutler and Howard were representing ETS as an amicus. They gave ETS effective representation. The court in the South Carolina case was led by Circuit Judge, former Senator, Russell of the Fourth Circuit. Senator Russell was a very smart judge and he was hostile to our case from the standpoint of the facts and the issues that we presented. He disagreed that there was any remedy that was appropriate, and in the end, we lost before the South Carolina federal court on four or five or six different issues. We appealed to the Supreme Court but it was pretty clear that the Court was never going to take a
case in which the appellant had lost on six grounds. A motion to affirm was made by the state and granted by the Supreme Court. That led to reversal of the favorable decision in North Carolina and pretty much finished NEA’s challenge to the use of the ETS NTE test for teacher requalification. We had endeavored to prove in the North Carolina and South Carolina cases that the National Teachers Examination had not been properly validated for the uses by the two states. And of course ETS valiantly tried to prove otherwise. I think we had the better of the issue. We satisfied the North Carolina court, but we lost before the South Carolina court. Those were great litigations, and there’s no question that the scores that black faculty were making on the test, which were around the 11th or 12th percentile, presented a great hurdle to overcome. Those scores say a lot about the education and background of the black teachers, who were the products of segregated schools and segregated societies. All of them had been teaching black children in segregated schools, many doing so to the satisfaction of the state for many years.

Later in the 1970s, NEA brought me a representation which came from its General Counsel, Robert Chanin, that was more of a labor law case. The NEA and the American Federation of Teachers, led by Albert Shanker, had had discussions of a never-ending nature about the possibility of merger. Indeed, I think those discussions go on even to this day. The NEA’s state affiliate in New York and the AFT affiliate in New York had merged. The joint state affiliate was called the New York State Union of Teachers, I believe, NYSUT.
The merged affiliate then split apart, and NEA retained me to sue the AFT affiliate for funds that NEA had invested in the merged entity which NEA believed were due to be returned. We brought suit in the U.S. District Court for the Northern District of New York in Albany and there ensued a lengthy, and actively pursued on both sides, litigation in which the Shanker affiliate was well represented by John Callagy of the Kelly Drye firm. Many depositions were taken, mostly in New York City. I litigated the case with the help of a paralegal at Shea & Gardner, Dorothy Landsberg, who had been in the Civil Rights Division. Her husband, Brian Landsberg, had spent a career there and then became a professor at McGeorge Law School, which is part of the University of the Pacific. Dorothy completed a law education later in her career and is now the head of a major law firm called Kronick Moskovitz in Sacramento. Ms. Landsberg and I prepared these depositions and did a great deal of fact-finding in the records. Ultimately, we worked with NEA General Counsel Chanin to settle the case with return of a significant sum to NEA.

That was an active period for me in representing NEA all the way up to 1980 when Bob Chanin determined that he was going to join a law firm but remain as NEA General Counsel. He considered Shea & Gardner and a union-side labor firm, Bredhoff & Kaiser. Ultimately he decided to join Bredhoff & Kaiser where he has had a distinguished career and remained as NEA General Counsel down to this day. I discussed with Bob the merits of joining our firm versus Bredhoff. I remember telling him that while Shea & Gardner would make
a good place for him, the union firm might be a more congenial or supportive home, and he chose to go there. When he moved to Bredhoff, I never did another stick of NEA work. Now my son is a partner of Bob’s at Bredhoff & Kaiser.

Ms. Garrett: Is that right? Which son is this?

Mr. Pollak: This is Roger. Roger’s a labor lawyer.

Ms. Garrett: Does he do any work for the NEA?

Mr. Pollak: He did one case with Bob. I had a great time representing NEA, and I have very fond feelings for all of the NEA people, including Bob Chanin. It was a very special representation.

It wasn’t long after I joined Shea & Gardner that another client came to me, the Trustees of the United Mine Workers of America Health & Retirement Funds. The Funds were a collectively-bargained pension and welfare fund for coal mine workers and their dependents. I think they first came to me in 1970, and I continue to represent them today. But it is fascinating what led them to me.

Ms. Garrett: Why did they come?

Mr. Pollak: Coincidence. And this says something about marketing, which is a big thing in law practice today. When I was at Covington & Burling, before going into government, I worked with Gerhard Gesell on antitrust cases. He of course later became an outstanding judge on the U.S. District Court for the District of Columbia. When I was in the Civil Rights Division as First Assistant to Assistant Attorney General John Doar, I did the hiring of young lawyers, particularly under the Honors Program. One of those I hired under that program was a number one
graduate from the Law School of Washington University in St. Louis named Monica Gallagher. Monica served with distinction in the Civil Rights Division and later moved to the Labor Department to handle pension and welfare matters under the supervision of a lawyer named Ian Lanoff. Lanoff moved to the UMWA Funds as General Counsel, and Monica moved with him. There were two lawyers in the General Counsel’s office there.

The Funds had a system of hospitals qualified to provide care and be reimbursed by the Funds, but the hospitals had to meet certain requirements. So when the Funds refused to qualify a hospital in, I believe, Kentucky, Webster Hospital, it sued the Funds claiming an antitrust boycott. The Funds wanted outside counsel, and Monica remembered that I had done antitrust work, so the Funds retained me as their antitrust lawyer. I defended the case successfully before District Judge Tom Flannery in the United States District Court for the District of Columbia. The hospital appealed to the U.S. Court of Appeals, and we prevailed there.  

In 1974, the UMWA and the coal companies entered a new collective bargaining agreement known as the National Bituminous Coal Wage Agreement of 1974. It continued funding for the Health and Retirement Funds, providing for a per-ton royalty on coal produced as well as a comparable royalty per-ton of coal purchased on which the per-ton royalty had not been paid. The latter provision was called the “purchase-of-coal clause” and it, or a comparable provision, had

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2/ Trustees of UMWA 1950 Welfare and Retirement Fund v. Webster Hospital, 536 F.2d 419 (1976).
been in the successive national labor agreements since 1946, but it had never been
complied with by the operators or enforced by the Trustees of the Funds. The
UMWA said that the purpose of the clause was to protect the work of the UMWA
mine workers by evening out the cost of non-UMWA coal with that of UMWA-
produced coal. The cost of UMWA coal was elevated primarily because of the
cost of the health and retirement benefits, but also because the terms and
conditions of UMWA employment exceeded those of non-union companies. As a
result, the cost of non-union coal, referred to as non-signatory coal, was cheaper.
The coal companies rejected those justifications and challenged the clause as a
boycott of non-signatory coal aimed at forcing non-union companies to recognize
the UMWA, unlawful under the antitrust laws and under section 8(e) of the
National Labor Relations Act, the so-called “hot cargo” clause of the labor statute.

The Trustees, in 1974, asked me to prepare a memorandum on whether, if
they enforced the purchase-of-coal clause, they would themselves be committing
an antitrust violation. We did a comprehensive memorandum at Shea & Gardner.
Ralph Moore worked with me on it, and Frank Kramer. Frank was an associate.
The Chairman of the Board of Trustees of the Fund was a capable attorney named
Harry Huge and the General Counsel, now deceased, was Martin Danziger. Our
memorandum said it would not be a violation of the antitrust or labor laws to
enforce the clause, provided the clause was a legal work preservation clause
aimed at evening out the cost of non-union coal with union coal and thereby
protecting the work of UMWA mineworkers. Shortly after providing that
memorandum, United States Steel sued the Funds in the U.S. District Court for the District of Columbia to enjoin enforcement of the clause, and we defended that lawsuit. After we got into the meat of the case with the commencement of discovery, U.S. Steel apparently became concerned that it was creating a record that might in the end be used by treble-damage plaintiffs against the company. It moved immediately to settle the case, and we ultimately did so favorably to the Trustees. Contributions were due on the coal that had been purchased in the amount of over $12 million. I remember that the check for the Trustees’ recovery was so large that U.S. Steel sent it over to me by messenger riding a bicycle. I got it immediately deposited in the bank. That was in 1975. Thereafter, there was litigation challenging the purchase-of-coal clause that extended all the way into the late 1980s or early 1990s. Coal operators sued the Funds to enjoin enforcement of the clause, and we sued operators seeking recovery of delinquent contributions. Those cases were so numerous that we moved the Multi-District Litigation Panel to consolidate them for pretrial discovery, which it did, in the Western District of Pennsylvania before Judge Mansmann, who later went on to the Third Circuit. Another district judge was assigned the case, Judge Alan Bloch. We lost a motion for summary judgment before Judge Mansmann and appealed the ruling to the Third Circuit. The question was whether the clause was unlawful on its face. We prevailed on that issue³ although the court left open the question whether the clause could be applied in ways that violated the labor or

³ In re Bituminous Coal Wage Litigation, 756 F.2d 284 (3d Cir. 1985).
antitrust laws. After that, there was a long run of litigations in which individual companies endeavored to prove that the clause was unlawful as applied. There was much paper discovery and many depositions.

After the Third Circuit ruled that the purchase-of-coal clause was legal on its face in *In re Bituminous Coal Wage Agreements Litigation*, some 40 to 50 cases that had been multi-districted were remanded to Judge Bloch of the United States District Court for the Western District of Pennsylvania for conduct of common discovery. Some judges who have multi-district cases in front of them look toward actually trying the cases once they have handled all the common discovery. Judge Bloch was determined that he would conduct only the common discovery and then remand all the cases. There was a large amount of discovery conducted but Judge Bloch would not hear any substantive issues. When Judge Bloch ruled on the discovery, he ruled orally in court, and his rulings were transcribed in the transcript but in no other way. He gave his rulings by citing the number of the interrogatory or document request and stating “yes” for approval of the request or “no” for denial, thus “Seventeen- A, yes; Seventeen-B, no; Seventeen-C, yes, Eighteen-A, no.” The court gave no explanation of the grounds of the rulings.

Ms. Garrett: Interesting. Really did his best to not create a record, other than on the transcript.

Mr. Pollak: We tried to understand the foundation of the rulings by comparing the favorable and unfavorable rulings. Ultimately, all of the purchase-of-coal cases but the one,
Ohio Valley Coal Company, in which the Trustees prevailed on the merits, were settled favorably to the Trustees.

I should mention that before the cases that were multi-districted, we litigated the legality of the clause with Kaiser Steel, which had mines in New Mexico.\footnote{Mullins v. Kaiser Steel Corporation, 466 F. Supp. 911 (D.D.C. 1979), aff’d, 642 F.2d 1302 (D.C. Cir. 1980), reversed 455 U.S. 72 (1982).} Kaiser was represented by Wilmer, Cutler & Pickering – Douglas Melamed. We countered Kaiser’s effort to avoid its purchase-of-coal royalty obligations imposed by the Coal Wage Agreement by relying on a proposition, coming out of a Supreme Court case called \textit{Kelly v. Kosuga} [358 U.S. 516 (1959)], that an antitrust and unfair labor practice defense should not be entertained when raised by the employer after all employee services had been performed. There were actually two suits, one against Kaiser, and another against Reitz Coal.\footnote{Mullins v. Reitz Coal Co., 105 LRRM 2776 (D.D.C. 1979).} One case was heard by District Judge Flannery and the other by Judge June Green. They were consolidated before the United States Court of Appeals for the D.C. Circuit where we prevailed in an opinion by Judge Abner Mikva, with Judge Wilkey writing a vigorous dissent. Kaiser petitioned for certiorari which was granted, and the Supreme Court, with Justice White writing the opinion, in \textit{Kaiser Steel Corporation v. Mullins, Chairman of the Board of Trustees}, reversed, six to three against the Funds. When we couldn’t win on a \textit{Kelly v. Kosuga} theory, which didn’t put in issue all the panoply of facts about whether the clause was a “hot cargo” clause or a work preservation clause, we had
to go into all of those issues and litigated for another decade and a half.

Ultimately, over $100 million in delinquent contributions was recovered. In the
one case, *Ohio Valley Coal Company*, that was ultimately litigated on the merits
to a conclusion, Judge Graham of the U.S. District Court for the Southern District
of Ohio upheld the legality of the clause as applied there.

Ms. Garrett: When did that case, the *Ohio Valley* case --

Mr. Pollak: That was almost the last purchase-of-coal case. It must have been decided in the
late 1980s. The owner of Ohio Valley was very firm in his view that he would
not settle. Both sides were well represented, lead counsel for Ohio Valley was the
law firm of Polito & Smock of Pittsburgh, Pennsylvania. Ohio Valley failed to
respond to our discovery requests, so the case was tried on the facts we set forth
in the discovery. I’ve continued to represent the Funds on other issues.

In the late 1980s and early 1990s, due to changes in the coal industry, the
UMWA Health Benefit Funds went into the red, and the Trustees announced they
would soon for the first time be forced to cut benefits. Congress reconstituted
those funds into the UMWA Combined Benefit Fund and rebased the private
funding by former and present companies signatory to Coal Wage Agreements.
I’ve represented the Combined Benefit Fund in a number of long-running cases in
which coal operators have contested the constitutionality and meaning of the
statute, the Coal Industry Retiree Health Benefit Act of 1992 (“Coal Act”).

Ms. Garrett: Of the federal statute that created the Combined Fund?

Mr. Pollak: Right.
Ms. Garrett: Were there any details that you wanted to provide about those litigations?

Mr. Pollak: The Coal Act spawned a plethora of litigation between 1993 and 2007. Issues relating to that statute, its meaning and constitutionality, have gone to the Supreme Court and have been heard on the merits in three cases. During this period, we have been litigating complex Coal Act cases for the Trustees. For example, we are now representing the Combined Benefit Fund in litigation over the meaning of the formula for calculation of the premiums the Coal Act requires coal operators to pay. At issue is the meaning of the word “reimbursements” as used in the formula. At least $209 million in premiums is involved. We litigated the issue successfully before Judge Kollar-Kotelly in the District of Columbia. On appeal, the D.C. Circuit, in a unanimous opinion by Judge Edwards for himself, Senior Judge Williams and Judge Rogers, held in part for the position taken by the Trustees but remanded it to the Social Security Administration which applies the formula and sets the premium. Imagine, this litigation over the meaning of one word in the premium formula still goes on, having been before several federal trial and appellate courts in Alabama, Virginia, Maryland, and the District of Columbia for nine years.

The representation of the Mine Funds has been fascinating in the legal issues it has presented, a textbook lode of intellectually challenging questions. The Trustees have been my longest running representation as a private lawyer.

Ms. Garrett: Have you recalled the name of the judge who dissented in the *Kelly v. Kosuga* case?
Mr. Pollak: In the *Kaiser Steel* purchase-of-coal case, where the issue was whether the court would hear a challenge to the legality of the clause in a contract action for recovery of royalties to a collectively-bargained health benefit fund, under the *Kelly v. Kosuga* ruling of the Supreme Court, the dissenting judge was Malcolm Wilkey. We prevailed before Judge June Green in the *Reitz Coal v. Mullins* case, which presented the very same issue. In the Court of Appeals, I remember the argument where Judge Wilkey was totally unaccepting of the reading we were giving *Kelly*, to the point where his face became red. Of course, Justice White vindicated him, as the Supreme Court ruled along the lines that Judge Wilkey had taken in his dissent.

At the time we were beginning to litigate the *Kaiser* case, the General Counsel of the Funds was Henry Ruth. I worked closely with Henry and ultimately, at my invitation, Henry joined our law firm as a partner and was here at Shea & Gardner several years. He then went back to Philadelphia, which was his home, to the Saul Ewing firm. Henry had been one of the Independent Counsels in Watergate. I shared some representations with Henry while he was at Shea & Gardner unrelated to the Mine Funds, including the representation of Hamilton Jordan, Chief of Staff to President Carter, and the representation of Billy Carter, the President’s brother.

There are at least three levels at which the cases I’ve litigated and clients I’ve represented can be discussed. One is to speak about the cases and the issues and the rulings, and I’ve been doing that. The second level is to speak about
people that were involved. The clients, the court people, the opposing lawyers, the witnesses. All of that is richly textured in my experience. The people that I’ve related to stand out in my mind today almost as if I was still relating to them, even though some of the events occurred 35 years ago. Then, the third level is to talk some about my approach to litigation and oral argument. That I think is an area I could deal with in less time, but certainly it bears comment.

My feeling about case preparation stems from working with Gerry Gesell who believed that cases are won on the facts. I would even trace it back to Yale Law School where I was taught by James Moore, of the Bankruptcy Treatise and Moore’s Federal Practice. Professor Moore said that if you have an issue in court and the facts don’t permit you to win, then your obligation as a lawyer is to go out and find more facts; your responsibility is to look again at the issue and redefine it so that other facts become relevant which will allow you to prevail. Either way, I think the lawyer is challenged to define the issues in the cases he is handling and then to find the facts that will be favorable to his client relating to those issues. I have always worked hard on the facts side of case preparation, both in reviewing documents – I learned about “the romance of the documents” from John Doar who would peer into voting records endlessly in preparing the Civil Rights Division’s voting rights cases – and in preparing for examination of witnesses, and keying documents to the questions to be asked in depositions. I think that’s been a strong area for me and one that I’ve enjoyed a great deal.
In taking depositions where you don’t know what a hostile witness is going to answer, I have often approached a series of question with absolute pain in my stomach, wondering what the witness would say. Often on a deposition, I have heard a witness’s testimony and thought, “Well my case is over. That witness’s testimony is going to sink me forever.” And the day ended and I’m as blue as a blue stone. What always happens is that on analysis it wasn’t ever as bad as I thought.

Ms. Garrett: We were talking about the pleasure you took in preparing the facts of your cases, and you had mentioned actually some of the desegregation cases and standardized testing cases for the NEA of going down and talking with witnesses and talking with the teachers and then deposing all the school officials. I’m wondering if there are any particular conversations that you had or witnesses that you can recall meeting with that were memorable or that sort of captured the tone of those cases in that time?

Mr. Pollak: My opponent in the Starkville case was an attorney named Thomas Tubb. He was from West Point, Mississippi, an area that called itself the “Golden Triangle,” West Point, Columbus, and Starkville. I flew in a two-engine propeller plane into the Golden Triangle Airport. It was a very, very southern community. My beginnings there were in late 1969, which was really, for those school systems, the beginning of desegregation. I had a band of teachers in the Starkville system who were very courageous. The lead teacher was Carolyn Reeves, a white teacher who brought the case to the NEA. She was joined by another white
teacher named Jan Peterson and a number of black teachers and administrators, including Mr. and Mrs. Buck. Mrs. Buck was a teacher and he was a principal employed for many years in the black schools teaching black children. These teacher-clients were worried about the course they were pursuing, the hostility in the community. I never felt other than safe there, but I think some of my clients were concerned. I was impressed with the dedication of these teachers to the cause of desegregation, and I was interested in the officials of the school district who were the opponents. The Superintendent of the Starkville District was Paul Armstrong. I had him on the stand in a hearing before Judge Orma Smith on a preliminary injunction. We were challenging imposition of the requirement that all teachers achieve a particular score on the GRE as a condition of employment for the 1970-71 school year that was about to begin. In the course of his testimony in court on a point of significance, Armstrong testified in direct contradiction to his deposition, and I was able to bring it out. Undoubtedly that hurt him and his side of the case. The school officials in both districts, Starkville and Columbus, believed that black teachers who had been considered acceptable when teaching the black students were insufficiently educated to teach white students. The situation was difficult because of the segregated circumstances in which those teachers had been educated and the low expectations that had been the rule for black students and their teachers. So the problems were real, but terminating the blacks was not the answer. Thomas Tubb who defended Starkville was in most every way a gentleman. He was highly regarded in the
community. He may have been one of the trustees of the University of Mississippi at the time of the dispute over registration of James Meredith. I’m sure that he had deep roots in the segregation that was part of the life of his community. He was always fair and honorable in the litigation. He said to me once outside of court, “Steve, your position is correct, but we need 20 years to make the change.” Of course, by then that was 16 or 17 years after Brown. Now it’s 51 years after Brown. One can recognize that change has been very hard across the whole nation. It struck me that those cases in the heart of Mississippi – presenting them under the Federal Rules to Judge Orma Smith and to the Fifth Circuit – were really a measure of rule of law at work. It was a great example that southern school districts, Starkville and Columbus, had their full day in court and couldn’t sustain their positions. The Court ruled, the appeal took place, the teachers were retained and grew in their jobs. Judge Smith was fair, orderly, impressive. At one point we were presenting part of the case to him in Greenville, Mississippi, and I brought my son Roger who was born in 1959, so he was 12 or 13. He commented that Judge Smith looked very “judgy.” It was fascinating because the federal judges rode circuit. The district court in Greenville wasn’t Judge Smith’s home court. He was staying at the same motel where we were staying. He would eat with his clerk in the same dining room. I would have no exchanges with him, but I would see him, and often my opposing lawyer would be there as well. Those were very hard-fought cases, but I considered counsel on the opposite side to have been honorable. The discovery
was hard fought, and it was often difficult extracting documents from the school districts, but the system worked, and we were able to make our record.

I haven’t said much about the Columbus case. Columbus was still rural, but more urban than Starkville, and the Columbus District was more cagey in choosing the National Teachers Examination in its efforts to avoid black teachers teaching white students. Unlike the Graduate Record Examination, the NTE was created to qualify teachers, but new teachers, not experienced teachers. I deposed Superintendent Goolsby, who had come up as an athletic coach and had a lot of executive ability. I respected him. He made a good witness for his side. Our group of teachers, they were equally impressive. The plaintiffs in the Columbus case were all black. Once the NTE score impediment to continued employment was removed, the School District proceeded against one of our clients on disciplinary grounds that Richard Sharp, my Shea & Gardner co-counsel, and I believed were trumped up. We had a whole separate litigation defending that teacher’s right to retain her employment and succeeded in that.

The litigations turned on the efforts we made on behalf of those teachers in each district to discover the facts through depositions, discovery of documents, and use of the ETS experts. That was the fabric of the two cases. Each case was presented to the court on hearings on preliminary injunction in live testimony and submission of documents and depositions, followed by post-hearing briefs, and then oral argument. I remember crafting an order on the second floor of a non-air conditioned federal courthouse somewhere in rural Mississippi with Richard
Sharp. We were trying to draft an appropriate remedy for the orderly desegregation of the faculty and administrators without use of the standardized tests. I was deeply invested in those cases and issues respecting the proper uses of employment tests. Later, I commented on and participated in efforts of the civil rights organizations to get the EEOC to draft proper testing guidelines.

Ms. Garrett: What role did you have in that?

Mr. Pollak: The EEOC was drafting guidelines and put them out for comment. Through the National Lawyers Committee for Civil Rights Under Law, with which I was active following my departure from Justice, we commented on those guidelines. I thought that ultimately EEOC adopted a good set of guidelines. More recently, EEOC has been backing away and watering them down. I found the issue of test validation a challenging one. I never thought that the ETS was other than in good faith in trying to have tests that were not discriminatory. I think ETS made great efforts to protect against discrimination in its tests. I doubted that they were able to be successful because of the carryover of discrimination against the Blacks in education and in the separateness of their society. I’ve never had the feeling that court processes went the last mile in assuring that Blacks were not disadvantaged by those standardized tests.

Ms. Garrett: What more do you think the court could have done?

Mr. Pollak: I’m doubtful that there was more for the court to do. It was up to the parties and particularly on the civil rights side to present up records that could demonstrate that even if unintended, the tests had a discriminatory effect, but that proof was
difficult and complex. And ETS – I remember in the South Carolina case – had a
great big notebook supporting its claims to validation, which we challenged
unsuccessfully.

Ms. Garrett: I want to explore the same avenues with the UMWA Funds; the people who are
involved and your relationships with them.

Mr. Pollak: One of the mistakes people often make is to believe that the Funds are an arm of
the United Mine Workers of America, the Union. They are not. The Funds are
trusteed, independent funds which, commencing in 1974, are regulated by ERISA.
I found from the very first in representing the Mine Funds that they were always
run in a financially open and honest way. There had been earlier challenges to the
predecessor fund that was set up originally in an agreement between John L.
Lewis who was the historically renowned chief of the United Mine Workers
Union, and Secretary of Interior Julius Krug, called the Krug-Lewis Agreement in
1946. Krug was involved because President Roosevelt had seized the mines
during World War II because of work stoppages by the UMWA. The earlier
UMWA Welfare and Retirement Fund of 1950, so called, had been trusteed, but
two of the three trustees were named by John L. Lewis. The trust then may have
been more an arm of the Union, or at least under the domination of the Union, but
I have no firsthand knowledge. As I knew it, the Funds were independent of labor
and management.

There was a major challenge to the practices of the Fund in the early
1970s in the Blankenship case presented before Judge Gesell. Those challenging
the way the Fund was conducted were represented by Harry Huge, who later became chair of the Board of Trustees. Judge Gesell ruled in Blankenship that certain practices of the Fund were unlawful. He asked that Paul Dean, who had been Dean of the Georgetown Law School, be named as the independent trustee. Paul Dean was named, and continued to serve from Blankenship which was in the late 1960s, early 1970s, through 1992 or thereabouts. Paul, my client as one of the Trustees, was always independent of mind in handling his responsibilities. He was joined for a long time by Chair Harry Huge, who was named by the Union as a Union-appointed Trustee, and there were several different Trustees named over the years by the coal companies signatory to the Coal Wage Agreement. One of the later ones was William Miller who was a vice president or senior vice president of United States Steel. I must have known maybe 10 or 12 different trustees, some named by the Union, some named by management, the Bituminous Coal Operators Association, and all during that time Paul Dean carried on. Generally there were two Union-appointed and two operator-appointed Trustees, plus Professor Dean, Dean Dean as he was sometimes called. Of course, I dealt with the Trustees, but mostly I dealt with the Funds General Counsel and sometimes the Executive Director. There was a succession of general counsels starting with Ian Lanoff whom I’ve named, Henry Ruth, and coming down to the modern era in which the longest serving general counsel, David Allen, has been General Counsel now for some 16 years.
The Trustees have never engaged in collective bargaining, which, until the Combined Benefit Fund was established by Congress in 1992, determined what the guidelines were for the Trusts, the Pension Trusts, and the Health Benefit Trusts. However, issues between labor and management sometimes intruded on the decisions the Trustees were called upon to make. Their obligation under ERISA was to serve only the interests of the beneficiaries, not the interests of the settlors who appointed them. Sometimes what will serve the beneficiaries is viewed differently by labor and management. So the issues on which I’ve represented the Funds in litigation have often required presentations to the Trustees and their guidance on policy issues that come up. I like to think the Trustees always thought they got the best advice we could give them based on our understanding of the facts and the law.

My longest running and closest partner with whom I shared the Mine Funds representation was Wendy White, who is an outstanding attorney and now the Senior Vice President and General Counsel of the University of Pennsylvania. We had a long litigation over whether per-ton royalty contributions were required on moisture included in coal: as the Eleventh Circuit said in *A.J. Taft Coal Co. v. Connors*, whether coal means coal or coal means coal including moisture.\(^6\) That issue was raised in litigation in Alabama which was a favorite jurisdiction for the mine operators. In the first moisture case brought by Taft Coal, Wendy acted as lead counsel and I assisted her, we lost before Judge James Hancock of the U.S.

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\(^6\) 906 F.2d 539 (1990).
District Court for the Northern District of Alabama who said coal is coal, not moisture, citing the dictionary. We argued that it meant something else based on the collective bargaining agreement, but we were unsuccessful and the case went to the Court of Appeals for the Eleventh Circuit, which affirmed Judge Hancock. We litigated the same issue in Washington and prevailed and ultimately settled most moisture cases favorably to the Funds.

Ms. Garrett: I think that my questions in this area are done, unless you had more issues you wanted to get into about the people involved in the Funds.

Mr. Pollak: The Mine Funds are authorized under ERISA to sue in the jurisdiction of their headquarters. We uniformly brought claims for delinquent contributions based on purchased coal in the District Court for the District of Columbia. I litigated these cases before Judge Gesell, Judge Harold Greene, Judge Joyce Hens Green, Judge Flannery, Judge June Green, Judge Stanley Harris, and possibly others. Often there was a race to the courthouse. I litigated the Ohio Valley case before Judge Graham in the Southern District of Ohio, a very fair, outstanding judge – maybe I’m influenced by the fact that he ruled in our favor on the merits of our contentions.

Ms. Garrett: Okay. Why don’t we conclude here then?

Mr. Pollak: Thank you.
Mr. Schultz: Steve, in the last interview, you talked about the beginnings of your private practice and your representation of the NEA and the Mine Workers Fund, and so I’d like to start this interview by asking you about your representation of the International Ladies Garment Workers Union. Maybe we should start with you telling us how that came about.

Mr. Pollak: It leads me to say right at the outset that the most significant relationships for me in producing law cases and matters and clients was my service in the United States Government. The National Education Association came to me because of David Rubin, who was in the Appellate Section of the Civil Rights Division. The Trustees of the UMWA Health & Retirement Funds came because of a graduate of the law school at Washington University in St. Louis I hired into the Civil Rights Division, Monica Gallagher.

The representation of the Garment Workers came as a result of my relationship with John Doar who was head of the Civil Rights Division when I served as First Assistant. John was head of a small firm at that time in New York City and was retained to represent the Garment Workers in an alleged violent strike matter, allegations that the Union representing workers at the
Kellwood Plant in Kentucky had engaged in a violent strike in violation of the law. John was representing the Union. He asked me and a paralegal who had been in the Civil Rights Division with us, Dorothy Landsberg, to work with him. So we helped prepare the case, going to Kentucky and interviewing workers and collecting documents, all with John Doar and the general counsel of the ILGWU Max Zimny. Ultimately, the allegations respecting the violent strike were resolved without trial. Thereafter, President Reagan was inaugurated, and his administration sought to repeal regulations implementing the Fair Labor Standards Act that proscribed homework in the needle trades. The reason for the regulations, which were issued originally in 1935, was the conclusion then that piecework at home in the needle trades by women working at their sewing machines would, as an economic matter, be in violation of the Fair Labor Standards Act by paying wages that were below the minimum wage and by not paying overtime for extra hours worked. Those regulations had endured from 1935 to 1980. With the movement for deregulation that was representative of the views of President Reagan, the Labor Department issued a notice of proposed rulemaking to repeal the regulations proscribing homework in the needle trades. A number of related but smaller trades like jewelry work were also the subject of the repeal proposal. The Garment Workers Union was the major interested party. Most of the homeworkers were in the needle trades and their products competed with those produced by members of the Garment Workers Union. The general counsel asked me if I would represent the ILGWU in opposing repeal of the
regulations. I said yes for myself and my firm, Shea & Gardner. I proceeded over several years to use FOIA to ask for and obtain all of the documents underlying the representations made in the notice of proposed rulemaking and then all of the documents that were underlying representations in the outcome of the rulemaking which was of course to adopt the repealer. We drafted comments that drew on all of the factual material that the FOIA requests produced and the factual material undercut the representations in the rulemaking decisions because the factual information demonstrated the necessity of the rules and the vulnerability of homeworkers to below minimum wages and excessive hours without time-and-a-half. After the repeal was adopted, we went to the federal court with an argument that the outcome of this informal rulemaking was arbitrary and capricious in violation of the Administrative Procedure Act because the factual representations and conclusions in the justification statement supporting the repeal were not borne out by the record. We filed 40 volumes of record materials supporting our claims.

Mr. Schultz: Were these mostly comments or other kinds of materials?

Mr. Pollak: There were comments but mostly they were factual materials from the files of the Labor Department that we had obtained by FOIA requests.

Mr. Schultz: Surveys and other kinds of information the Labor Department collected?

Mr. Pollak: Right. And enforcement actions or recommendations for enforcement actions. The standard for reversing an informal rulemaking is very rigorous. There’s a presumption that the agency knows what it’s doing, and we presented our case...
before Judge Louis Oberdorfer, and he ruled that the decision repealing the ban on homework in the eight covered trades was not arbitrary and capricious. We filed an appeal to the United States Court of Appeals for the District of Columbia Circuit in a case styled ILGWU v. Donovan, Secretary of Labor Donovan, and brought to bear this factual record that we had made. I argued the case before a panel of Judges Wright, Edwards and McGowan. The court, in an extensive opinion by Judge Edwards, 722 F.2d 795 (1983) (76 comprehensive footnotes), reversed the decision below, held that the informal rule making rescinding the restrictions on homework was arbitrary and capricious, and issued instructions to send the matter back to the District Court which in turn placed it back before the Labor Department. There were extensive further proceedings. The commitment to deregulate died hard. Ultimately, deregulation occurred in some of the lesser trades, but the proscription of homework in the needle trades survived.

Mr. Schultz: That’s a tremendous victory.

Mr. Pollak: The outcome was successful. The case provided me with a fascinating opportunity to look at the ILGWU, one of the nation’s most venerated and venerable labor organizations, to work first with president Sol Chaikin, who was quite a leader in the labor movement, and then with his successor, Jay Mazur. There were hearings on the Hill about the subject, and I counseled the labor movement on its presentation. I have a photo of General Counsel Zimny and me testifying. So it was a real opportunity to serve as a lawyer for the labor movement which was one of the few opportunities in that vein that I had.
Mr. Schultz: Did you do any other work for the Garment Workers?

Mr. Pollak: I don’t believe that I did. This representation took years, up to the Court of Appeals down, more proceedings. I think ultimately we went back to Judge Oberdorfer with a complaint that the federal government, the Labor Department, was not heeding the remand order in conducting further proceedings. I recall that that effort was successful. The requirements for further rulemaking were enforced by the federal court.

Mr. Schultz: That’s terrific. The next matter I want to ask you about is a project I understand Secretary Califano enlisted you on regarding regulations enforcing the disability rights laws. Why don’t we start with my asking you how that came about.

Mr. Pollak: When President Carter came to office and named Joseph Califano to be Secretary of Health, Education & Welfare, the Secretary found on his desk a set of regulations implementing Section 504 of a statute that had been adopted by the Congress proscribing discrimination against the handicapped. That statute was Section 504 of the Rehabilitation Act of 1973, and of course President Carter came in in 1976, so during the years since the statute had been on the books, there had been proceedings before the Secretary of Health Education & Welfare developing regulations, but the Secretary had been unwilling to adopt the regulations which had essentially been completed, so they remained in front of Secretary Califano and the Carter administration. Well as you can expect, the Secretary had a million things on his desk and was assembling staff and I had worked with Joe Califano when I served President Johnson in 1967 so he asked
me if I would undertake to review the draft regulations to draw on my background in civil rights and other background and recommend to him a set of regulations which would appropriately implement Section 504.

Mr. Schultz: Was this pro bono or was this paid work?

Mr. Pollak: It was paying work. My recollection is we may have charged something less than our regular rates as a public service matter, but it was paying work.

Mr. Schultz: Tell me your recollections of Secretary Califano.

Mr. Pollak: Well, I knew him and worked closely with him when I served President Johnson as White House staff. He was Johnson’s Domestic Policy Chief and I was the President’s Advisor for the National Capital Affairs which was a domestic field, of course. I often related to Joe in addressing various issues. My recollection of him is that he was a very effective assistant to President Johnson, that he had a very close relationship with President Johnson, that he was in command of the fields assigned to him, that he dealt on the merits with the matters which brought me in contact with him, that he was both personable and able to be brusque and throw his weight around. I thought he respected competence, and my assessment of the responsibilities that were assigned to me was that I was handling them competently and he relied heavily on my performance. I had first met him when Attorney General Ramsey Clark was head of a cabinet task force to assemble a human relations legislative program for the new Congress for President Johnson, the Congress entering in 1967. I had been the working head of that task force, and I made what I would call a full report recommending 50 or 60 different
human relations possibilities for the President to consider for his domestic
program. I’m sure that was where Califano came to know me. In any event, I
remember meeting a couple of times on the handicap regs as we called them with
Califano as I called him, and my memory is that he said look, I’ve got these
regulations, I want to issue them, I want them to be the right regulations, I want
them to be effective, I want them to be sensible, and I want you to bring me an
appropriate set. It was the handicap community, disability community, I think
that’s the term now used – heads of organizations of deaf persons, heads of
organizations of people in wheelchairs, heads of organizations people with other
disabilities – they were all assembling to pressure Secretary Califano and the
Carter Administration to get these regulations issued. They had various positions
that they wanted reflected in the regs, and I remember believing that my
responsibility was to serve up to Secretary Califano regulations that were the most
appropriate regulations that would implement the statutory purpose and to identify
for him issues that the disability community might be pressing where the draft
regulations that I was proposing didn’t do just exactly what they wanted and to
explain to him why, so that he could decide a range of issues as to the coverage of
the regs. I think that the regulations he issued stood the test of time. There came
later a full statute protecting disability rights which drew heavily on the
regulations and enacted them into statutory law. The amazing thing about
Section 504 which was perhaps six or so lines long was that it proscribed
discrimination on account of disability. It was very constitutional in nature. The
later statute went on very extensively in identifying particular acts of
discrimination in particular fields that were proscribed. The earlier statute
especially did the same thing but did it by saying there shall be no discrimination
on account of disability. Drafting the regulations was a very rewarding
assignment to be asked to perform.

Mr. Schultz: Did you meet with outside groups?

Mr. Pollak: The Secretary or his staff probably did so. I recall speaking with my long-time
friend and neighbor Ginny Stern, head of the AAAS Project on Science,
Technology and Disability, who was extremely knowledgeable about the needs of
persons with disabilities, particularly the deaf. I remember relating to top aides of
Secretary Califano, including his special assistant, Ben Heineman, and another
aide, Richard Beatty, who went on to be a major figure in a New York law firm.
We had a good working relationship with them. I think I was advantaged in
performing the function because Califano knew my method of working and
conveyed that to his special assistants. I had good people at Shea & Gardner
working with me, Wendy White and Bill Gateota were two of them.

Mr. Schultz: How did you go about this? Did you review the comments or materials they gave
you?

Mr. Pollak: Yes. We reviewed the full record that was before the prior secretary and the draft
regulations and reviewed positions that were being urged by the disability rights
groups in time present. There could have been new submissions to Califano after
he took office. I think the work was done on the record, our work – Shea &
Gardner’s work – was done on the record that had been made before the Republican Administration that was going out.

Mr. Schultz: Did you produce a written product?

Mr. Pollak: We produced a whole set of regulations and supporting memoranda that we then transmitted to the Secretary.

Mr. Schultz: Did you make a presentation to them?

Mr. Pollak: I’m sure we did. The Secretary seems to have issued the regs in April 1977, April 28, 1977. Secretary Califano undoubtedly took office some time in January of 1977, and we worked for a couple of months and put out the regulations. Today, a Secretary wouldn’t even be confirmed by then.

Mr. Schultz: Right. That’s pretty quick work.

Mr. Pollak: I had two other assignments relating to disability. I undertook representation in the Supreme Court of a man named Walter Camenisch. He was deaf, and he was a graduate student at the University of Texas at Austin. He had asked for a signing person to be present in his classes and said he had a right under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, to the sign language interpreter. That was denied to him, and he brought a lawsuit that ultimately wended its way to the Supreme Court. I represented him pro bono in the Supreme Court and worked with the National Association of the Deaf Legal Defense Fund and the Mental Health Law Project in doing so. I argued that case before the Court. Unfortunately, the Court was constricting the scope of private rights of action inferred from federal statutes which did not expressly provide
such a right. As a tactical matter, we felt constrained to limit our substantive position on the reach of the federal statute and regulations in order not to risk a restrictive decision on whether Camenisch had any right at all to sue. We survived without an adverse decision, but we were not able to obtain a ruling upholding the protections of deaf students afforded by Section 504. The Court, in an opinion by Justice Stewart, held the question whether the preliminary injunction ordering the University to supply the interpreter was moot because its terms had been fully complied with; vacated the decision below in favor of Camenisch, and remained for trial on the issue of who should pay for the interpreter. The majority opinion did not discuss the private right of action question. 451 U.S. 390 (1981).

The other representation in the disability rights area is this: There came to me some clients, two different sets of clients, who were dyslexic and needed some additional time to take the Law Aptitude Test. It was in the very early stages of that issue being presented and resolved by the testing companies, and there was a great sensitivity by the testing company, not inappropriately, to avoid giving undue advantage to students with a disability as against students who had to meet all the requirements. On the other hand, there was a willingness, if the case was made, for dispensation to be given. I had two of those students, or applicants, as clients. I remember dealing with John Wodach who was head of the Disability Rights Section of the Civil Rights Division. They were very pressured representations because the date of the exam was pressing, pressing, pressing,
we were rushing to get the matter resolved so my clients could take the test. I’ve always been surprised at the vagaries of practice because I was there at the creation of these regs and really had quite a foundation, but I never developed a disability rights practice other than those three representations.

Mr. Schultz: What happened in the representations?

Mr. Pollak: We were successful, and the students took the examination with a dispensation and went on to gain admission to law school. By the time admission came, at least in one case the individual decided not to study law. But they did take the test with a dispensation.

Mr. Schultz: Did you go to court?

Mr. Pollak: In one case we brought a lawsuit, which was filed in the United States District Court in Greenbelt, Maryland, seeking a preliminary injunction. The lawsuit was against the testing company, ETS. ETS was very reluctant to risk a litigated decision, and we were able to work out a favorable settlement.

Mr. Schultz: That area has really developed.

Mr. Pollak: It has, much, I think, to the advantage of the nation because members of the disability community are getting jobs, getting educations. People that have great potential are being productive. There have been a lot of advances and certainly a great enlightenment of the nation as to people with disabilities.

Mr. Schultz: And a lot of it due to lawyers.

Mr. Pollak: I think so. A lot of it due to the rule of law, which has been a big concern of mine throughout my practice and life.
Mr. Schultz: Is there any other work in the civil rights area in private practice that comes to mind?

Mr. Pollak: I’m a mediator on the Panels of the United States District Court and the U.S. Court of Appeals here in the District of Columbia, and I’ve had mediations involving civil rights charges of employment discrimination particularly.

I had some early representations of counties that wanted to bail out of coverage of the Voting Rights Act of 1965. I recall representing the County of Honolulu, Hawaii and El Paso County, Colorado. Each county was covered by the statutory formula, and we made presentations to the Justice Department and the U.S. District Court here establishing their right to be released from coverage. My recollection is that we were successful in relieving Honolulu and El Paso of the obligations to comply with the special requirements of the Voting Rights Act. To secure release, the counties had to demonstrate the negative, that is, that they had not engaged in any conduct violative of the protections against discrimination in voting. Note that bailout has now become a major matter in light of the recent *Northwest Austin Municipal Utilities District No. 1 v. Holder* [557 U.S. 193 (2009)] decision, which was a constitutional challenge to Section 5 of the Voting Rights Act where the Supreme Court didn’t reach the constitutional issue but said that the Act gave the Utility District a right to bail out if it could prove it met the statutory requirements.

Mr. Schultz: This is Judge Tatel’s decision?
Mr. Pollak: It’s Judge Tatel’s May 30, 2008 decision for the three-judge United States District Court for the District of Columbia, 573 F. Supp.2d 221, which was reviewed by the Supreme Court and decided in an opinion of Chief Justice Roberts.

Mr. Schultz: Let’s turn to antitrust. I gather one of the biggest matters you handled was the Pinney Dock case, so why don’t you tell us how that came about and what it involved.

Mr. Pollak: When I worked at Covington & Burling with Gerhard Gesell, I worked on several antitrust cases. It was that antitrust background that led to my first retention by the Trustees of the UMWA Health and Retirement Funds to represent the Funds against charges by Webster Hospital that limitations on hospitals participating in the health plan of the Trust were an antitrust boycott. So I’ve always considered myself versed in antitrust law. In the later years of my practice, I had the Pinney Dock case and two assignments from the United States District Court for the District of Columbia in antitrust cases.

United States District Judge Harold Greene appointed me an amicus to advise the Court in a case in about 1984. Laker Airlines had brought an antitrust action in the United States courts against Pan American World Airways and other airlines alleging antitrust violations. These were allegations respecting international carriage and two British airlines went into the court in Britain and sought a preliminary injunction against Laker proceeding against them in the United States action. The British court issued the preliminary injunction against the proceeding which was before Judge Harold Greene. Laker of course was
precluded from presenting any matters to Judge Greene. Judge Greene wondered how to proceed, whether he should honor the injunction of the British court, whether his duties under the antitrust laws in the United States called for him to go forward, and he appointed me an amicus to advise him on what to do. So primarily my service to Judge Greene, as to which I was assisted at Shea & Gardner by partners John Rich, Tim Shuba, and Frank Kramer, was to review matters of comity, international law, and interrelationships between courts in preliminary injunction issues. We issued a lengthy report to Judge Greene that was published in the International Business and Trade Law Reporter in its November 1985 issue, about 100 pages. Judge Greene had considered proceeding contrary to the injunction. Our counsel was to await an imminent ruling of the British courts, and in the end, the British courts took down the injunction and the matter went away. That was a very interesting assignment, posing great issues respecting the rule of law in relationships between courts of different nations. I recall that we determined that we would not have relationships off the record with Judge Greene, so that the parties to the litigation need not feel that matters that came to our attention in receiving submissions from the parties on the issue presented to us would then become influential on the Court which was ultimately to deal with the merits of the matter. That I think worked out well. Upon getting the assignment from the Court, before we knew anything about the facts of the matter, my memory is that Judge Greene was very restive at being under a preliminary injunction from a foreign court that precluded a party from presenting
to him matters, facts, about carriers that were allegedly operating in violation of
the United States antitrust laws.

Mr. Schultz: Was this pro bono?
Mr. Pollak: No.
Mr. Schultz: How were you paid?
Mr. Pollak: In this International Business & Trade Reporter, we wrote a little introduction at
the invitation of the Reporter that talked about our report which they then
published in full. In that document, we reported that there was a great interest
that people had in whether we were paid. We spoke to that issue and I have to
look at the document which is in front of me. We said in this introduction,
“Although we had undertaken the assignment without any understanding
whatsoever about the availability of compensation, the law in the District of
Columbia was clear: ‘the traditional rule regarding compensation of an amicus
curiae is that ‘where the court appoints an amicus curiae who renders services
which prove beneficial to a solution of the questions presented, the court may
properly award compensation and direct it to be paid by the party responsible for
the situation that prompted the court to make the appointment,’” citing cases. So
we filed a petition for compensation from the parties. We didn’t specify what the
compensation should be. The matter was settled with the defendants that were
directly the beneficiaries of the British court’s injunction, British Airways and
British Caledonian, Lufthansa and Swiss Air. So we were paid something.

Now if you want, I can speak about the Pinney Dock case.
Mr. Schultz: Before you do, tell me about Harold Greene.

Mr. Pollak: Harold Greene had been the Chief of the Appellate Section, called the Appeals and Research Section, of the Civil Rights Division. I was not in the division at the time of the drafting of the Civil Rights Act of 1964 or the initial drafting of the Voting Rights Act of 1965, but I have been greatly concerned with those statutes and had a role in the ultimate drafting of the Mansfield-Dirksen Compromise, which became the Voting Rights Act. My firm understanding is that those bills were in the major part drafted in the Civil Rights Division and that Harold Greene was the major drafter.

I joined the Division in March of 1965 and Harold was at that time the head of the Appeals and Research Section. He was soon to be named by President Johnson to the then-local trial court called the Court of General Sessions. I came to know him well while he remained in the division where I began serving as First Assistant to the Assistant Attorney General and then became close to him in his service as Chief Judge of the Court of General Sessions, and after 1972, Chief Judge of the Superior Court of the District of Columbia. Particularly, I related to him when I served President Johnson as his Advisor for National Capital Affairs. Also, I had at least one case in front of him for the UMWA Health & Retirement Funds when he was a federal District Court judge. I considered him both a professional and a close personal friend, along with his wife Evelyn. Recently, as President of the Historical Society, I facilitated for the family the gift of Judge Greene’s papers to the Library of Congress.
Judge Greene loved being a judge. My recollections about him are most fully set out in time present because I spoke at the time his portrait was hung at the Court. I will attach my remarks.

Mr. Schultz: Yes, that would be a good idea.

Mr. Pollak: I may have spoken on another occasion about him. In a short capsule, he loved being a judge, he loved the law. He suffered fools not well. He was constantly challenged by, and wanted to be constantly challenged by, the cases presented to him. He was very effective in acting as a trial judge and was a good administrator. He had always a twinkle in his eyes and liked to see the humorous side of life. He was very enjoyable to be with.

Mr. Schultz: When you say he liked the humorous side of life, do you have examples?

Mr. Pollak: He had a strong ego but would make self-deprecating humorous remarks about himself, noting his own personal foibles. Whenever I would call him “Judge,” he would always call me “General,” as in Assistant Attorney General. He called for all the formalities in his courtroom, but otherwise, on a personal basis, he wasn’t at all stuffy. The best story I think is in one of these remarks that I made about him: When he had just gone on the bench of the Court of General Sessions, I went to lunch with him and he told me that he had a run-of-the-mine landlord/tenant case that had come to him, and he said that he thought there were fundamental issues presented by the claim of the landlord to evict the tenants, where the tenant was presenting defenses or seeking to present defenses about the compliance of the landlord with the Housing Code. Judge Greene said that he
was going to treat these issues fully and seek to address the legal issues in a full manner, and he published then, I believe, a 22-page opinion, *Edwards v. Habib*. The decision was reviewed by the D.C. Circuit. *See* 366 F.2d 628 (1965).

Mr. Schultz: It’s a huge case.

Mr. Pollak: It has rocketed down all the years. And that was in his first year on the bench. If a matter was on his docket, he was going to get to the heart of it.

Mr. Schultz: He didn’t take anything for granted?

Mr. Pollak: No.

Mr. Schultz: That’s amazing. Okay, so let’s talk about the *Pinney Dock* case. How did that come about?

Mr. Pollak: *Pinney Dock* was a dock company on what’s called the Lower Lake Erie. It received iron ore vessels that brought iron ore pellets from the upper Lake Superior iron ore mines down to the Lake Erie docks for offloading and movement by rail cars to the steel mills in the Pittsburgh area. The railroads and the dock companies were related because the dock companies had ore to ship and had to pay the rates the railroads charged. The railroads were regulated and enjoyed exceptions from the antitrust laws for rates for cartage of the ore that were reviewed by the supervising ICC authority. Pinney Dock alleged – as did the steel companies as well – that the railroads had colluded in violation of the antitrust laws in setting the rates for movement of ore, and the railroads defended on the ground that their behavior was fully authorized by the exemptions that were part of the rate-making structure. John Doar, my colleague in the Civil
Rights Division, was retained by CSX, one of the major carriers of the iron ore, to
defend it from complaints by dock companies and steel companies for treble
damages stemming from the alleged unlawful collusion among the ore-carrying
railroads over rates. He needed assistance, so he came to Shea & Gardner and
particularly to Dorothy Landsberg, who had been a colleague of his in the
Division who was a paralegal at the firm, and to me to join him and to bring the
resources of Shea & Gardner to the defense of CSX. All the ore-carrying
railroads were defendants in the case. It was a great big case, a gigantic case in
which there were many, many depositions. The cases were filed in the late 1970s.
In order to defend the charges, we had to go back and find facts running back into
the 1950s and pursue thousands of documents and talk to aging railroad
executives who had come up from being clerks on the railroads. We had to learn
all of the economics of movement of ore. CSX was headquartered in Cleveland.
The case was pending in the United States District Court in Cleveland, and we at
Shea & Gardner with Doar engaged in a long case preparation focused on
developing a defense. Bessemer & Lake Erie Railroad was a defendant,
represented by former Antitrust Division Section Chief Ken Anderson. Laurence
Shiekman from Philadelphia’s Pepper Hamilton firm represented another
defendant railroad. There were outstanding antitrust lawyers in the group. CSX
wanted John Doar to represent it in both the pending criminal and civil
proceedings. John said that it would be more than he could handle to do both so
Don Flexner of Crowell & Moring was retained to represent the company in the
criminal case. Ultimately, with John in the lead, CSX made a favorable settlement of Pinney Dock’s civil case. All the railroads but the Bessemer & Lake Erie settled. Anderson went to trial, and the verdict was against the Bessemer. The treble damage award was in nine figures.

Mr. Schultz: What was the argument. Given that these were regulated rates, that the companies had somehow manipulated the rates?

Mr. Pollak: That the ambit of the protections flowing from rate regulation by the ICC was not as broad as the discussions between the companies reflected.

Mr. Schultz: So there’s evidence of discussions?

Mr. Pollak: My recollection, and it has been a while, is that the railroad representatives had no consciousness that they were doing anything wrong because they were operating in a climate where they were regulated and their rates were regulated and they thought nothing of discussing the rates. So there were limitations. The evidence was presented challenging the rates because of the discussions. The claims reflected a change in the understandings, a look at events of the 1950s through a prism of the later 1970s.

Mr. Schultz: Right. So this was the Carter Justice Department throughout the criminal case?

Mr. Pollak: I think so. There are a large number of people at Shea & Gardner who worked on the case, it was so big. In the appellate proceedings, our team was led by Dick Conway who was an outstanding appellate lawyer here at Shea & Gardner. There were large multi-law firm efforts to consolidate the briefings. Ultimately certiorari was sought in the Supreme Court. I don’t think the Supreme Court
reviewed the appellate decision that limited the protections of the railroads and brought about the settlements.

Mr. Schultz: Tell me about John Doar.

Mr. Pollak: John was a great leader of the Civil Rights Division. I’ve spoken about him earlier in this oral history and do not want to repeat myself. Here is one thing I may not have said, because it may not have taken place. John had the highest confidence of the courts before whom he appeared, particularly United States District Judge Frank M. Johnson, Jr. of the Middle District of Alabama and the outstanding appellate judges of the Fifth Circuit who issued courageously the civil rights rulings of that era about voting and schools, Judges Brown, Wisdom, Rives, and Tuttle particularly.

I’m active with the Civil Rights Division Association, an organization of division alumni primarily of the 1960s and 1970s. We put on a symposium at the FBI auditorium and brought Judge Wisdom up. Of course he reflected on the cases brought by the Civil Rights Division in the 1960s. John was there, and Judge Wisdom expressed his high regard for John Doar and for the role John played.

Mr. Schultz: When he left the Justice Department, John went out on his own?

Mr. Pollak: John left the Department to become the President and Director of a project of Robert Kennedy in the Bedford-Stuyvesant community in New York. He did that for a while and if memory serves me, he was at one time for a period head of the Public School Board in Manhattan. John was then retained by the House
Judiciary Committee majority as counsel responsible for the proceedings respecting impeachment of President Nixon. He practiced with the Donovan Leisure firm in large-case practice, antitrust practice. John’s integrity was absolutely as high as anyone I ever practiced with. Subsequent to that time, the Eleventh Circuit retained John to represent the full Court in reviewing allegations of misconduct relating to Federal District Judge Alcee Hastings on the District Court in Florida. John performed that responsibility in his usual outstanding fashion. John continued practicing in his own firm which originally was known as Doar, Dvorkin & Rieck. Mike Dvorkin had been a law clerk for Judge Gesell.

Mr. Schultz: Very interesting. Okay, so there were a number of interesting investigations.

Mr. Pollak: Right. Do you think we’ve done enough for one day?

Mr. Schultz: Okay. Why don’t we stop here.
Mr. Schultz: Steve, I understand that during the Carter Administration you represented some public figures tied to the Administration, Hamilton Jordan and Billy Carter, and later, the 1984 vice-presidential candidate Geraldine Ferraro and her husband. I would like to talk to you about all of those. Maybe I’ll start by asking you how was it do you think that they came to you for these very important representations?

Mr. Pollak: Bill, there really was no “they” because in each instance, the client came in perhaps related but in different ways. The representation of Hamilton Jordan, who was chief of staff to President Carter, and Jody Powell, who was Director of Communications, arose as a result of Lloyd Cutler who was at that time Counsel to President Carter in the White House. On one Friday in August, when on Saturday I was leaving with my family for a vacation in Kitty Hawk, North Carolina, I received a call from Lloyd Cutler advising me that Hamilton Jordan and Jody Powell, neither of whom I knew, had a need for counsel and would I take a call from Hamilton. I said I certainly would.

Mr. Schultz: Let me just stop you – how did you know Lloyd Cutler?
Mr. Pollak: I knew Lloyd Cutler from the time I came to Washington in 1955 or 1956 to interview with law firms seeking a job on graduation from Yale in 1956, and I interviewed at a Yale firm, as I saw it, called Cox, Langford, Stoddard, and Cutler. It was nine people, nine lawyers. Lou Oberdorfer was a partner. And I met Lloyd, he interviewed me. They did not offer me a job. They hired Sam Stern, who was clerking for Chief Justice Warren, finishing a clerkship for Warren, and I joined Covington & Burling. Subsequently, I had known Lloyd at somewhat of a distance through Yale Law contacts because he had gone to Yale, and he and Gerry Gesell, with whom I worked at Covington, were friends, and I came across him in that connection. When I was head of the Civil Rights Division, Lloyd had public assignments. He was Executive Director of the National Commission on the Causes and Prevention of Violence established in 1968 by President Johnson, and I related some to him in his role there. I don’t think we had ever shared a representation or that I had ever been on a case with him. My perception was that he couldn’t invite members of his own former law firm, and I was a candidate. In any event, I was flattered by his inquiry.

Hamilton called me, and he just said, “Jody and I have a need for a lawyer, would you come over to the White House and talk to us?” So I went to the White House. I brought along Henry Ruth, who at my urging had earlier been made a partner at Shea & Gardner. He had been general counsel for a client of mine, the Trustees of the United Mine Workers of America Health & Retirement
Funds, and had been an Independent Counsel in connection with Watergate.

Henry had criminal experience.

Mr. Schultz: So you knew it was a criminal-type matter?

Mr. Pollak: I knew that much, yes. We learned, as the newspapers reported, that two defendants who had been convicted but not sentenced in a tax-skimming case, who owned and ran Studio 54 in New York and who were represented by Roy Cohn, had --

Mr. Schultz: Tell us who Roy Cohn is.

Mr. Pollak: Roy Cohn was a famous, or infamous, attorney who had been counsel for Senator Joseph McCarthy during his investigations and had a flamboyant and unsavory reputation. Apparently the Department of Justice had told these defendants – one was Steve Rubell – that if they could offer up some significant persons who had used drugs at Studio 54, they might get a lighter sentence. They had reported to the Department that Hamilton Jordan and Jody Powell had been there and snorted cocaine. That was at least my understanding. A statute that existed at that time provided that if a high-government official was alleged to have committed a crime, the Attorney General was to name an independent counsel to investigate the allegations and bring formal charges if the facts warranted. The independent counsel – called a “special prosecutor” – had been named, Arthur H. Cristy, a highly regarded New York lawyer. This was the first time the statute has been applied. As the public record revealed, Hamilton and Jody had been in New York City on public business at the time reported, they had visited
Studio 54, but they had not snorted cocaine. There would have been an issue for me of representing both persons, but that issue never arose because it turned out that at the asserted time Jody had left Studio 54. It was clear that the defendant persons who named Hamilton and Jody were either confused or had someone else in mind. In any event, any assertion that Jody had done this act fell away. However, the investigation continued as to Hamilton, and I undertook the representation, along with Henry Ruth. I wanted to follow up and get more information. That Friday evening, we went to the White House after 7:30 at night and spent some time there with Jody and Hamilton. I came back the following day on which I was to leave in my car for Kitty Hawk and brought my son Roger and a friend of his with me to the White House. While I was meeting with Hamilton, they were enjoying the White House Mess. I got the facts I wanted and proceeded to leave that day for Kitty Hawk and dealt with the matter (because there were no immediate deadlines requiring my presence for a week or two) by telephone. In any event, it wended its way along, and ultimately the special prosecutor presented the case to the grand jury and the grand jury no billed it. No charges were brought.

Mr. Schultz: How long did that take, from beginning to end?

Mr. Pollak: As I say, that was August. It resolved itself some time after March of the next year, about an eight-to-twelve-month period. I know when it was because, as you Bill Schultz know, I go skiing in Utah in March. It so happened that the date before the grand jury was during the days that I was skiing, so I skied one
morning, took a van down to the Salt Lake City airport and took an afternoon plane to Washington. I slept in my own bed, met Hamilton at the airplane in Washington, we flew to New York, he went before the grand jury, and I took a plane back to Utah at 6:30 that night. I recall dictating into a portable machine on the plane my recall of the day and my client’s report of his appearance before the grand jury. I was skiing the following day. I felt like a jet-setter.

You would have a hard time appreciating the difficulties that these proceedings caused for the President’s chief of staff. Hamilton was directly involved in negotiations to free hostages held by Iran, and Hamilton --

Mr. Schultz: So this is sort of at the end of --

Mr. Pollak: The Carter Administration, yes. And Hamilton, while I was representing him, traveled in a disguise to the Middle East to negotiate for the release of the hostages. He had to schedule these proceedings and interviews by me and the goings on with the special prosecutor in and among all his other duties. That was very dislocating for him. I found that he was very quick of mind and was able to devote himself 100 percent to my needs when called on to do something. It was a very interesting representation.

Mr. Schultz: Tell me more about your impression of both Jody Powell and Hamilton Jordan.

Mr. Pollak: I saw the most of Hamilton and much less of Jody. My impression of Hamilton Jordan was a favorable one. The representation came after the period of time in which he was looked on as kind of a callow youth who happened to have ascended because of his role in the Carter campaign for the presidency to be the
President’s chief of staff. He was easy to deal with. He didn’t stand on ceremony. He got down to business right away. He brought to bear all of his calendar materials, and of course, the chief of staff has a pretty full paper record of where he was when. He was really enjoyable to work with. He kept quite a division between his public duties and the area of work for which I was responsible. I would visit him in the White House, but he didn’t share his public responsibilities with me.

What I’d say about Jody is that he was – both men were very bright and reflected that. They were quick. Jody was a family man, had a wife, children, seemed completely out of character to be somebody who would have done what was alleged. Hamilton was – I can’t recall what his marital status was – but he was a little less of the family creature I saw in Jody. I never doubted that he was innocent of the charges. One other thing that was interesting, and this came up with Billy Carter as well, I felt a responsibility to keep the lines of communication quite clear. The decisions that we made respecting Hamilton, just as decisions we made later respecting Billy Carter, were made independent of anybody who was in the federal government, certainly independent of the President. I thought that was entirely in the interest of my clients and certainly in the interest of the President.

Mr. Schultz: Did you have any contact with the President?

Mr. Pollak: I really didn’t. All that I remember was one incident when I was at the White House in a hallway of the West Wing waiting for Hamilton. Bob Strauss, a
high official for Carter, was there and the President was walking in and out. I was introduced to him, probably by Hamilton. He may have had on a cardigan sweater.

Mr. Schultz: Did the special prosecutor have the authority simply to drop the prosecution, but he decided to take it to the grand jury?

Mr. Pollak: I suppose that he had the authority to drop it, but I suppose he had testimony placing Hamilton at the Studio 54 and the claims of the two defendants that he sniffed cocaine, and so presenting it to the grand jury was understandable. I have no direct knowledge of his reasoning.

Mr. Schultz: Had you had prior experience in criminal law?

Mr. Pollak: I don’t know that I had. I felt perfectly at home doing what I was doing. I had a lot of experience working with facts, and so I was working with facts. I spent a great deal of time on the case as you can imagine. I think there are now rules about private lawyers representing high government officials billing for their time so that there’s no underbilling, but there weren’t any such rules at the time. With my firm’s permission, we reduced our charges quite drastically for this government servant.

Mr. Schultz: Did you have any contact with Hamilton after the Carter Administration left?

Mr. Pollak: I did. Limitedly. He ran for the Senate, you’ll recall. I had arranged with him that while he was in the government he didn’t need to pay my bill, and we arranged for periodic payments over a significant period of time once he left the
government. When he ran for the Senate, I excused him from making further payments while he was running.

Mr. Schultz: Should we talk about Billy Carter?

Mr. Pollak: Yes.

Mr. Schultz: Was this after the Hamilton Jordan representation?

Mr. Pollak: Yes. When somebody is chief of staff to the President, all kinds of people try to ingratiate themselves, so there’s an awful lot of things that come the way of the chief of staff. That seemed evident to me, seeing Hamilton deal with the life that he was leading.

Mr. Schultz: Can you be more specific?

Mr. Pollak: He was making this trip to New York to perform some public business. There were people who wanted to show him a good time, take him around to the very trendy places and be seen with him. This was the outcome. Long hours spent defending himself, large articles in the press, and a whole diversion which certainly we saw.

Mr. Schultz: Were there other examples that you observed, people trying to ingratiate themselves, by giving gifts or that sort of thing?

Mr. Pollak: I couldn’t go around with him in any public space without people stopping and making a fuss. That’s all.

Mr. Schultz: How did he react to that? Some people like it, some people don’t.

Mr. Pollak: He had a Southern manner. He accommodated as if it was expected. I don’t think he sought it out. It didn’t seem to me to go to his head. Early in his career as
chief of staff, which I never observed, I wasn’t on the scene, the public perception was that he acted in unseemly ways because he thought he was a big shot. That had passed by the time I met him.

Mr. Schultz: Billy Carter. How did that representation come to you?

Mr. Pollak: That was different. Billy Carter was not in the government. He got into difficulty because he accepted money from Libya, and the charge was made that he was paid to act for Libya and that he had failed to register as a foreign agent.

Mr. Schultz: Just tell us a little bit about Billy Carter, his background. He was obviously the President’s brother.

Mr. Pollak: Right. He was a younger brother of the President. He was married to a woman named Sybil, they had six children. When the President was elected, and having been Governor of Georgia, Billy Carter was running the family peanut farm in Georgia. The President’s personal lawyer, Charles Kirbo – according to Billy, I never talked about Billy’s case with President Carter, so my knowledge about these matters comes from Billy – in any event, Billy understood that Kirbo informed the President that because the peanut farm received some federal subsidies, Billy couldn’t continue to operate it. So Billy lost his job. My perception is that because of that, or matters related to that, Billy started drinking, and he engaged in certain unflattering behavior as a result of his drinking, including some incident where he arrived at an airport, or he was on a tarmac or something, and he urinated on the tarmac. It was all over the public press. He generally had sort of a clownish reputation, I think as a result of his drinking.
Mr. Schultz: Do you know anything about his relationship with his brother, the President?

Mr. Pollak: I think the President was very fond of him, and was very concerned about him. Attorney General Civiletti, because of the President’s concern, had some concern too because there were some – I think Cutler was still in the White House – inquiries made of me about what we were doing in relation to Billy. My feeling was that the President and his Administration would be best served if we kept our counsel to ourselves and we did. That may have been upsetting to the President, but we never communicated with the Administration up one side or down the other, other than the people who were responsible for the administration of the Foreign Agents Registration statute in the Department of Justice with whom I dealt officially.

Mr. Schultz: Were there attempts by Lloyd Cutler or others in the Administration to communicate with you?

Mr. Pollak: All that was going on was the normal concern of an older brother when the authorities were investigating the younger brother. I was working with Henry Ruth, and we thought the best course that we would take would be to erect an entire wall between us and any high officials of the government.

Mr. Schultz: And they accepted that?

Mr. Pollak: They had to because we didn’t give them any choice. We just said we had no comment.

Billy called and said, “I have a problem.” I think he referenced what we had done for Hamilton and said he’d like to come see us. It was a fascinating,
really fascinating, representation. It had two facets. My conclusion was that he should register as an agent of a foreign government, so we had to get the form that the registration office required. Then we had to fill it out correctly. We had to be certain that we had the facts, and it required a documentation as to how much money had been received and for what. We had to get the right facts for all of that. We made that filing. Then in addition to that, the United States Senate investigated Billy, and we prepared him to testify. I have on my wall here a picture of Henry Ruth and me which says, “Washington, Aug. 21 – BEHIND THE BACK CONFERENCE – Billy Carter’s two lawyers stretch to confer for a moment behind their client’s back as the president’s brother continues his testimony Thursday on Capitol Hill before the Senate Judiciary Subcommittee, which is studying his dealings with Libya.” Then it identifies Henry Ruth and me, and says 1980. I will attach the photo to this oral history.

Mr. Schultz: Right. August 21, so that’s right up to the election.

Mr. Pollak: Exactly. There are three volumes of testimony of Billy that I have in my library. He testified for a lengthy period, and we of course worked with him to prepare him for that. One of the challenges of the representation was that Billy liked to be the center of attention of the press. My instructions to him were that he was not to be talking about the substance of the matters. He was a good client and followed the instructions. Contrary to the public perception, he was very smart. He was in full command of himself by that time, and he was an outstanding client. He performed very well, and he took his lumps based upon mistaken behaviors of the
past. It was a pleasure representing him. One of the highlights occurred the night before his opening testimony before the Senate committee. My wife and I gave a dinner for Billy and Sybil and Billy’s two siblings, other than the President, Ruth, the sister who rode motorcycles and wore beads, and Gloria. They all came for dinner out on the deck behind our house in Cleveland Park. Henry Ruth and his wife were with us. I remember the President’s siblings talking about the President and Rosalynn in a very family kind of way. So it was a very interesting evening.

Mr. Schultz: So you had to decide whether you needed to file registration, and then you had to represent him before the Senate committee, but was there any potential prosecution or investigation by the federal government?

Mr. Pollak: I think the Office of Foreign Agent Registration investigated his behavior and his registration statement. We had to produce documents for that office. To my knowledge, it never became a criminal investigation.

Mr. Schultz: Did you have any contact with him after the representation closed?

Mr. Pollak: No, not really. I think that there were some materials that I and my colleagues returned to him, but I never had any other contact with him. I cannot remember having any communication about the outcome with the President. I never had a call from the President commenting on the outcome, and I never spoke with the President about the matter.

Mr. Schultz: Is there anything else about the Hamilton Jordan representation or the Billy Carter representation that should be included in this oral history?
Mr. Pollak: I think it’s hard being a sibling of the President. Throughout history, it’s been hard. I think it was hard for Billy. Billy just didn’t have a role. He wanted to have a role, a working role. I still have a tape measure, it’s here on my desk, saying “Carter’s Warehouse, phone 824-4915, Plains, Georgia.”

Mr. Schultz: Did he ever talk to you about how difficult it was being a brother of the President?

Mr. Pollak: He complained about Kirbo and the edict that came down saying, “you can’t run the peanut factory.” That was his work. But I don’t think he was given to more global ruminations about being a sibling of the President. From the evening with the family, my perception was that the President’s siblings felt a mixture of emotions.

Mr. Schultz: He was the oldest?

Mr. Pollak: He was the oldest, right. But they, like all siblings, grew up together. They viewed him as a brother.

Mr. Schultz: Do you remember anything anyone said?

Mr. Pollak: I just remember that they had comments about Jimmy and Rosalynn. I felt fortunate to have the representation. I may have done it as public service.

Mr. Schultz: Maybe not voluntarily, though?

Mr. Pollak: I received psychic remuneration.

Mr. Schultz: You were the lawyer for the people in and near the Administration in serious trouble.

Mr. Pollak: The funny thing about it was that I had no relationship with the Carter Administration at all. At the outset of the Administration, I had hoped to get a
job. I wanted more public service, but I never had even an offer of a job, and as I say, I had no relationship with anybody in the Administration. I’ve told you how the Jordan representation came about through Lloyd Cutler, and I think Billy just took a page out of that.

Mr. Schultz: I think they must have been very happy with you representing them, somebody recommended you to Billy Carter probably.

Mr. Pollak: He said he read it in the paper.

Mr. Schultz: Is that right? That’s interesting. He probably saw that you were successful.

Mr. Pollak: It suggests that the Studio 54 thing came up in 1979 and that it had been put to bed in the Spring of 1980. Billy came in the Spring of 1980.

Mr. Schultz: Was there ever any discussion about the impact of Billy Carter’s situation on the President’s re-election?

Mr. Pollak: It may have been speculated on in the press.

Mr. Schultz: You don’t remember any discussion with him or anybody in the Administration?

Mr. Pollak: No.

Mr. Schultz: So then Geraldine Ferraro.

Mr. Pollak: I have to tell you how Geraldine Ferraro came about.

Mr. Schultz: But before you do, is this 1984?

Mr. Pollak: 1984.

Mr. Schultz: Just tell us, maybe somebody will be reading this 25 years from now, who Geraldine Ferraro was.
Mr. Pollak: Geraldine Ferraro was a congresswoman from New York who lived out near Kennedy Airport; her district must have been out there in Queens. She was finishing her third term. The Democratic Convention, to which I was not a delegate and was not present, elected Walter Mondale, Carter’s Vice President, as the candidate to run against President Reagan. The common understanding was that it was an extremely uphill battle for Mondale and perhaps for that reason, consideration was given to doing something unprecedented, which the Party ultimately did, and that is to select a woman as the candidate for vice president. That’s what happened, and the person selected was this third-term congresswoman. I’ve always thought that in the political calculus of the time there was some concern on the part of the Republicans that this selection of a woman could conceivably constitute a threat for the Mondale ticket against the Reagan ticket, and so from the very moment that she was named, there arose a great clamor over an assertion that was originally made by a professor at GW or American University that she had improperly or intentionally falsified a statement that she filed with the Federal Election Commission when she was running in 1976 for her first term in Congress. I’ll explain what that allegation was, but in any event, there grew to be a whole play out of claims that Geraldine Ferraro had committed a grievous wrong in falsifying this document that had been filed some six years previously. She was embroiled in rebutting those charges during the entirety of the campaign. It carried on to investigations by the Federal Election Commission and the Congress well into 1985, maybe even 1986. Depositions
were taken, the Department of Justice had a criminal investigation. It was a big deal, and it was all about this charge that she filed a false or misleading statement with the FEC a long time before she ever became a vice-presidential candidate.

What had happened, according to Gerry Ferraro and her husband John Zaccaro and her aides, so I have no reason to doubt it, was that she was running for Congress – this is, to me, very interesting and it reflects the status of women in what must have been 1978 – and she had a need for campaign funds. A young man came to her campaign office and volunteered to work for her election, representing himself to be an expert on the federal election laws. He advised that she could meet her financial needs if there were members of her family who could make her a loan. So, her children and John made her loans. Candidates for federal office must make periodic filings about their campaign finances, and her first filing with the Federal Election Commission was rejected, or at least found wanting, in that she reported her loans and they said, “You’re not entitled to have any loans from your family, that’s proscribed.” So she had to come up with money to pay them back. Being a woman, when she went to a bank, she couldn’t get a bank loan. Now maybe there were other reasons she couldn’t get a bank loan, but the primary reason, as I understood it, was because she was a woman and she had limited opportunities for getting that kind of financing. So she had a piece of property in her name which she sold. It was property in SoHo in New York City. The allegation was that the property wasn’t hers, that it was her husband’s. That was the issue.
Here’s how I came to have the representation, at least this is my understanding of it. The Mondale campaign was under way. I said to a lawyer friend of mine, John Nolan, who I thought had connections into the Democratic Party, that I was looking around for some way to contribute to Mondale’s election. John mentioned it to Mondale’s aide who was until recently the President of the National Trust for Historic Preservation, Dick Moe. He was active in the Mondale campaign. Gerry’s need for representation came up, and Moe must have mentioned my name. I knew Mondale some from having testified before a Senate committee he chaired on school desegregation. Ultimately, the treasurer of the campaign, Mike Berman, called me up one afternoon and asked if I would talk to Gerry Ferraro who needed a lawyer. I said yes. Gerry called me up and said she needed a lawyer, would I represent her. I said sure. She said, “Well, we’re having a meeting with our accountants tomorrow morning in New York.” Her accountants were Arthur Young, one of the Big Seven accounting firms. She asked would I come up to that meeting. Again, I said sure. She must have told me something about what the problem was.

Mr. Schultz: It was probably in the papers too.

Mr. Pollak: Sure. So I flew up to New York for this meeting. I went there with my partner Tony Lapham. The subject of the meeting was that Arthur Young was putting together Gerry’s registration and disclosure statement as the candidate for Vice-President. It had to be filed with the FEC. The disclosure form asked every question you could possibly ask about everything you ever owned, how it came to
be owned by you. So it put in issue all of her finances and raised the necessity of being completely and totally factually correct. As I sat in this meeting room in New York City with a raft of people I had never met before, an amazing thing dawned on me: on all the issues, I became the decision maker. Everything that was put on the table, they looked to me to decide because after all, the filing was by Gerry Ferraro and I was her lawyer. So it was really an eye-opening experience, an amazing experience. We continued to work on the statement for some period after. I’m happy to say that the statement was filed and it passed muster. But that was just one of a host of challenges facing my new client for which I was responsible.

Mr. Schultz: That was the beginning.

Mr. Pollak: That was the beginning.

Mr. Schultz: Was this a pro bono representation?

Mr. Pollak: No, but it was certainly done at a reduced fee. I was not a big money maker for my firm on these representations.

Soon thereafter, Gerry undertook to have a tell-all news conference at a motel/hotel near Kennedy Airport. Tony and I worked with her to prepare her for the conference along with her staff member, Maxine Isaacs, who was the wife of Jim Johnson, Mondale’s campaign director, was a press person for the Ferraro campaign, and others. I remember riding over to the conference with Gerry in a limousine. We had tried to identify all the questions she could be asked, how she would answer them based upon everything that we knew. We went into this
motel and there were a million microphones and television cameras, all that. My memory is that she did an excellent job and handled it very well, but the charges dogged her throughout the campaign and even beyond. They kept being blown up, her good answers never seemed to catch up with the allegations. All of her documents were subpoenaed by the Public Integrity Section of the Department of Justice. Gerry and her husband John Zaccaro were subpoenaed by the Department of Justice to give depositions, as were others who touched the properties in any way.

Mr. Schultz: Is this after the election?

Mr. Pollak: Yes, most of that was after the election.

Mr. Schultz: But during the election there were also lots of allegations about John’s real estate holdings?

Mr. Pollak: There were subterranean or not so subterranean allegations that hadn’t a shred of validity from that day to this – that John had some connection with the mafia. I thought the source of those was nothing but undisguised prejudice against Italian-Americans. John was in real estate, he had real estate ownerships. The trials that they suffered because she was a candidate were heavy. The family was a good American family. They had a son, Harry, and two daughters, lovely people. It was something to relate to them. It gave me a look at what it is to be a candidate. They didn’t have time to pay their bills. I mean they paid them, but when they had a moment of free time, they’d be doing the kind of things that each of us has to do to keep our household together. It was quite amazing to observe. During
the campaign, Gerry had to spend significant time dealing with requests for
documents and other things when she was traveling across the nation trying to
help Mondale win election.

Mr. Schulz: Whatever came of these charges?

Mr. Pollak: We represented Gerry in a major investigation by the House Ethics Committee.
Ultimately the House Committee issued a decision which we considered a
favorable outcome. Gerry testified before the House Committee. Then there was
a full-blown Federal Election Commission proceeding, and we briefed numerous
issues in filings before the FEC. As I mentioned, the Public Integrity Section of
the Department of Justice had a criminal investigation, subpoenaed documents,
and deposed Gerry and John. At one time the Department of Justice or the FBI
had gotten wind of some kind of threat against John, and I remember meeting
with FBI Director William Webster, trying to be sure that John was protected. It
was a whole array of representations.

Mr. Schultz: Nothing ever came of any of it?

Mr. Pollak: I want to be precise about the outcome of the investigation by the House Ethics
Committee. I’ve got in my library materials respecting its hearing on Geraldine
Ferraro. [Finds some materials] This is a report of the House Committee on
Standards of Official Conduct, December 4, 1984, a good month after the
election. The volume runs 795 pages. The Washington Legal Foundation was the
first to make the charge against Gerry that kicked it all off.

Mr. Schultz: Is this the report here?
Mr. Pollak: Yes. Looking at pages 28-29 of the report, there were two conclusions. One was that “Representative Ferraro either failed to disclose or incorrectly disclosed a significant number of items relevant to her total financial concerns. As a result, approximately ten of the allegations in the WLF [Washington Legal Foundation] complaint are sustained.” The second was that “Representative Ferraro did not meet three standards necessary for claiming the exemption from disclosure of her husband’s financial interests. Her inability to successfully claim the exemption centered on the benefit she has received from her husband’s financial activities. The preceding pages of this report identify many items which would be characterized as the financial interests of John Zaccaro. Maintenance of the Forest Hills home, education of the children, and the purchase of vacation properties are three examples of expenses covered with John Zaccaro’s financial resources.” The report goes on: “The Committee wishes to weigh at least two considerations which reflect favorably on Representative Ferraro’s position in matters relating to the WLF complaint. First, no information received by the Committee staff in the course of this investigation indicates a deceptive intent on the part of Representative Ferraro. Instead, all facts point to error, oversight, and misinterpretation as reason for the incomplete disclosures. Second, the Congresswoman has amended her 1978 through 1983 disclosure statements to include nearly all of the information originally omitted or misreported. While these amendments do not cure the alleged violations of House Rule XLIV (as concluded in Section V of this report), the fact of their filing may indicate the
Congresswoman’s willingness to make full disclosure.” The Committee then says it’s faced with determining the appropriate action. The Congress was adjourned so the full House was unable to take formal action. The Committee determined what it would have recommended to the House had the House been in session: The report relates that the staff recommends that “the Committee conclude with regard to the errors and omissions alleged in the WLF complaint that Representative Ferraro has committed violations of House Rule XLIV constituting a technical violation. A technical violation is a determination made available to the Committee pursuant to Rule 17(c)(2). It carries no recommendation for action when a report of such finding is made to the House.” The report was approved by the Committee by a vote of ten to two. We thought that was a good outcome.

Mr. Schultz: I can see that. So what happened to Geraldine Ferraro?

Mr. Pollak: Well, her husband kept practicing real estate – he’s not a lawyer – he continued his real estate business at 218 Lafayette Street, New York City, and Geraldine went into a law firm. She wrote a couple of books and practiced law, and I think she’s now retired. She has been battling cancer.

Mr. Schultz: Any other thoughts on this representation?

Mr. Pollak: I worked on it with at least three outstanding partners of mine, Tony Lapham, Wendy White, and John Rich, and we gave the representation the best we had. It was mired in financial documents, real estate transactions, there was a “guys and dolls” cast of people in New York who had roles: investors, real estate agents,
accountants. They all were interviewed by the FBI or gave depositions. It really had a life of its own. Gerry and John became friends of ours. They were very appreciative of our work. It was another rewarding experience.

Mr. Schultz: You were in a small firm then, Shea & Gardner.

Mr. Pollak: Yes. When I joined Shea & Gardner in 1969, it was probably 19 lawyers. It grew incrementally. Maybe it was 30 when I represented Gerry and John.

Mr. Schultz: And now you’re in a large firm?

Mr. Pollak: Right.

Mr. Schultz: And of course law practice has changed, it’s much more focused on profit.

Mr. Pollak: It’s also become much more specialized. I considered that I was well-qualified to handle these representations, but I was not engaged in the practice of representing persons under criminal investigation.

Mr. Schultz: It’s true, criminal investigations, federal election law, real estate law, accounting, all the areas that you certainly hadn’t specialized in.

Mr. Pollak: No, but apprenticing with Gerhard Gesell and attending Yale Law School and serving in the Department of Justice were adequate preparation.

Mr. Schultz: What I was getting at is, I mean these are obviously very high profile, very interesting cases that any lawyer would be flattered to be able to do one of them, but do you think in a large law firm today a lawyer would be able to do these cases at the fees you were or were not being paid?

Mr. Pollak: I think there would be questions raised. There were no questions raised in my firm. Frank Shea had been an Assistant Attorney General, he had been on
Justice Jackson’s staff at Nuremburg; Warner Gardner had been Solicitor of Interior and Labor and held other high positions in the federal government. They believed in public service. I think we all thought that a lawyer who is asked to take on representation of public servants has an obligation to respond. Not an obligation to respond without fee, but astronomical fees were really not in the cards for any of these people. They didn’t have that kind of money. Ferraro and Zaccaro were not wealthy. One of the things that was fun was to see the family trying to cope with the mother being a candidate for Vice President.

Mr. Schultz: It came kind of fast on her, didn’t it?

Mr. Pollak: Right. It did.

Mr. Schultz: It sounds like your firm not only went along, they were probably delighted that the firm was associated with this kind of work.

Mr. Pollak: I hope so. They at least never complained to me. And I felt good about it. I thought it was a great opportunity.

Mr. Schultz: Sounds great.

Mr. Pollak: Want to close it up?

Mr. Schultz: Probably a good stopping place. Three pretty interesting matters.
Mr. Schultz: We’re going to talk about a few other matters in your private practice, and the first one I want to ask you about is being the Special Master in the Vitamins Antitrust Litigation, Misc. No. 99-197; MDL 1285. Why don’t you just tell us about that.

Mr. Pollak: That was a fascinating four-year effort, and I’m pulling off my bookcase a compendium of opinions that I wrote.

Mr. Schultz: Which is about 8-10 inches thick.

Mr. Pollak: Yes, but I have three of them. First let me tell you how I got named. The Vitamins Antitrust Litigation had been multi-districted for pre-trial discovery in the District of Columbia. The claim was price fixing, boycott, by manufacturers, exclusively foreign manufacturers of vitamin products primarily for addition to food and animal feed. There had been criminal proceedings and guilty verdicts or pleas, so these were follow-on treble damage civil litigations, class actions. It was originally assigned to Paul Friedman. The judge foresaw that there was going to be a great deal of active litigation, particularly over discovery, and asked the parties to suggest a special master to handle discovery issues and other related issues. Out of that came my appointment as special master.
Mr. Schultz: Who were the lawyers who had a role in selecting you?

Mr. Pollak: The lawyers were a roster of the major firms of the nation who represented the defendants, Mayer Brown; Bruce Montgomery of Arnold & Porter; Sherman & Sterling; Sullivan & Cromwell. I’m not certain how my name got into the mix.

Mr. Schultz: The plaintiffs lawyers, was that Dickstein?

Mr. Pollak: The plaintiffs’ lawyers were Boies Schiller; Dickstein Shapiro, Ken Adams; a Texas firm, and Joe Sellers’ firm.

Mr. Schultz: Cohen Milstein?

Mr. Pollak: Yes. Mike Hausfeld was a major player for the plaintiffs.

Mr. Schultz: What years was this?

Mr. Pollak: My initial appointment was 1999. I remained active in deciding issues up through 2003. It was a four-year assignment. I issued recommended decisions in perhaps 49 or 50 litigated matters, some of them extremely interesting issues. Of some interest respecting the work of the United States District Court, Judge Friedman had the cigarette multidistrict litigation, tobacco litigation. It was suggested either by the Chief Judge of the United States District Court for the District of Columbia or the Multi-District Panel that he shouldn’t be handling both cases – cigarettes and vitamins – because it was too much, so after I had been named, the case moved to Judge. Judge Kennedy is an outstanding tennis player, had played tennis actively with Jonathan Schiller of Boies Schiller. Judge Kennedy, I believe, recused himself because of that relationship. So the case moved to Chief Judge Thomas Hogan, and stayed with Judge Hogan. I communicated with
Judge Hogan, who I didn’t know, suggesting that he should feel free to select as special master someone with whom he was acquainted. He communicated to me that he wished me to stay with the assignment, so I served as Judge Hogan’s special master throughout. It was one of the great opportunities and great experiences of my professional life. I found Judge Hogan to be an outstanding judge in handling this complex case and managing it. Indeed, there were hundreds of motions, thousands of docketed items, as many as 5,000 items in the docket. Judge Hogan managed to make it all look easy. I know that he spoke once about it to an ABA gathering. The case offers a good opportunity, just like the AT&T case of Judge Harold Greene, to observe a masterful judge handling a complex multi-party case. It wasn’t one case; there were many different vitamin products involved, and each presented its own litigation, so while the defendants were often similar in each case, in some of the cases there were different defendants. Most of the cases ultimately settled. My responsibility was to handle all discovery disputes, and while I was a private practicing attorney, these disputes would be briefed to me, and then I would go to one of the federal courtrooms and the parties would argue them to me.

Mr. Schultz: In a federal courtroom?

Mr. Pollak: Right. I would sit on the bench. I never wore a robe, and I never endeavored to arrogate to myself any of the formal attributes of a judge, but the parties obviously took seriously the briefing and arguments, and I rendered written reports and recommendations which under the Federal Rules are subject to appeal
to the United States District Judge. They very, very often would be appealed and they would be very, very often be affirmed by Judge Hogan.

The first issue presented to me was a unique issue on which there had been very little precedent: whether discovery by plaintiffs to establish personal jurisdiction over the foreign defendants must proceed under the Hague Convention on Taking Evidence Abroad or the Federal Rules. The Federal Rules are much more conducive to obtaining discovery than is the Hague Convention. This was presented to me as a discovery dispute, and the issue was fully briefed and argued. I rendered a recommendation that in the circumstances the discovery would be conducted pursuant to the Federal Rules. The issue went to Judge Hogan, and he reached the same conclusion in a Memorandum Opinion filed September 20, 2000. I thought the case would be, the ruling would be taken to the Court of Appeals because there was so little law, but it stayed with Judge Hogan’s opinion.

There were many other quite challenging issues, very intellectually stimulating. One of the issues was sufficiently complex that I issued a Report and Recommendations that was a hundred and one pages long.

Mr. Schultz: Wow.

Mr. Pollak: It proves the wisdom of Judge Friedman’s anticipation that a special master was needed. There was really no way that a sitting federal judge with multiple assignments on his or her docket could give these discovery disputes the attention which I could give as a special master.
Mr. Schultz: How much of your time did it take over those four years?

Mr. Pollak: It took a lot of time. I did the work with the help of one associate at the firm. Most of the time that was Tim Lynch, who had been editor-in-chief of the Law Review at Georgetown and was at Shea & Gardner. Subsequently, Tim went to be an Assistant United States Attorney. He performed in outstanding fashion. There were months when I would spend more than 100 hours on the assignment.

Mr. Schultz: So well over half your time?

Mr. Pollak: Right. I charged for my services at a reasonable rate under the Court’s order appointing me and the parties divided the charges 50/50.

Mr. Schultz: What was your relationship to Judge Hogan?

Mr. Pollak: My relationship with Judge Hogan was a formal one on all the issues that were presented to me. I did not discuss them with Judge Hogan. They were presented to me, I rendered a written ruling. The parties would or would not appeal that ruling to Judge Hogan, and he would address the issue with my report and with their briefing in front of him. He limited the briefs to ten pages, considering that the matter had been fully handled in front of me and that he could give it summary attention based upon more limited briefing. The record was always a written one before Judge Hogan. I had a discussion with him early on in which I said that I thought the appropriate approach would be for me not to discuss the substance of these issues so the parties would have a full shot at the federal judge, who after all had the responsibility.
Mr. Schultz: So it was really like the relationship between a District Court and Court of Appeals.

Mr. Pollak: That’s right. Now there was an occasion in which there was kind of a backup. Judge Hogan set a date for conclusion of discovery and stuck to it hard but then it had to be slipped once or twice. In an effort to wind up discovery, all the pending motions were catalogued, and I held a hearing at which all of the motions and the necessity of briefing them and having them decided by me was addressed so that we could identify what the real line up before the court was and put to one side those motions that probably never had to be addressed. The number may have been over 200. In approaching that sort of scheduling responsibility, I recall having discussions with Judge Hogan about how to approach it and manage it. Otherwise, while I had pleasant, for me, relationships with Judge Hogan, they were limited.

Mr. Schultz: Did he try some of these cases ultimately?

Mr. Pollak: He did try – the major cases settled, and some cases – the amount of money involved was tremendous. The criminal fines were the largest ever collected by the Department of Justice. One was $1 billion, or maybe over a billion.

F. Hoffmann LaRoche, one of the defendants, had paid a big fine. But the cases that went to trial involved significant money but were for a long time more secondary cases. A few cases were tried. I haven’t been active in the matter for five years. A few tag ends are still going on before Judge Hogan.

Mr. Schultz: Did he consult you or did you have any role in the trials?
Mr. Pollak: I had no role. When appeals were taken of my rulings, I generally went to the argument before Judge Hogan. It was of course a matter of interest to me, but also there were occasions when the outcome of the argument left something more for me to do after a ruling by the judge. I attended some one trial just for the interest, seeing how it went. I had never wanted to be a judge and so this experience of serving as a special master afforded me a good window on what it would be like to be a judge. It was a challenging, decidedly interesting, and very rewarding experience. I found the briefing interesting. Sometimes I was intrigued by the briefing because there were often issues that went directly to the meaning of the Federal Rules, and sometimes for one reason or another the parties on both side of the issues seemed to avoid briefing what appeared to me to be the central matter at issue. I never asked them about it. There were obviously great resources put into the briefing, and often there had to be extensive affidavits about foreign law and practice, so a great deal of learning was presented to me. I learned a great deal from the case.

Mr. Schultz: Did your experience make you think you would have liked to be a judge or confirm that you wouldn’t?

Mr. Pollak: I probably would have enjoyed being a judge. I wasn’t sorry that I had that view that I had. I never sought to be a judge. Judge Hogan assigned some settlement responsibilities to Magistrate Judge Kay and I occasionally talked to Magistrate Judge Kay about what I was doing. He led me to believe that I was shouldering a
lot of responsibilities that were valuably performed by me so as to relieve
Judge Hogan.

Mr. Schultz: Yes, I’m sure.

Mr. Pollak: Magistrate Judge Alan Kay performed highly competent services in bringing the
parties to settle some of the cases. It was a good example of a federal judge using
the various tools that were available to him to deal with this immense litigation.
The case proceeded a lot of the time under the radar. There was no major
commentary, as there was about the AT&T case, that Judge Hogan was
performing his very unusual service as there was commentary about
Harold Greene. I think it was a comparable virtuoso performance.

Mr. Schultz: Did you have any other experience as a special master?

Mr. Pollak: I never did. I hoped to have another assignment, but I never did. I guess you get
just one of those, and mine was a big one.

Mr. Schultz: So the next project I want to ask you about is your experience as Assistant to
James McKay who was an Independent Counsel.

Mr. Pollak: Jim McKay was a partner at Covington & Burling with whom I had worked when
I was there. Jim McKay was an outstanding trial attorney. In and about 1960,
Jim and I together, possibly I was in the lead, sought from then-Chief Judge
Bazelon a pro bono case to work on, and Judge Bazelon turned to the Chief Judge
of the Fourth Circuit who had been Solicitor General, Simon Soboloff. The
Chief Judge gave us two habeas cases under 18 U.S.C. 2254, state habeas. Men
who were claiming that they had had constitutionally infirm trials and who had
appealed their convictions without success. Number one was incarcerated in Jessup, and the other was incarcerated in the jail in downtown Baltimore. Jim and I handled those cases which presented issues respecting the availability of federal habeas to these prisoners of the State of Maryland, issues that had not yet been determined by the Supreme Court. Shortly thereafter the Supreme Court decided a now-legendary case regularizing greater rights of the criminal defendants who had been convicted to post-conviction review. But those issues were then more open.

I knew Jim in that capacity. When he was named by the Division of the U.S. Court of Appeals for the D.C. Circuit for Appointment of Independent Counsels, the chief judge of which was D.C. Circuit Senior Judge George MacKinnon, a former Congressperson, my partner Wendy White and I volunteered our assistance.

Jim McKay was appointed in February 1987 to investigate whether Lyn Nofziger of the Reagan Administration had violated any criminal law. Thereafter, Jim’s assignment was expanded to include related allegations possibly implicating Attorney General Edwin Meese III when he was counselor to President Reagan.

Mr. Schultz: What were the allegations?

Mr. Pollak: The question to be investigated was whether Nofziger, acting as an agent of Welbilt Electronic Die Corporation, violated federal conflict of interest laws, 18 U.S.C. § 207(c), by communicating with the President’s office within one year of
being employed as Assistant to the President. McKay brought formal charges against Nofziger. McKay and members of his staff, including now Circuit Judge Merrick Garland, tried the case.

I remember that Jim had offices on 18th Street. Others working with him in addition to Garland included Lovita Coleman and Thor Halvorson. Wendy and I participated actively addressing legal issues that came up at the time the matters were being presented before the grand jury. In my private practice, I had taken many witnesses to the grand jury. I did that over the whole of my practice, including in the Monica Lewinsky affair. With Jim McKay, this was the only time that I ever had occasion to go into the grand jury for presentation of evidence. That was extremely interesting to me. Looking back on the role of the Independent Counsels and the comments and criticisms that have come on the extended issues that Independent Counsel Kenneth Starr addressed, Jim McKay was an experienced courtroom litigator and brought to his assignment some discipline growing out of his experience that centered his investigation and allowed him to move through it and complete it and make his report while focused on what the central matters were.

Mr. Schultz: Roughly how long did the investigation go on?

Mr. Pollak: Looking at his published report respecting Mr. Meese dated July 5, 1988, he completed his investigation and the trial of Mr. Nofziger within 17 months of his appointment.

Mr. Schultz: What prompted you to volunteer?
Mr. Pollak: I was interested in finding something interesting to do in the way of public service.

Mr. Schultz: And you had worked with him before?

Mr. Pollak: Sure. Jim always treated the contribution that Wendy and I made as important. I’m not sure whether it was that significant. His report (page vi) says we served as his “counselors, successfully defending my office from attacks on the constitutionality of the independent counsel statute and attacks on my jurisdiction ***.”

Mr. Schultz: I’m sure he was delighted to get the help. You mentioned that you represented a witness in connection with Monica Lewinsky. I can’t let that go by without asking you about that.

Mr. Pollak: The wife of a Yale Law friend had been a volunteer in the Clinton White House, and in that capacity had had some contact at work with another volunteer, Kathleen Willey, who lived in Richmond, Virginia. Ms. Willey made allegations respecting the President which were apparently explored before a grand jury. My friend’s wife was called before the grand jury in the U.S. District Court for the Eastern District of Virginia. I represented her in responding to that investigative request.

Mr. Schultz: Your role in that piece of history.

Mr. Pollak: Another of my occasional responsibilities touching on governmental investigations.
Mr. Schultz: I think what we’ll do now is switch to your pro bono work and other kinds of work during your years in private practice, which is extensive. I don’t think we’ll cover it all. But there were I gather two Supreme Court cases that you argued on a pro bono basis. *Griffin v. Breckenridge* and the *University of Texas v. Camenisch*. So we’ll have a chance to talk about those. Let’s start with *Griffin versus Breckenridge*, how this case came to you and what it was about.

Mr. Pollak: When I came out of the United States government, I was asked to succeed John Nolan of Steptoe & Johnson who had been the first chair of the what was then called the Washington Lawyers Committee for Civil Rights Under Law. I readily accepted and was chair of the board of directors for two years, 1970 to 1972. One of the major accomplishments of that service was the hiring of Roderick Boggs as the director of the organization. He remains the director today, and he’s made a unique contribution to civil rights and the representation of indigent people with civil rights and related issues in the District of Columbia and in the nation. Rod came to me with a case that became *Griffin v. Breckenridge*. It was a claim for damages stemming from an interference, alleged to have been on account of race, with an individual using the public highway in Tennessee. The claim was brought under 18 U.S.C. 1985. The question was what that statute, enacted initially in 1866 as part of the Civil Rights Act of the First Reconstruction, meant and what it required as a matter of intent on the defendant’s part. We took it on and I did the case with Richard Sharp, an associate at Shea & Gardner and a lawyer who had been in the Civil Rights
Division, Gary Greenberg. We researched back in the proceedings of the United States Congress in 1866 the meaning of the statute and brought all of that learning to bear. The issue was a later presentation of a similar issue decided in the famous Screws case which dealt with a criminal statute, now 18 U.S.C. 241 or 242, interference with civil rights.

Mr. Schultz: Who is Breckenridge?

Mr. Pollak: I have to refresh my recollection. Why don’t we position that for the next session.

Mr. Schultz: Was this a case against a private person?

Mr. Pollak: Yes it was.

Mr. Schultz: So that was the whole thing. It wasn’t a state action, it was how far you could go?

Mr. Pollak: Exactly. When someone was interfering with your civil rights.

Mr. Schultz: But it was a private party.

Mr. Pollak: Yes it was.

Mr. Schultz: This was a pretty famous case.

Mr. Pollak: Yes it was. We prevailed nine to nothing.

Mr. Schultz: Could Congress under the 14th Amendment pass a law that dealt with private conduct as opposed to public.

Mr. Pollak: Exactly. It was a wonderful case for somebody coming out of the Civil Rights Division to have an opportunity to do.

Mr. Schultz: Did you take it from the trial court all the way up?

Mr. Pollak: No. I got it in the Supreme Court. My recollection is that cert had been granted, when I took the case. We filed briefs, and I argued the case.
The other case was *University of Texas v. Walter Camenisch*. I have spoken about it earlier in this history.
Mr. Schultz: In the last section you talked about the Griffin and Camenisch cases, and I think you wanted to put the Supreme Court’s citations in. Do you want to add anything else?

Mr. Pollak: Shortly after I got out of the Department of Justice in 1969, the Washington Lawyers’ Committee for Civil Rights Under Law had a case called Griffin v. Breckenridge which was testing the reach and requirements for a judgment of liability under 42 U.S.C. 1985(3). I believe that I was by then chair of the committee and undertook to represent petitioners, Negro citizens of Mississippi, who had brought a damage action charging that white citizens had conspired to assault them when they were passengers “travelling upon the federal, state and local highways” in an automobile. I presented the case in the Supreme Court which reexamined and somewhat reinterpreted that significant statute in an opinion by Justice Stewart, which continues to be the determinative opinion with respect to the meaning of that statute.

Later, the Mental Health Law Project here in the District of Columbia came to Shea & Gardner for representation of a deaf student, at San Jacinto State College, named Camenisch, who had sought to have a sign language interpreter assist him
at his classes and was denied funding. The case tested the reach of Section 504 of the Rehabilitation Act of 1973, which proscribed discrimination on account of a disability. I undertook the representation and argued the case in the Supreme Court. The opinion held that the review of a preliminary injunction, which had been granted in favor of Mr. Camenisch, had become moot and so the decision did not interpret the reach of Section 504 or the legality of the provision. The opinion there is 451 U.S. 390 in a 1981 decision. The *Griffin v. Breckenridge* cite is 403 U.S. 88, 1971. Those were two of the three cases that I argued in the Supreme Court after leaving the government, the third being one of the representations of the Trustees of the UMWA Health and Retirement Funds called *Kaiser Steel Corporation v. Mullins*. In the latter case, my client lost 6 to 3 in an opinion by Justice White.

In any event, I had one other clarification or amplification. I have reported in the prior sessions that I assisted James McKay who had been appointed an Independent Counsel to investigate certain allegations respecting Lyn Nofziger, a White House official in the administration of President Reagan. That investigation by McKay also explored charges against the then-Attorney General in the Reagan Administration, Edwin Meese III. In my discussion, I had left that unclear. McKay made a lengthy report in respect to the Meese inquiry dated July 5, 1988, and I and my partner Wendy White assisted Mr. McKay.

Mr. Schultz: Okay. So we talked about a number of cases that you did pro bono and projects such as the special counsel investigation you just discussed. In addition to that,
you have served on an extraordinary number of committees, including the Lawyers’ Committee, being chair of the Washington Lawyers’ Committee, co-chair of the National Lawyers’ Committee for Civil Rights Under the Law; D.C. Circuit Historical Society; numerous D.C. Bar activities. These are all listed on your resume. You have a sort of complete resume that lists all these activities, and I think it would be a good idea to append it to your history. I’m not going to ask you to go through each of these, but maybe you can talk a little bit about what you think drew you to do all this work and also how it fits into law practice or how it fit into your law practice.

Mr. Pollak: I was originally drawn to law because I was interested in public service and I was fortunate in being able to go into public service as a member of the federal government from 1961 to 1969. Even by that time, I had made it a part of my professional life to be a volunteer participant in public activities where my law training was useful. My first such activity was while I was a new lawyer at Covington & Burling. I found a model for combining private practice with pro bono or unpaid civic volunteer work in Charles Horsky, well known, even then in 1956, 1957, 1958, a partner at Covington & Burling. Charlie was president of the Washington Housing Association, an organization begun in the time of Eleanor Roosevelt and devoted to addressing the problems of low income people having inadequate housing available to them. I volunteered as a member of the Washington Housing Association and served on committees, including the urban renewal committee which I chaired. Ultimately, while I was in the United
States government, First Assistant in the Civil Rights Division, I served as president of the Washington Housing Association which by then was called the Washington Planning and Housing Association.

Mr. Schultz: Let me just back up for one minute. Was Covington & Burling’s commitment or involvement in pro bono work a factor in your choosing that firm as your first job?

Mr. Pollak: It was. I was at Yale and there was a strain of the Yale Law School that favored public service by the law school graduates. My interest in law firms in Washington was in three firms that had a significant number of Yale law school graduates in their leadership. Covington & Burling, where later Judge Gesell was a partner, and he interviewed at Yale; and a firm called Cox, Langford, Stoddard & Cutler, a nine-person firm in which Lloyd Cutler and later Judge Louis Oberdorfer were partners; and Arnold & Porter, where Thurman Arnold, who had been a professor at Yale, was a name partner. I interviewed with those firms in New Haven and went down to Washington to interview at Covington. I accepted that at Covington & Burling my choice of outside activities was my own to make, that it would have the support of the firm, and that I would be called on to do my law firm work at the same time as I did outside work.

Mr. Schultz: Okay, so you were in the government, and now you’re coming out of the government. Was this a factor in choosing Shea & Gardner?

Mr. Pollak: It wasn’t really a factor in choosing Shea & Gardner. I can’t recall any discussion about pro bono at all. Frank understood I had no clients to bring with me. He
was confident that that would all come in the future, and that I should feel easy about what I would be doing. He’d see I had enough to do. I just assumed that I’d find a happy home there and could make my professional life what I wanted. And that’s the way it turned out.

Mr. Schultz: How did this pro bono develop for you?

Mr. Pollak: There was either a movie or saying long ago called “Available Jones.” I was just an “Available Jones.” When people had something to be done for no pay, they often came to me to do it, and I had no interest in saying no and generally said yes. There were opportunities that came along and I generally treated those unpaid activities as calling for the same kind of attention and energy as regular law work, and one assignment led to another. I don’t really recall how the earliest outside unpaid pro bono activities came on. The first outside position I took on was chair of the newly created Washington Lawyers’ Committee for Civil Rights Under Law. I joined Shea & Gardner in March of 1969. I must have become chair of that Committee later that year and held it for two years.

Mr. Schultz: Who was the first chair?

Mr. Pollak: John E. Nolan of Steptoe & Johnson whom I had known in the federal government. John probably asked me if I would succeed him. John had been Special Assistant to Attorney General Robert Kennedy.

Mr. Schultz: What was the Washington Lawyers’ Committee for Civil Rights?

Mr. Pollak: In 1963, as I understand it, in anticipation of the coming passage of the public accommodations statute, Attorney General Kennedy, Assistant Attorney General
Burke Marshall, and Assistant Attorney General Louis Oberdorfer, with the support of President Kennedy, worked with the leadership of the ABA to gain an establishment of a lawyers organization that could produce a large cadre of volunteer attorneys who were to engage in litigation to secure the rights guaranteed by the anticipated public accommodations law. It was thought that there would be such broad scale opposition to opening public accommodations in the South to Blacks that the resources of the Justice Department would be inadequate to the law enforcement task. So this lawyers’ organization was established at the request of the President, called the National Lawyers’ Committee for Civil Rights Under Law. The first Co-Chairs were leading members of the bar, former president of the ABA and Philadelphia attorney Bernard Segal, and a prominent New York attorney, Harrison Tweed. The Lawyers’ Committee has always been headed by two lawyers, co-chairs, and the second or third group of chairs included Lou Oberdorfer, now, of course, a Senior District Judge. Lou secured a grant from the Ford Foundation looking toward establishment of local lawyers’ committees in major urban areas around the country. The Washington Lawyers’ Committee was one of those local lawyers’ committees. It was organized in 1969, some five years after the National Committee was born, with Nolan as chair and then I succeeded him. So I had two active years there. A dimension of my activity was that just one of my undertakings was to handle the Griffin v. Breckenridge case, but we were providing pro bono representation through the Lawyers’ Committee for all kinds
of civil rights matters, and I was choosing staff as well. One of the points for
which I should be remembered is that I hired Rod Boggs back in 1972. Rod still
heads the Committee now in 2010 and has been a distinguished leader of that
organization. So, I devoted myself to that assignment, and then when the unified
bar was created in 1972, some people reached out and asked me if I would run for
the Board. I did and was elected and that spawned my many assignments with the
Bar, including, seven years later, being elected President-Elect. Before that, I’d
served on the Bar Board for several years.

Mr. Schultz: What are your reflections on the role of the D.C. Bar in the practice of law?

Mr. Pollak: My reflections are that a unified bar, meaning that all the lawyers who practice in
the jurisdiction here in the District of Columbia must be members of the Bar in
order to have a license to practice, is a good thing. The rules for the Bar are
created by the highest local court in the District, the District of Columbia Court of
Appeals. The body of lawyers elect their leaders, and the Bar is committed to
enforcing high standards of ethics. It’s devoted to other purposes that lawyers
should hold high, including affording representation to the poor and the
disadvantaged, pro bono representation. I think that there’s a place for all the
voluntary bars which are devoted to particular groups or particular purposes like
the Environmental Bar, the Federal Communications Bar, or the Asian-American
Bar. There are many different voluntary bars, but the unified bar, the D.C. Bar, is
the Bar of everyone who practices here. That’s a very positive institution and has
made a distinguished record. I was fortunate to have been elected as president for
the 1980-1981 term. I served as President-Elect with John Pickering, which was a rewarding experience. John, a uniquely experienced, capable and humanistic attorney, set a high standard for me. I ran against two distinguished lawyers, Charles Horsky, my mentor, and Herbert Forrest, and through some, I always thought, quirk, I was elected over those two persons who I thought brought great qualifications to the office and would have prevailed. In any event, one of the rewarding things about being president of the Bar is that in addition to the benefits and burdens of serving as president, once you’ve served, you’re among a group that’s often asked to take particular assignments later for no pay, including heading up the D.C. Bar’s Pro Bono Program which I did in the early 1990s and presided over a review and reorganization of the program. I consider that one of the most rewarding pro bono undertakings I ever did.

Mr. Schultz: What does the Pro Bono Program do?

Mr. Pollak: The Bar’s Pro Bono Program has always been devoted to encouraging lawyers to undertake representation of the poor and disadvantaged on a no-pay basis. In 1990, I was invested as chair of the governing body of the Bar’s Pro Bono Program which at that time was called the Public Service Activities Committee. Shortly after that, Bar president Sally Determan determined to undertake or to sponsor a review of the program to see if it was accomplishing the purposes for which it was created. With some effort, I convinced her that she should not go outside the Public Service Activities Committee for the leadership of this review committee, that there was not much for me to do as chair of the Public Service
Activities Committee while the review was going on, and that she should ask me to chair the review, which she did. Working with nine or ten volunteer capable lawyers and with Katherine Mazzaferri who was Director of the Bar, we conducted an in-depth review over two years. The major contributors were Jane Belford, Joe Sellers, Rob Weiner, Katherine Mazzaferri, and the now-head of the Pro Bono Institute, Esther Lardent. We looked all over the country for what bars were doing in the pro bono arena. We considered that the D.C. Bar was not performing in as useful way as it should and replaced the programs with those that were at the cutting edge around the United States. We found significant patterns in the program of the San Francisco Bar and created a new structure, which I’m happy to say endures to this day, in a very comprehensive report that was submitted to the Board of Governors in 1992 when Jamie Gorelick was president. I consider that the 75-page report of the Public Service Activities Review Committee, issued June 15, 1992, to be among the best projects with which I have been connected. Very rewarding. Its recommendations included many strong points. One of them was that every other year the Bar’s Pro Bono Program should seek out a new activity so that it would never become rooted in stationary programs, that it should always be looking for something new, something changed, so that it didn’t become routine and uncreative. It still does create new activities.

Mr. Schultz: What are some of those most significant activities that the program has undertaken?
Mr. Pollak: The most significant was that we created what we called initially a Law Firm Pro Bono Legal Clinic. We asked law firms to take a night twice each year at which they would send a cadre of 10 or 12 lawyers. The staff of the Pro Bono Program would in advance of the night be “in-taking” indigent clients in need of representation and developing the case materials for each of these potential clients. Then, on the designated night, the Bar would invite the clients in, the law firm would send the lawyers in, the Bar would marry up clients and lawyers, and each of the clients would go home with a lawyer who had taken the case. There would be family law cases, child custody cases, spousal abuse cases, Social Security-type cases, landlord/tenant-type cases, and adoption cases. Sometimes a lawyer in the law firm would have a case for a year or two that the lawyer undertook at the Pro Bono Clinic. The law firm would agree to come to the clinic say twice a year and take cases. I remember going. The Pro Bono Program would serve pizza the night of the clinic. I went as a volunteer lawyer the first night and took a case. Arnold & Porter was one of the first law firms to volunteer. That program continues. It’s now called the Advice and Referral Clinic. That was a wholly new undertaking. Today the Bar Pro Bono Program has many different activities. For instance, it staffs something called the Landlord/Tenant Resource Center, which is housed at the Landlord/Tenant Court and serves individuals who are called, subpoenaed, to come to the Landlord/Tenant Court, and come without a lawyer. They can come to the Resource Center, show their court papers, and obtain information as to what’s
happening to them. If they need a lawyer, there’s another program that will provide an attorney for that day when an individual needs an attorney. Another aspect of the Bar’s Pro Bono Program is that under the so-called “referendum,” adopted by the membership while I was president, unified bar dues cannot be used for anything but general public purposes and the Pro Bono Program is not recognized as one of those purposes. The Pro Bono Program must raise all of its funding. So one of the things that we recommended in 1992 was that the Program conduct an annual fundraising event. That has become the annual reception honoring the new Bar president, and it’s been going on each year. This year it raised over $620,000 or $630,000. So that was another creation of our report.

The Bar Board of Governors has asked me to undertake other assignments which I’ve always been prepared to do. One of the particularly rewarding assignments, which I performed over eight years on two different appointments, was to be a member of the Judicial Nominations Commission, which statutorily has the duty of naming the chief judges of the Superior Court and the District of Columbia Court of Appeals, and when there are judicial vacancies on these two courts, proposing three candidates, one of whom is to be nominated by the President for service as a judge. I served with judges of the United States District Court on that commission, including Chief Judge Aubrey Robinson, District Judge Harold Greene, and District Judge Norma Holloway Johnson. That’s an excellent institution, has produced an excellent bench of both courts. In my
experience, the Commission was dedicated to quality and diversity in candidates to present to the President.

Mr. Schultz: In what years did you serve on the Commission?

Mr. Pollak: The Bar has a general limit of service of no more than six years. I served a six-year term and ended up as chair. During my service, the chairs were Judge Robinson and then Wiley Branton. I succeeded Wiley Branton. I was succeeded as chair by Judy Lichtman, an outstanding attorney and leader of the National Women’s Law Center. Now-District Judge Paul Friedman succeeded Judy. When Paul was named United States District Judge, and he had been serving as a nominee of the Bar on the Commission, the Bar asked me to fill out his term so I served for two more years. My first service was January 1984 to January 1990; my second, July 1994 to January 1996.

Mr. Schultz: Tell me about Wiley Branton.

Mr. Pollak: I had known Wiley in the Department of Justice where he was a Special Assistant to Attorney General Clark or Katzenbach. Then I served with him on this Commission. When he was on the Commission, he was a partner at Sidley & Austin. I credit him with providing black attorneys with a model for the private practice of law. At Sidley & Austin, he mentored a number of outstanding black attorneys. That firm was ahead of others in the District in diversity and I credit Wiley with accomplishing that.

Mr. Schultz: Didn’t he have a history in civil rights?
Mr. Pollak: Wiley was a leader in the fight for civil rights in Arkansas, and then came to Washington in the Kennedy-Johnson years. He was an excellent chair of the Judicial Nominations Commission. He was distinguished by his commitment to civil rights, his commitment to excellence and diversity in candidates for the bench, and his really engaging interpersonal relations. He was a winning human being.

Mr. Schultz: You have a note here in terms of the D.C. Bar, it says, “the referendum.”

Mr. Pollak: The D.C. Bar is an agency created by the District of Columbia Court of Appeals in which all lawyers practicing in the District must belong. In that respect, it’s not like a voluntary bar. A voluntary bar is free to take any positions that it may wish in behalf of the people who voluntarily become members. The unified bar, along with unified bars around the country, engaged in a learning experience as to the existence of some limitations on its position-taking because it’s speaking for all the lawyers who have no choice but to belong. In the early years there was less awareness of those limitations, and this came to a head in the time of John Pickering’s and my presidencies, 1979 to 1981. The voluntary Bar Association of the District of Columbia was maintaining a library at the federal Courthouse, and, perhaps because of the creation of the unified bar, found that its income stream was inadequate to continue to maintain the library. It offered the library to the unified D.C. Bar and invited the D.C. Bar to take it over and maintain it. The voluntary bar said to John Pickering, who was the D.C. Bar president at the time, that the voluntary bar would support a dues increase for
funding the library. So John Pickering and the D.C. Bar sought approval by the District of Columbia Court of Appeals for an increase in dues to fund the library for the main part but also for some other aspects of its obligations. Well, this kind of kicked over a volcano and out of it arose motions both to oppose the increase in dues and to limit the use of dues to what the movants regarded as the public purposes for which the D.C. Bar was created. Ultimately in my term as Bar president, there was a referendum of the Bar’s thousands of members on these limitations. I was the president of the entity seeking to avoid the limitations, or at least those that we thought were inappropriate, and it was a very active campaign. Among the leaders of the proponents of the limitations was Nate Dodel who was a Department of Justice employee. He was a very committed opponent of a range of expenditures by the Bar. So that was fought out, and the limitations were adopted. The Bar achieved some moderation in the reach of the limitations. The outcome, while we opposed it at the time, has turned out to be something that can be lived with by the unified Bar. Activities that aren’t classified as core activities can be funded through contributions. Since all lawyers practicing here must be members, some limitations on use of dues are not inappropriate.

Mr. Schultz: Did the library qualify as a --

Mr. Pollak: We never acquired the library. We never got the funding. The best you could say is it was a great big active fight. A large measure of my time as president of the Bar, a post I have characterized as being counsel for the Bar, I spent litigating
over these limitation efforts and setting up the structure for the vote on the
referendum.

Mr. Schultz: Were you in court over these?

Mr. Pollak: Since the Bar is an entity created by the District of Columbia Court of Appeals,
we were litigating in front of the District of Columbia Court of Appeals in terms
of the structuring of this referendum and its outcome. I kept a docket and was
filing official papers. I felt my responsibility was to be satisfied as the ultimate
client with everything we were doing, reviewing everything we were filing and
saying about the referendum.

Mr. Schultz: How much of your time did you spend as president of the Bar?

Mr. Pollak: I don’t know the answer to that, but a lot. But I maintained my practice
throughout all these activities.

Mr. Schultz: How did you do that?

Mr. Pollak: I don’t know. I just did. I had colleagues who were working with me and just
squeezed the evening hours to do whatever was required.

Mr. Schultz: Did your firm ever question the amount of time you were spending on all these
outside activities for no pay?

Mr. Pollak: Not to my knowledge. I must have it down somewhere. In 1993, the firm elected
me chair of the executive committee, so my partners must have been satisfied
with how I spent my time. And that was then a big commitment of time inside the
firm, particularly as we undertook a look at the rules and procedures for
compensating partners. We had had a system which was heavily influenced by
seniority, and there was pressure to move to a system more business oriented, which is where firms have gone subsequently.

Mr. Schultz: Did you talk about that in the oral history?

Mr. Pollak: I have not. After serving in the government from 1961 to 1969, I harbored the hope that I would find another leadership position in the government in later administrations. It seemed to me that after having held a presidential appointment, I couldn’t reasonably go in as a line attorney. No presidential office ever came my way, although I sought one. So these pro bono activities were for me again the opportunity for public service that I was seeking when I couldn’t serve in the government. I served in the House of Delegates of the ABA when I was president and president-elect of the D.C. Bar, but I didn’t find that particularly rewarding. Not that it wasn’t doing useful policy things. My focus has always been on local activities, except for the National Lawyers’ Committee on which I’ve always been active since going on its board in 1969 on getting out of the government. I’ve done that national activity, but otherwise my focus has been on the District of Columbia.

Mr. Schultz: When you took on a new pro bono assignment, did you have to get approval from your firm?

Mr. Pollak: Certainly if it was a case, I did. I had to go through the usual conflicts check. If it was a board position, I’m doubtful that I did. I probably told Frank Shea who was for a long period the head of the firm.
Mr. Schultz: But even for a case, assuming there were no conflict, did the firm have to review it in terms of resources?

Mr. Pollak: I think that in a loose way a case that would require significant application of time, particularly of others besides myself, I would clear it with the head of the firm. I don’t think I ever was denied approval. But there’s some *in terrorem* effect of the staffing requirements. In other words, the National Lawyers’ Committee often has major trials, major district court level cases in the South, which would require significant discovery and travel. I didn’t volunteer to take one of those on because I didn’t think the firm had the wherewithal to handle that. I was respectful of the Cravath firm, Sullivan & Cromwell, and other New York firms, and Willmer Cutler & Pickering, Arnold & Porter, that took on those cases with great commitments of first-rate personnel. There were cases in which I was involved, pro bono cases, federal cases, in which we invested large amounts of personnel, lawyer time. But those certainly I would clear. They required commitments of major resources.

Mr. Schultz: Let’s talk about the D.C. Circuit. What’s the Special Committee on Gender Bias?

Mr. Pollak: In a period of time, about the early and mid-1990s, the D.C. Circuit created a Task Force on Gender, Race, and Ethnic Bias. The task force was composed of District Judge Joyce Hens Green, Court of Appeals Judge Patricia Wald, Chief Judge John Penn, District Judge Ritchie, and District Judge Paul Friedman, and it created a special committee on gender which was chaired by Professor Vicki Jackson of Georgetown, Professor Susan Ross of Georgetown, and Susan Liss of
the Civil Rights Division. I was a member of that special committee, and I headed up a committee on litigation process. I expended significant time working on the reports of the committee, particularly with Vicki Jackson. It was a distinguished group of people. For one reason or another, several judges on the Court of Appeals were opposed to the activities of this Gender Bias Task Force, and felt that it was intruding on Article III rights and responsibilities of the judges. Ultimately, the product of the task force and committee was pretty much laid on the table, not able to have much positive effect, except perhaps for lifting awareness among the court and its personnel, including staff and judges. But for one reason or another, it was upsetting to a majority of the members of the Court of Appeals.

Mr. Schultz: What year was this?

Mr. Pollak: I have in front of me a draft final report of the Special Committee on Gender dated January 1995.

Mr. Schultz: But it was never released?

Mr. Pollak: It was released. But all that happened was it was submitted to the Court. Recommendations for a committee on implementation were not acted upon. They ended up on the bookshelf. It was a good report and deserved a better, more useful, outcome.

Mr. Schultz: What did it recommend, roughly?

Mr. Pollak: I would have to refresh myself on what it recommended. The court is not an institution distinguished from the rest of society. Ethnic and gender bias exist and
have existed. The work of the Special Committee on Gender was both one of finding the facts out with respect to biases and remedies that could be put in place or have been accomplished. I’m sure the report would make significant reading today, and there may well be recommendations that are still relevant.

Mr. Schultz: Had other circuits tried anything like this?

Mr. Pollak: My recollection is that they had, although this may have been the farthest reach of it. I noticed that the litigation committee that I chaired, litigation process, was composed of highly distinguished members of the Bar and the whole Special Committee on Gender was made up of really great lawyers, great participants in our Bar.

Mr. Schultz: What you have there, is that a report? It’s a very big document.

Mr. Pollak: It’s the report, right. It’s the draft final report. I mean this was a multi-year effort taken on at the request of the Court of Appeals, so it was taken very seriously by all of those who worked on it. My litigation process committee included Michelle Ellison; Patricia Gern; Carolyn Lamm, now president of the ABA; Susan Liss was a liaison; Dan Margolis, former name partner of a D.C. law firm; and Roger Warin, now head of Steptoe & Johnson. It was a significant committee. I respectfully say that the reports of the committee were sensitive to the concerns that troubled the judges who opposed what we were doing. It was unfortunate that the work was not fully utilized.

Mr. Schultz: Do you want to say anything more about it?
Mr. Pollak: I will recall one aspect. We interviewed – that is, the Committee interviewed judges on the court about gender bias and published – that is, made notes of the interviews, and those were put in memoranda form and reviewed by the judge. I interviewed District Judge June Green. She was the second woman on the U.S. District Court for the District of Columbia, nominated by President Lyndon Johnson.

Mr. Schultz: That’s right.

Mr. Pollak: When she was named to the Court, she reported in this interview that a number of judges were hostile to her presence on the Court. And for a significant period, she had no courtroom of her own. She had an office that was a long way from the courtroom to which she was assigned. She recalled that she used to walk in the interior corridor with her robe in her hand and would put on her robe in the hall when she got to the courtroom.

So, we have had great advances with respect to gender bias. This report of the Special Committee on Gender prepared by the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias, was published in the Georgetown Law Journal of May 1996 with a forward by Justice Ruth Bader Ginsburg, who sent me a copy of her forward in which she said, “To Stephen Pollak, applause and appreciation for your service on the task force. Ruth Bader Ginsburg.” I have this 84 Georgetown Law Journal 1651 (1996) which is Justice Ginsburg’s forward and by looking there, one can find both her forward and then at least a significant publication of the work of the Special Committee.
Mr. Schultz: Okay.

Mr. Pollak: I have a very valuable library of civil rights materials that I have collected during my time at the bar, and many of them are probably out of publication and largely unavailable. I’m wondering what to do with it. I don’t think that it should be lost.

Mr. Schultz: You probably should talk to the Georgetown Law School Library or something.

Mr. Pollak: Maybe I could ask Yale.

Mr. Schultz: The great thing is that they can probably put it all online.

This is a good stopping place.

Mr. Pollak: Okay.
Mr. Schultz: We’re going to continue on talking about some of the committees and some of your pro bono activities. The first one I want to ask you about is the Washington Housing Association and Housing Development Corporation.

Mr. Pollak: When I came to Washington in 1956, at Covington & Burling, I met Charles Horsky. My history to date reflects that my life and activities intertwined with his over the years. I had come from Chicago where my family was involved with housing and indeed had founded the Metropolitan Housing and Planning Council. I had a tradition of being concerned with housing for the disadvantaged, and Horsky was president of the Washington Housing Association. I volunteered to be active with that group and joined its board and probably spent twelve or more active years serving on the board and then becoming president, continuing into the period in which I was in the federal government. It was originally concerned with public housing and worked with Eleanor Roosevelt in supporting public housing here in Washington, D.C. In the late 1950s and 1960s, the Association, under my leadership, expanded its focus beyond housing to planning, and changed its name to the Washington Planning and Housing Association. One of my close colleagues in the work was Reuben Clark who became a partner in
Wilmer Cutler & Pickering. Reuben and I led the Urban Renewal Committee and favored urban renewal which had its opponents who often were concerned that it was not urban renewal but urban removal of the disadvantaged and minorities. I learned there was some truth in that. There were redevelopment plans for Adams Morgan drawn to use urban renewal funding to tear down some of the dilapidated buildings in that area and replace them with modern structures. We in the Housing Association were supportive of those plans as we were supportive of urban renewal. The chair of the National Capital Planning Commission, Elizabeth Rowe, known as Libby Rowe, opposed the plans. She carried the day. I concluded at the time or relatively soon thereafter that she had been right about saving the Adams Morgan neighborhood and commercial areas. Later on, the Planning and Housing Association spawned a nonprofit corporation headed by the Reverend Channing Phillips, a black man. I served on its board along with several capable, public spirited attorneys, Donald Brown, C. Everett Shorey, and Bruce Terris. We worked to obtain federal money to renovate Clifton Terrace which was a big slum property on 13th Street. We did other good things to try to secure better housing for the disadvantaged.

Mr. Schultz: Was WPHA a private organization?

Mr. Pollak: Wholly private.

Mr. Schultz: How was it funded?

Mr. Pollak: It was funded by raising money from donors and foundations. We had a small budget. The organization spawned the Housing Development Corporation, but it
didn’t fund the Housing Development Corporation, which sought funding from HUD for renovation of Clifton Terrace and other projects.

Mr. Schultz: Did it have a staff?

Mr. Pollak: The Planning and Housing Association had one in staff, Anna Miller. Anna was expert in all manner of housing for the poor and disadvantaged and urban renewal. I recall her as a power for good.

Mr. Schultz: So the principal mission was to work on housing for the poor and disadvantaged?

Mr. Pollak: Exactly. And for enlightened planning. And I think the organization had a great tradition and accomplished significant actions for betterment of housing for the poor and disadvantaged.

Mr. Schultz: Does it still exist?

Mr. Pollak: I’m not sure. I still have bulky files of projects and programs that we worked on.

Mr. Schultz: Were those who were active with the Association mostly members of the board?

Mr. Pollak: Yes, and committees. I gained a relatively wide acquaintance through my work with the Washington Planning and Housing Association. One of the people I worked with was Carl Moultrie, a black lawyer who became a Superior Court judge and later chief judge. The building at 500 Indiana is named after Carl. He was on our board. And another member of our board was George E.C. Hayes who was head of the Public Utilities Commission in the District of Columbia. He was one of the active lawyers on the briefs in Bolling v. Sharpe/Brown v. Board of Education. I look at the activities with the Washington Housing Association as
having launched me into a broader range of activities with nonprofit organizations in the District of Columbia.

Mr. Schultz: Tell me about Charlie Horsky.

Mr. Pollak: Charlie was a brilliant lawyer at Covington & Burling. He was an excellent brief writer. He had been in the Solicitor General’s Office. He wrote a book early in his career called Washington Lawyer. He lived to be quite elderly. When I was at Covington & Burling, the U.S. Reports were in the 400s. Charlie had argued a case I remember that was in the 311\textsuperscript{th} volume of those reports. I had written my comment at Yale Law School on the Expatriation Act of 1964 which, among other things, provided for taking citizenship away from persons who were convicted of Smith Act seditious crimes, rendering them stateless. My comment took that sanction on and considered its constitutionality. The conclusion of the comment was that this provision of the statute was unconstitutional as a cruel and unusual punishment. When I arrived at Covington & Burling, Charlie was preparing a brief in behalf of a petitioner to the Supreme Court whose citizenship, the United States contended, had been forfeited pursuant to provisions of the Nationality Act of 1940 [Section 401(e) and (j)] when he voted in a Mexican political election and remained outside the U.S. in wartime to avoid military service. The case was Perez v. Brownell [356 U.S. 44 (1958)]. I threw in with Charlie in briefing the case. While the Court denied relief in Charlie’s case, on the same day it ruled in Trop v. Dulles [356 U.S. 86] that another provision of the Nationality Act [Section 401(g) providing that a citizen shall lose his nationality
by “deserting the military or naval forces of the United States in time of war, provided he is convicted thereof by court martial and as a result of such conviction is dismissed or dishonorably discharged from the service” was unconstitutional under the Eighth Amendment as a cruel and unusual punishment. The Court said it believed, “as did Chief Judge Clark in the court below, that use of denationalization as a punishment is barred by the Eighth Amendment,” quoting the Judge’s dissenting opinion citing and relying on my comment:

“Plaintiff-appellant has cited to us and obviously relied on the masterful analysis of expatriation legislation set forth in the Comment, The Expatriation Act of 1954, 64 Yale L. J. 1164, 1189-1199. I agree with the author’s documented conclusions therein that punitive expatriation of persons with no other nationality constitutes cruel and unusual punishment and is invalid as such. Since I doubt if I can add to the persuasive arguments there made, I shall merely incorporate by reference. In my faith, the American concept of man’s dignity does not comport with making even those we would punish completely ‘stateless’ – fair game for the despoiler at home and the oppressor abroad, if indeed there is any place which will tolerate them at all.” [356 U.S. at 101 n.33 quoting 239 F.2d 527, 530 (2d Cir. 1956)].

Heady stuff for a second-year lawyer.

I met Charlie in those ways and was active with Charlie, who preceded me in the White House as the President’s Advisor on the National Capital Affairs. As I’ve said earlier in this history, as chance would have it, I ran against Charlie for president of the D.C. Bar. I considered him not only a friend, but really the best that could come of Washington lawyers. He was an example of that. Charlie was the founding force for the Council on Court Excellence. During his term in the
White House, he spawned the President’s Commission on Crime in the District of Columbia which led to many major reforms in the criminal justice system here. He was a major force in creation of the Federal City College, now the University of the District of Columbia. He had a great sway for good in the District.

Mr. Schultz: That’s tremendous. And he died about 5-10 years ago?

Mr. Pollak: Yes.

Mr. Schultz: So now I want to ask you about some of the committees that you’re on for the Judicial Conference. But first of all, what is the Judicial Conference?

Mr. Pollak: Under federal statutes, each circuit, of which there are twelve in the United States, has a Judicial Conference of the judges of the courts of the circuit. The federal statutes now mandate the conference of judges to meet every other year with members of the bar who practice before the courts of the circuit. There is also a Judicial Conference of the United States chaired by the Chief Justice that is composed of selected judges of all the circuits, including the chief judges of the federal district courts and the federal circuit courts. Our Circuit Judicial Conference has a few committees, including a standing committee on pro bono services. From time to time, the Conference establishes special committees such as the committee I chaired in the early 1970s on the administration of justice under emergency conditions.

Mr. Schultz: So there are three Judicial Conference committees you’ve served on and chaired. Let’s just talk about each of them briefly. The first one is the Committee on the
Administration of Justice Under Emergency Conditions. Why don’t you just tell me a little bit about that.

Mr. Pollak: In the late 1960s and early 1970s, there were many mass protests in the District of Columbia and at the Pentagon over the war in Vietnam. There were arrests of thousands of people. There were difficulties that mass protests raised for those charged with maintaining civil order. The arrests and charges came into the federal courts, and challenges were raised by the defendants. The Judicial Conference in 1971 resolved that the chair of the Conference, Chief Judge David Bazelon, appoint a committee “to report on actions taken to implement the findings and recommendations of the 1968 Committee on the Administration of Justice Under Emergency Conditions.” In carrying out that resolution, Chief Judge Bazelon in August 1971 announced the appointment of an 18-member committee, of which I was the chair, a distinguished committee, to look into the administration of justice under emergency conditions. We obtained a Ford Foundation grant of $40,000, had a small staff, co-directors and an executive director, and volunteer lawyers, young, capable, energetic lawyers, who worked with us. The Committee included Patricia M. Wald, later member and then Chief Judge of the D.C. Circuit Court; H. Carl Moultrie, later Chief Judge of the D.C. Superior Court; the dean of Georgetown Law School Adrian Fisher, later professor at Georgetown Samuel Dash; Frederick Ballard, a leader in the D.C. Bar; Gilbert Hahn, who became chair of the D.C. City Council; Norm Lefstein, who was a leader of the public defender; Dan Mayers;
Herbert “Jack” Miller, who was head of the Criminal Division of the Kennedy Department of Justice; Fred Vinson, who later headed the Criminal Division of the Department of Justice. A great committee. The committee issued an outstanding report, in my view, which was presented to the Judicial Conference in the summer of 1973. Judge Charles Fahey was the liaison from the Court of Appeals to the Committee. There grew to be a concern on the part of some of the judges of the Court of Appeals that the pendency in the court of cases arising out of the mass arrests might render consideration of the report and implementation of its recommendations somehow at odds with the judges’ Article III responsibilities to see to the trial and the correct outcome of appeals of these pending cases. In the end, the Committee, even with the help of Judge Fahey and Judge McGowan, was unable to work out a modus vivendi for its report of several hundred pages. All I was permitted to do, and no more, was to rise at the Judicial Conference in the summer of 1973 at the Homestead and offer to submit the report to the Conference. The judge who had the gavel received the report for the Conference, and that was the end of it. We were unable to work out any implementation committee or any formal use of its recommendations which was unfortunate as I think they were well-considered, insightful and useful recommendations.

Mr. Schultz: Do you know anything about the dynamics on the court?

Mr. Pollak: There were reports of tensions between then-Chief Judge Bazelon and Circuit Judge Burger and of differences among some of the judges on the court seen by some to align with Bazelon or with Burger. I don’t mean to say that those
differences were influenced one way or another by this report, but that the report got caught up in some of those differences and tensions. There had been differences over whether a committee should have been named in the first place.

Mr. Schultz: So Bazelon was just not able to get a majority or consensus on the court to adopt the report?

Mr. Pollak: Getting a consensus would have found a way for the report to be received and for a committee, perhaps of the judges, to implement or use the report in ways that would not pose any threat to the Article III responsibilities of the court which were primary. It was unable to be worked out even though Judge Fahey worked hard at it and I know had the help of Judge McGowan.

Mr. Schultz: Did you get to know Judge Fahey during this process?

Mr. Pollak: I did. And we benefited from his counsel greatly.

Mr. Schultz: Tell me about Judge Fahey.

Mr. Pollak: Judge Fahey was one of the great judges of the Court of Appeals. He was in the finest tradition of a United States jurist. He was wholly dedicated to the fair administration of justice. He came to the Court with a marvelous background, having been in the Solicitor General’s Office and Solicitor General. He had argued many cases in the Supreme Court. He was brilliant. He drew outstanding clerks. He was deeply committed to the Bill of Rights and its place in constitutional decision making. He was particularly concerned with Fourth and Fifth Amendment rights, as well as First Amendment rights. He was a very soft-spoken man, but he also had a very short fuse. One of my partners,
Richard Sharp, had clerked for Judge Fahey. He said that every clerk was always fired by the judge several times during the year but always re-hired with tenderness and care the next day.

Mr. Schultz: The next committee is the Program Committee for the 50th Conference in 1989.

Mr. Pollak: In 1989, the Chief Judge was Pat Wald and she was a co-chair of the Conference along with a district judge. I was asked to be the Chair of the Program Committee, or at least the non-judge chair of the Program Committee. It fell to me to work with the Court Executive, then Linda Ferren, to identify for the Committee the subjects for the Conference program and then the participants for each panel. I devoted a large amount of time to doing that, and we had a great lineup of both subjects for the panels and participants in the panels. Working through that assignment outfitted me for work on the programs the Historical Society now presents in the Ceremonial Courtroom. One of those Ceremonial Courtroom programs is like one of the panels presented at the Judicial Conference. All I can remember about the substance of the program in 1989 was that one of the panels was on ways to promote better protection of the environment, and we had a leading professor at Harvard Law who favored cap-and-trade. That part of the panel was probably well ahead of its time.

Mr. Schultz: I think we’re still before its time.

And then the third one is the Standing Committee on Pro Bono Legal Services which was a long-time committee of the Judicial Conference I believe.
Mr. Pollak: Right. It’s a Standing Committee of the Conference. I think it’s the only Standing Committee of the Conference. I chaired it for five or six years. It’s populated by members of the bar. During my tenure, we had two significant accomplishments. The first was that we updated a rule of the Judicial Conference that calls on lawyers who are members of the Bar of the Federal Court in the District of Columbia to devote a certain amount of time, and if not time, to contribute money, representing or funding representation of the poor and the disadvantaged in access to justice. So we reviewed that rule, considered that the time amount was too low and the dollar amount was comparably low. We proposed increasing those minimums, and the Judicial Conference adopted our proposal, which at least up to now, remains in the Federal Rules governing the practice of law in the federal courts of the District of Columbia. The second activity that we promoted was the fostering of more pro bono services across the length and the breadth of the bar which was a traditional purpose, but we turned for the first time to facilitation of pro bono services by lawyers employed by the federal government. There needed to be facilitation by the leadership of the various federal departments and agencies because government lawyers were by rule not permitted to use telephones or time to represent persons other than the federal government. There needed to be accommodating regulations and changes in those regulations. We promoted that and drew together a committee of federal government generals counsel and comparable officials across a broad spectrum.
That effort is continuing to bear greater and greater fruit as more and more federal lawyers contribute their time.

Mr. Schultz: And this is mostly to what kind of legal services?

Mr. Pollak: It’s primarily to represent disadvantaged persons in civil proceedings involving, for example, child abuse or adoption or Social Security denials or landlord/tenant problems, a range of issues that are faced by the poor and disadvantaged.

Mr. Schultz: That’s terrific.

Mr. Pollak: At every judicial conference, the committee makes a report to the conference. As a matter of the history of pro bono services in the District of Columbia, those reports are a good chronology.

Mr. Schultz: Was Charlie Horsky the head of this committee?

Mr. Pollak: I can’t recall who my predecessor was. I know my successor, Katherine Garrett, was selected by me and proposed to the chief judge. She now is the director of the D.C. Bar Foundation.

Mr. Schultz: All right. So a couple of others. I guess the next one is the D.C. Bar Foundation. Let’s talk about that. That’s another 12-year project it looks like.

Mr. Pollak: It actually was a 6-year project. The D.C. Bar Foundation is a 501(c)(3) organization in the District of Columbia. The purpose of the Foundation is to raise money and select providers of legal services to the poor and disadvantaged to receive funding from those monies. You say it was a 12-year project. It was actually longer than six years because prior to being named to the Board – the
Board is named by the District of Columbia Bar Board of Directors – probably in the early 2000s, I had served actively as a member of a Study Committee of the D.C. Bar on the Bar Foundation. The Study Committee made a panoply of recommendations aimed at bringing the Bar Foundation forward.

The Bar Foundation was created in about 1977. Its three-person Board for a long period was composed of former D.C. Bar presidents, and it had a very limited budget for staff. Its staff during that period was a fine attorney and contributor to the public good, Zona Hostetler. By the time the Study Committee looked at it, the scope and rules of the Foundation needed updating to meet the challenges of a later era. The Study Committee presented recommendations to the Bar Board which were adopted. The Foundation’s Board was expanded, its staff augmented. It was put in a posture that enabled it to do its job better. Subsequently, I was named to the Board, and I served as a Board member first with Andrew Marks as president and Emily Spitzer as the Executive Director. When Emily left to work on her brother’s campaign for governor of New York or for other reasons of her own, she was well-regarded as Director, she was succeeded, in part due to my support, by Katherine (Katia) Garrett. I had known Katia in several capacities, in part as my successor as chair of the D.C. Circuit Judicial Conference Pro Bono Committee. Then I served with Rob Weiner as president and succeeded Rob as president. I served a year as president, vacating the office when I reached the six-year term limit. I spent a large amount of my time as a member of the Bar
Foundation Board as chair of a committee on IOLTA, “Interest on Lawyers’ Trust Accounts,” a significant source of funding for the Bar Foundation. We worked on bringing the IOLTA Rules governing members of the D.C. Bar up to the high standards of some other jurisdictions that required banks to pay “comparable rates” on IOLTA funds and made IOLTA mandatory for members of their bars.

Mr. Schultz: Tell us what IOLTA stands for.

Mr. Pollak: Interest on Lawyers’ Trust Accounts. In this period in which interest rates are virtually zero, IOLTA raises annually something under a half million dollars for the Bar Foundation, but when interest rates are higher, it can raise $2 million or more. It’s a great engine for funding. The Bar Foundation has a really significant mission to support legal services for the poor and disadvantaged.

Mr. Schultz: What organizations does it give back money to?

Mr. Pollak: It funds about 26 nonprofit legal services organizations in the District of Columbia. One of them is Legal Aid Society of the District of Columbia. Another is the Washington Lawyers’ Committee for Civil Rights and Urban Affairs. Women Empowered Against Violence – WEAVE – is another. AYUDA. I say 26, and they depend heavily on funding from the Bar Foundation as well as fundraising of their own. Another organization supported is the Neighborhood Legal Services Program which is funded primarily by the Legal Services Corporation of the United States. I considered service on the Bar Foundation Board to be well worthwhile. I think my tenure as president was productive, but challenged by the decline in IOLTA revenues which dropped in
one year from $2 million to under $1 million because of the decline in interest rates associated with the current recession.

Mr. Schultz: Then there is the Historical Society of the District of Columbia Circuit.

Mr. Pollak: I’m not going to spend a long time on that. The District of Columbia Circuit’s Historical Society has a website, www.dcchs.org, and history is available there. The Society was founded at the suggestion and support of Chief Judge Patricia M. Wald, and the founding chair was now-Justice Ruth Bader Ginsburg. It was founded in 1990 to support the writing of a book on the history of the District of Columbia Circuit Courts, that is, the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit and their predecessors. That book has now been written by Professor Jeffrey Brandon Morris. It’s entitled, Calmly to Poise the Scales of Justice. The Society went on from there to support and promote the taking of oral histories of judges and lawyers; to put on programs on historic cases and personages in our courts; to run a mock court for area high school students arguing before federal judges; to help judges preserve their private papers; to put on exhibitions in the Courthouse as we have done. It’s an active society, it now has a 36-person Board. I was recruited in the early 1990s to be an oral history interviewer and began that way and have served since then and am now the president. It’s a labor of love.

Mr. Schultz: So now we’re going to talk about Shea & Gardner, which has morphed into Goodwin Procter. What year did you come to Shea & Gardner?
Mr. Pollak: I came to Shea & Gardner in March 1969, hired by Frank Shea on the recommendation of Bill Dempsey, who was a year ahead of me at Yale Law School.

Mr. Schultz: How big was the firm then?

Mr. Pollak: It was 19 or 20 lawyers.

Mr. Schultz: I think you’ve already talked about how you got hired and why you chose Shea & Gardner, but I’d like to ask you just some questions about law practice and how it has changed. I guess before I do that, you were at one point the chair of the firm, of the management committee of the firm. Is that right? Why don’t you first talk a little bit about the firm and its philosophy, how it was managed, and your role as chair of the management committee.

Mr. Pollak: Warner W. Gardner, who was a name partner and founded the firm with Francis M. Shea, has written a book, a small book, on the firm entitled, *Shea & Gardner 1947-1994 As Seen by Warner W. Gardner*. Anyone who wants to know about the firm should scout out Warner’s book, which perhaps would be available on the web in this day and age. In any event, Shea & Gardner was reflective of its three senior partners, Francis Shea, Warner Gardner, and Lawrence J. Latto, all of whom were very capable, broadly experienced, and committed to the highest standards of the practice of law and the highest standards of ethics. The firm, taking the leadership of Francis Shea, reached out for the best young lawyers who were coming down the pike. When I joined, there were five or six former Supreme Court law clerks, or more, and probably everybody else, although not
me, had been an appellate law clerk. The firm was a litigation firm, mostly in the federal courts around the United States and the District of Columbia. The firm had a stable of clients who came in and never left. In the practice of administrative law, Warner Gardner represented American President Lines and was practicing before the Federal Maritime Commission, and that was the focus rather than the federal courts. Of course, some APL matters landed in the federal courts. The firm, as was more typical then, made, or had a policy of making, every young person who made the grade a partner and then advancing the partners by seniority up the pay scale. That was not particularly unusual in that day, but those were policies to which the firm was deeply and unreservedly committed.

Mr. Schultz: When you say made the grade, you mean in terms of work ethic and legal ability, not business development. Is that right?

Mr. Pollak: Right. Business development wasn’t taken into account. The most senior people received the largest pay, but all the others could anticipate moving up the line as they became more senior.

Mr. Schultz: They moved up with their class?

Mr. Pollak: Right. There were classes. A small number in each class, but there were classes. Soon after I got to the firm, I was named to the Executive Committee, and I served when Frank Shea was chair of the firm, was chair for a long period, and then sort of like breaking with precedent, Larry Latto succeeded him, then Bob Basseches, one of my more senior partners, succeeded Larry, and I succeeded Bob. And then John Aldock succeeded me, and the firm, after a period
of time of John’s tenure, merged with Goodwin Procter, and John has been, since the merger five years ago, the chair of Goodwin Procter’s Washington office. My tenure as chair of the firm was significant in at least one respect, a committee to review the compensation system was constituted.

Mr. Schultz: What year was this?

Mr. Pollak: In the period 1993-1996. The outcome of that was a modest move, not as much as some favored, away from the straight seniority system for compensation and partnership toward taking more elements of the practice of law into account, including business generation, steepening the income rise among partners and providing for capping some partners who ended up not generating business.

Mr. Schultz: Was that in line with the prevailing compensation systems in other firms, or were you behind them, or ahead of them? It’s all obviously gone in this direction in recent years.

Mr. Pollak: I think that we probably made those moves later than many other firms.

Mr. Schultz: At this point, Frank Shea had died? And Warner Gardner was senior?

Mr. Pollak: Frank had died. Warner Gardner was certainly senior and didn’t participate. The major participants were the senior partners of the firm at that time. We were not all of one mind, so it was contentious.

Mr. Schultz: Did it change the firm?

Mr. Pollak: It made changes that were significant to the partners, but the directions of movement and the steps taken were limited, and I don’t think the emotional ties within the firm suffered very much. It represented a change in direction that
ultimately led to changes in the firm and led some people to leave the firm, not because they weren’t successful, but because they weren’t committed to being in the firm any longer. I’ve always thought that for lawyers, much of the ego gratification comes from gaining their own clients and having the pleasures of somebody wanting the lawyer to be the client’s lawyer, and secondly, by the amount of income awarded to the lawyer by his or her peers. So as judgments were made by the law firm that some people, although partners, weren’t performing sufficiently to move up the ladder and gain higher incomes, they felt unappreciated or dissed by the firm. That reduced their commitment to the firm, and some took themselves away because they wanted not to feel that they had not quite made the grade. I spent endless amounts of time arguing or debating the pros and cons of these changes with partners, and obviously we had to reach some kind of consensus. I think that the consensus we reached was for many of the partners, more so the younger ones, only a way station. We didn’t go far enough in directions of a system reactive to generation of business that some wanted and the movement continued after I was no longer chair. To some extent, that drove an interest in the merger, and at the time the merger was considered, the older partners, of whom I was one, senior partners, didn’t participate in the vote on the merger. We thought – I thought – I think others thought, it was a decision for the partners whose futures would be tied up in the merged firm. I never changed my mind about that. The merger worked out well for the partners who wanted it, and Goodwin Procter has been a good home for me.
Mr. Schultz: How does the firm differ now from when you first came and even 10 or 20 years later?

Mr. Pollak: When I first came, and during all the time up until the merger, I was the only lateral partner other than Henry Ruth who joined for a few years and then departed for Philadelphia. We incubated all of the partners from associates who had come to the firm. That’s not the way the firms operate today. Practice groups come in and go out. I don’t know that practice groups have gone out from Goodwin, but practice groups have come in. At Shea & Gardner, everyone knew all the partners because we’d lived with them for six, seven, eight years before they became partners. We had only one office in Shea & Gardner, that was 1800 Massachusetts Avenue, Northwest, preceded by 734 15th Street, Northwest.

Mr. Schultz: How big was Shea & Gardner when it merged with Goodwin Procter?

Mr. Pollak: About 65 attorneys. There were reasons that commended themselves to the younger partners that made the merger look good.

Mr. Schultz: Which were what?

Mr. Pollak: Stability and assurance of a flow of clients and the fact that major corporations were wanting a full “bench” well experienced in the areas of representation, whereas at Shea & Gardner, we were litigation generalists. So the practice was changing in that respect.

Mr. Schultz: Do you think Shea & Gardner could have survived by itself?

Mr. Pollak: I think so, but in an economy of greater and greater incomes for lawyers, I don’t know that Shea & Gardner would have provided the same income growth that
could be had inside a large firm. I believe the younger partners wondered just exactly what the future would be if we didn’t merge.

Mr. Schultz: That’s a common story.

Mr. Pollak: I don’t think there was a lot of broken china due to the process. The process was handled well. Those who really favored the merger, that is it was their decision, feel they made the right decision. I don’t count myself in that group because I didn’t participate in making that decision. I consider myself a generalist in the practice of law. The considerations that were motivating the merger were not factors that were motivating me were I making a decision whether to favor it. It’s just a different group of considerations for me than for the younger people.

Mr. Schultz: I assume a lot really had to do with security.

Mr. Pollak: I think so.

Mr. Schultz: Let’s see. Anything more about the firm?

Mr. Pollak: One of the disappointments that I had over the years was that we never really established a good base of minority lawyers. We had some very capable minority lawyers including Steve Carter, who was here and whom I recruited with the advice of Owen Fiss, a professor at Yale. But Steve’s wife was hired to work in New York, and Steve Carter, after about eight months, left us to go to New York. Of course, he then became an academic of superior accomplishment. Steve’s father, Lisle Carter, had been a colleague of mine in the government, and we hired Steve before I knew of his relation to Lisle.
Mr. Schultz: How has having women as colleagues affected the atmosphere of the firm, or has it made any differences that come to mind?

Mr. Pollak: It made it better.

Mr. Schultz: How?

Mr. Pollak: If you’re going to deal with a range of clients and a range of decision makers, having a diverse group of lawyers is a better way to face the public and the decision makers. I don’t totally generalize, but women have different experiences often in their lives. Bringing those points of view to the table makes for stronger decisions. Men left to their own have a more narrow vision than do men and women together.

Mr. Schultz: Do you think it has made this firm and other firms more flexible in terms of their attitudes toward family and those kinds of things?

Mr. Pollak: Sometimes. It doesn’t necessarily run just from women to be more flexible. Some women don’t favor flexibility; they express a view, “Well, I made it without flexibility, others should.” But there will be women more than men that will say, “Look, we need that flexibility.” I happen to feel that it’s vastly in the interests of the law firm to have that flexibility, let women take several years off and then come back. If they’re good, they’re good. Those are large subjects.

Mr. Schultz: Yes they are. Lots of factors. Let’s talk a little bit about practicing law. Do you have any observations you’d like to make? Let’s start with building a practice.

Mr. Pollak: When I came to Covington & Burling in 1956, right out of law school, the people at Covington & Burling – the partners who recruited me, and maybe it was
Gerry Gesell or Charlie Horsky or Eddie Burling, I can’t remember – but they always said uniformly that it didn’t make any difference whether I ever got any business, that the firm had plenty of business and that I could always count on having good work to do. Early on, I took that as a calming influence since I didn’t have any idea where I’d get any business. Over time, I came to realize that I wanted business to come to me for three reasons. One, I wanted to control the work that I was doing, and if I had business coming, I could pick among the business, the roles, that were congenial to my likes and my talents. Second, I wanted, to be psychological about it, I wanted the gratification of having people want me to be their lawyer. After all, that was my profession, and it wasn’t really enough to have some other lawyers want me to help with their work. Third, even if it wasn’t going to make a difference in my income at Shea & Gardner, where income was really based on seniority for a long period of time, it was going to make a difference in the role that I would play in the firm because people who were controlling business were given a role on the executive committee and had a say in the firm, which was somewhat more than others. So there was good reason to want to generate your own clients, and I have always thought in the end that was one of the things that one wanted to do in a practice. So the real question for Washington lawyers is, “how do you do that?”

Mr. Schultz: Right. That was my next question.

Mr. Pollak: One of the ways is to inherit clients from partners that the lawyer assists in the firm, both because the people they assist get older and move on, which firms now
encourage, but secondly, sometimes the client becomes so pleased with the assistant that the client starts funnelling business to the assistant. Another way, which is quite significant today, is to gain experience in a particular area where you become known, environmental law or antitrust law or tax law, choosing experiences along the way that will mark you as well-versed in the field. Joining the bar, ABA, antitrust section, tax section, business section, whatever, and gaining colleagues who may have a need for a lawyer outside their firm because of a conflict and send you business or send you business because you’re located where they’re not located. A third way that worked for me is to have lawyers you worked with or against in litigation or civic activities retain you or, when someone asks them to recommend a lawyer, recommended you. In my years as a practicing lawyer, I think my clients all came from other lawyers recommending me.

Mr. Schultz: Many of them were lawyers that you met when you were in the government?

Mr. Pollak: Many of them were lawyers I met in the government or met in some other way.

Mr. Schultz: After the government?

Mr. Pollak: Right. But mostly in the government or from Yale Law School. I didn’t ever inherit any work. I didn’t need it, I guess. I just did the next thing that came in the door.

Mr. Schultz: How long did it take you after you came to Shea & Gardner to get to the point where you had your own practice?
Mr. Pollak: Not very long. The first business that came my way was from a lawyer, David Rubin, who had been the Deputy Chief of the Appeals and Research Section of the Civil Rights Division, number two to Harold Greene, the same Harold Greene who became a District Court Judge here. David was Deputy General Counsel of the National Education Association, and he telephoned me in Fall 1969 or possibly early 1970 and said that an arm of the NEA, the DuShane Fund, wanted to be more active in relation to desegregation, particularly of faculties, and discrimination in the public schools and the effort to rid the public schools of it, and would I come and talk with this group. I went to Puerto Rico to meet them and this began a decade of representing the NEA in Supreme Court desegregation cases and teachers who were objects of discrimination and a whole panoply of great cases to work on.

Mr. Schultz: That’s a great way to start a law practice.

Mr. Pollak: Yes. That was really marvelous. If I was to point to anything that may have recommended me, it was that I worked hard at fact development, depositions, documents, motions, and argument. People that opposed me or saw me thought that was something that I could bring to a case. That may have gotten me other representations. I want to attach to my oral history a list of points that I used for years in preparing my witnesses for deposition.

Mr. Schultz: We’ll attach it, but why don’t you talk about that for a minute.

Mr. Pollak: Most of the trials that I had were really in depositions. When my witnesses, my client’s witnesses, or those that were related to my client’s case, were going to be
deposed by the other side, I would talk to them about what they should have in mind as they answered the questions, and then one of my partners, John Rich, made a list of what I was telling them. I would work with that list and refine it. For example, I talked to the witness about what knowledge is, whether you knew something or whether somebody told you, or recall or listening carefully to the question or answering with a few words and letting the next question be posed, or not becoming angry or not trying to please me when testifying, just telling it like it was. I can remember saying to witnesses, “I can always live with the truth, whatever it is, just tell it and it will work out fine.” I worked with my documents and got them in order so that I could take a deposition with a flow of documents that got me the kind of evidence that the documents would warrant.

Mr. Schultz: Any other sort of advice in terms of preparing to take a deposition?

Mr. Pollak: My feeling about taking a deposition of an adverse witness is that you need to be sure you’ve collected every document that’s related to the witness or that’s related to what you want to talk to the witness about. I always presume that the witness will be doing the witness’s best to favor the witness’s side of the case. With witnesses who have a commitment to a client who opposes your client, you must have documents to force the witness to face up to the facts that you are trying to develop because without them, there will be too many places for the witness to hide.

Mr. Schultz: What about trial preparation? Thoughts about that?

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Mr. Pollak: Just the need to try to center on what are the major points that need to be made and keep your eye on the ball and not get diffused trying to do more than you need to do. Have a winning theory and winning witnesses.

Mr. Schultz: What about preparing for appellate argument?

Mr. Pollak: Well I’ve told in another place when I made my first argument in the Supreme Court as an assistant to the Solicitor General. Archibald Cox, Solicitor General, attended and gave me two pieces of advice after the argument. He said, “Always open with a statement of the issue as you see it, and secondly, don’t discard the argument you’ve prepared because of what your opponent has argued, give the argument you’ve prepared.” So I generally tried to prepare by identifying what the issue was and what I wanted to say about it. I always found that I prepared an argument that was too long. I would make an outline and then sometimes give a moot court alone, just to myself. Then I would give one to somebody, a colleague --

Mr. Schultz: Just to one colleague?

Mr. Pollak: Yes, or a couple of colleagues. Maybe I’d do it more than one time. The most successful arguments that I made were ones where my long outline got boiled down to a page or two of key phrases that would tickle my mind as to what were the main points I wanted to make and what were the subpoints within the main ones. I always articulated to myself that I would never get to make it in a run the way the outline was, but I tried to feed into my responses to the judges’ questions
the points of my outline. ALI-ABA had me come and lecture on appellate argument. I liked arguing a lot. It was a real high to do it.

Mr. Schultz: How many times did you argue in the Supreme Court?

Mr. Pollak: Twelve times. I think I made good arguments. In private practice I’d argue my own cases. Most of the time I won, but not always.

Mr. Schultz: That’s not always so easy in private practice.

Mr. Pollak: No. I always remembered the statement of J.W. Moore, Moore’s Federal Practice and Moore on Bankruptcy, at Yale Law. He said, “If the facts that relate to the issue aren’t winning facts, then redefine the issue and find more facts.”

Mr. Schultz: Judge William Bryant used to always say, “Don’t fight the facts.” That’s really the opposite.

Mr. Pollak: In the Civil Rights Division, we built our cases on the facts. We worked hard to find the facts that established our claim. We built the factual record that would determine the outcome where the law was applied. That’s what we trained the young lawyers to do. Our leader, John Doar, derided “gee whiz” cases – “Gee whiz, your honor, our claim is right; we’re entitled to win.”

Judge Gesell, another mentor, felt the real determinant of cases was the facts, and I’ve been a fact person. I’ve always thought I was good with the facts, because I had a clear idea as to what they were.

Mr. Schultz: So looking back on it, do you think law was a good fit for you?

Mr. Pollak: I was terribly fortunate to become a lawyer because I knew no lawyers, had no lawyers in my family. It was just fortuitous I became a lawyer. It was the right
profession for me. When I came out of the federal government, I was flattered that Bill Gorham, who was then the president of the Urban Institute, wanted me to come be his deputy, and John Gardner, who had been the Secretary of Health, Education & Welfare, wanted me to come as his deputy. He was head of the Urban Coalition, which became Common Cause. Gardner withdrew his offer, and I then turned down Gorham. That was really the right decision. So law was the right place.

Mr. Schultz: What advice would you give somebody coming out of law school? What career advice would you give?

Mr. Pollak: If you want to be a litigator, get a clerkship and then get in a really good U.S. Attorneys’ Office and learn the trial practice. Assistant United States Attorneys learn to be at ease in the courtroom. That’s my perception. They learn the moves, and if you’re in a big uptown practice, you don’t get into court enough to learn that. The other thing I would advise is the advice that I got when I went to law school. My dad was in the real estate business in Illinois. The company’s lawyer was a man named Bernard Nath, one of the founding partners of the Sonnenschein law firm in Chicago. Bernie, whose children I grew up with, was a graduate of the University of Chicago Law School. He didn’t understand why I would want to go to Yale. He said, “If you go to law school, graduate in the top ten percent of your class.” So I went to Yale and I saw all these wizards who were making theses fabulous records. I thought, “Darn Bernie, what do you mean be in the top ten percent?” I did, and he was right. That opened a lot of doors. If
you’re in a lower percentage, you can have a great career, but getting started is harder.

Mr. Schultz: Anything else you want to add?

Mr. Pollak: I don’t think so. Thank you, Bill. You’re a great interviewer.

Mr. Schultz: Thank you, Steve. I really enjoyed it.
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*University of Texas v. Camenisch*, 451 U.S. 390 (1981), 236, 284, 286, 287, 288
Stephen J. Pollak is senior counsel to Goodwin Procter (October 2004 to present) and was a partner (1969 to October 2004) and former Chair of the Executive Committee of Shea & Gardner (1993-1996) prior to its merger with Goodwin Procter in October 2004. Mr. Pollak joined the Firm in 1969 after serving in the United States Department of Justice and the White House from 1961 through 1969. Among his governmental positions were Advisor to the President for National Capital Affairs (1967) and First Assistant and Assistant Attorney General in charge of the Civil Rights Division (1965-67, 1967-69) and Assistant to the Solicitor General (1961-64), U.S. Department of Justice.

Since 1989, Mr. Pollak has been a member of the Panel of Mediators appointed by the U.S. Court of Appeals for the District of Columbia Circuit and the Panel of Mediators appointed by the U.S. District Court for the District of Columbia. He has served as mediator in approximately 80 cases and arbitrator in five cases that went through evidentiary hearing to decision. Mr. Pollak has served as a training consultant in mediation for the Office of Dispute Resolution of the U.S. Department of Justice.

In addition to service as mediator and arbitrator, Mr. Pollak's legal practice has consisted primarily of representing clients in trial and appellate litigation in the Federal Courts, the Supreme Court (13 cases argued), Courts of Appeals, and various District Courts and before federal departments and agencies. His fields of concentration in litigation have included constitutional law, labor and antitrust law, civil rights, ERISA, and legal ethics. He has also represented individuals under investigation for possible violation of federal laws, including lawyers and law firms against whom complaints have been lodged with the Bar Counsel.

From 1999 through 2003, Mr. Pollak served as Special Master in the Vitamins Antitrust Litigation, MDL No. 1285, in the United States District Court for the District of Columbia before Chief Judge Thomas F. Hogan. He was responsible, among other things, for resolving all discovery disputes.

Mr. Pollak has served as lead counsel for the United Mine Workers of America Health and Retirement Funds, a collectively bargained multiemployer benefit fund, in litigation over the validity under the labor and antitrust laws of provisions of the bargaining agreement requiring contributions to the Funds on coal purchased by companies signatory to the agreement. Mr. Pollak has handled more than 50 cases of this nature for the Funds, recovering more than $100 million in contributions. Other litigation for the Funds includes lawsuits testing the meaning of the 1992 Coal Act which created the UMWA Combined Benefit Fund and provided for its funding primarily by companies signatory to prior collective bargaining agreements.

During the 1970s and early 1980s, Mr. Pollak was lead outside counsel for the National Education Association in many cases at trial, on appeal and in the Supreme Court presenting frontier constitutional, civil rights and labor issues.
Mr. Pollak served as counsel to the Secretary of the Department of Health, Education and Welfare, Joseph Califano, in drafting regulations implementing Section 504 of the Rehabilitation Act of 1973, and was counsel for respondent Camenisch in the University of Texas v. Camenisch, 451 U.S. 390 (1981), in which the rights under federal law of a student with a hearing impairment to have the assistance of a sign language interpreter were at issue.

Mr. Pollak was President of the District of Columbia Bar (1980-81) and was also a member of the Board of Governors of the Bar (1972-73, 1974-75, 1979-80, and 1981-82). He served as Chair of the Bar's Public Service Activities Committee (1989-95) and was the leader in reorganization of the Bar's pro bono activities. Mr. Pollak was President (7/2008-6/2009) and a member of the Board of Directors (2003-2009) of the District of Columbia Bar Foundation. He is a member of the District of Columbia Access to Justice Commission (March 2005-present).

Mr. Pollak has served as a member and Chair of the District of Columbia Judicial Nomination Commission (1984-90, 1994-96), responsible for selection of the Chief Judges of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia as well as presentation to the President of candidates for nomination as judges of those Courts.

Mr. Pollak is President and member of the Board of Directors of the Historical Society of the District of Columbia Circuit (2003-present, 1993-present) and Director of its Oral History Program (1994-present).

Mr. Pollak is a member of the American Bar Association, serving in the House of Delegates (1978-81), and the American Law Institute.

Mr. Pollak attended Dartmouth College (B.A. 1950) and Yale Law School (LL.B. 1956), and served in the U.S. Navy (1950-53).

Mr. Pollak has received the following awards:


Daniel Webster Distinguished Service Award, awarded by the Dartmouth Club of Washington (2005)

Thurgood Marshall Award for Service in the Public Interest, awarded by the District of Columbia Bar (2001)

Whitney North Seymour Award for 1994, awarded by the Lawyers' Committee for Civil Rights Under Law

Frederick B. Abramson President's Award for 1994, awarded to the "Public Services Activities Corporation, Pro Bono Clinics, Stephen J. Pollak," by the District of Columbia Bar

Servant of Justice Award for 1994, awarded by the Legal Aid Society of the District of Columbia
Wiley A. Branton Award for 1992, awarded by the Washington Lawyers' Committee for Civil Rights Under Law

Frederick B. Abramson President's Award for 1992, awarded to the Public Services Activities Review Committee, Stephen J. Pollak, Chair, by the District of Columbia Bar

* * * * *

Present Position: Senior Counsel
Goodwin Procter LLP
901 New York Avenue, N.W., #823E
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(202) 346-4178
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Senior Counsel (October 2004 to present)

Prior Position: Partner
Shea & Gardner, Attorneys at Law
1800 Massachusetts Avenue, N.W.
Washington, DC 20036
(202) 828-2090
Partner (March 1969 to October 2004)
Chair, Executive Committee (April 1993 to April 1996)

Experience: Mediation and Arbitration
Member, U.S. Court of Appeals for the District of Columbia Circuit Panel of Mediators (1989 to present)
Member, U.S. District Court for the District of Columbia Panel of Mediators (1989 to present)
Member, CPR Panel of Distinguished Neutrals, Washington, D.C. (1998 to present)
Member, AAA Panel of Mediators for Complex Cases
Special Master, Vitamins Antitrust Litigation (U.S. District Court for the District of Columbia, 1999 to 2003)

Counsel and Associate Independent Counsel to Independent Counsel James C. McKay re Franklyn C. Nofziger Matters (February 1987 to July 1988, August 1989 to 1990)

Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
(December 1967 to January 1969)

Special Assistant to the Attorney General
U.S. Department of Justice
(October 1967 to December 1967)

Advisor to the President for National Capital Affairs
(February 1967 to September 1967)
First Assistant to the Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
(April 1965 to February 1967)

Deputy General Counsel
Office of Economic Opportunity
(October 1964 to April 1965)

Legal Counsel to the President's Task Force on the War Against Poverty
(June 1964 to October 1964)

Assistant to Solicitor General
U.S. Department of Justice
(November 1961 to October 1964)

Associate
Covington & Burling
Washington, D.C.
(1956 to November 1961)

Memberships and Board Positions:
District of Columbia Bar
President (June 1980 to June 1981)
President-Elect (June 1979 to June 1980)
Secretary (1974 - 1975)
Member, Board of Governors (1972 to 1973, June 1981 to June 1982)
Chair, Public Service Activities Committee (1989 to October 1995); and Public Service Activities Review Committee (1990 to June 1992)
Chair, 1998-99 Nominations Committee
Member, Bar Foundation Study Committee (1998 to 2000)
Member, Pro Bono Initiative Committee (2000 to 2001)
Member (1972 to present)

District of Columbia Bar Foundation
President (2008 to 2009)
Vice President (2007 to 2008)
Member, Board of Directors (October 2003 to 2009)
Past President (2009 to present)

District of Columbia Access to Justice Commission
Member (March 2005 to present)

District of Columbia Judicial Nomination Commission
Chair (July 1989 to January 1990)
Acting Chair (December 1988 to July 1989)
Secretary (1986 to 1988)
Member (July 1994 to January 1996; January 1984 to January 1990)
The Historical Society of the District of Columbia Circuit
President (September 2003 to present)
Member, Board of Directors (October 1993 to present)

Special Committee on Gender Bias of the Task Force of the D.C.
Circuit on Gender and Race Bias
Member (September 1992 to 1995)
Member and Chair, Subcommittee on Litigation Process
(January 1993 to 1995)

American Law Institute
Member (1978 to present)

American Bar Association
Fellow (July 1996 to present)
Member, House of Delegates (1978-81)
Member (1958 to present)

Judicial Conference of the District of Columbia Circuit
Standing Committee on Pro Bono Legal Services
Chair (1997 to July 2001)
Member (1996 to 2001)
Committee on the Administration of Justice Under Emergency Conditions
Chair (1971 to 1973)

Lawyers' Committee for Civil Rights Under Law
Co-Chair (1975-1977)
Member, Board of Directors (1969 to present)
Member, Executive Committee (June 1987 to 2009)

Washington Lawyers' Committee for Civil Rights and Urban Affairs
Chair (January 1970 to March 1972)
Member, Board of Directors (1969 to 1995)

DKH, Incorporated; Draper and Kramer, Incorporated; and D&K Insurance
Agency, Inc., Chicago, Illinois
Chair (May 2011 to present)
Vice Chair of Boards of Directors (May 2009 to April 2010)
Member, Board of Directors (July 1970 to present)

Housing Development Corporation (Non-Profit, Low-Income Housing)
President (January 1976 to 1980)
Member, Executive Committee and Board of Directors (1969 to 1980)

NAACP Legal Defense & Educational Fund, Inc.
Member, Board of Directors (June 1987 to May 1995)

So Others Might Eat, Washington, D.C.
Member, Board of Directors (June 1987 to December 1992)
Education:

Dartmouth College, 1946-50, B.A., Phi Beta Kappa
Yale Law School, 1953-1956, LL.B., cum laude
Order of Coif
Managing Editor of Yale Law Journal
Jewell Prize - Highest grades, second year
Second prize for best student contribution to Yale

CASES ARGUED BEFORE THE
SUPREME COURT OF THE UNITED STATES

Griffin v. Breckenridge, 403 U.S. 88 (1971)
Hanover Bank v. Commissioner of Internal Revenue,
369 U.S. 672 (1962)
Namet v. United States, 373 U.S. 179 (1963)
Rabinowitz v. Kennedy, 376 U.S. 605 (1964)
United States v. Healy, 376 U.S. 75 (1964)
Willis Shaw Frozen Express, Inc. v. United States,
377 U.S. 159 (1964)

March 15, 2012
Katherine L. Garrett  
Biographical Sketch

Katia Garrett is a public interest lawyer and social justice advocate who has worked in the District of Columbia since her 1985 graduation from George Washington University Law School. Following a clerkship with U.S. District Judge Thomas F. Hogan (DDC), she worked as a courtroom lawyer with the plaintiffs’ civil rights and employment law firm of Kator, Scott & Heller.

Ms. Garrett served as the Executive Director of the DC Circuit’s Task Force on Gender, Race & Ethnic Bias, and subsequently held positions within the US Department of Justice, including as Chief of Staff to Eleanor D. Acheson, Assistant Attorney General, Office of Policy Development.

She served for over eight years as the Executive Director of the DC Bar Foundation, the largest funder of civil legal services in the District, launching the successful DC Poverty Lawyer Loan Repayment Assistance Program and the DC Access to Justice Grants Program.

Katia has taught as an adjunct at both the Washington College of Law at American University and at George Washington University Law School, and has worked as a consultant on class actions, dispute resolution, and non-profit management.

Her community service includes terms as the President and Board member of the Washington Council of Lawyers, the Chair of the DC Circuit Judicial Conference Standing Committee on Pro Bono Legal Services, the Board of the National Association of IOLTA Programs, and as a Complaint Examiner for the DC Office of Police Complaints. Katia was named Woman Lawyer of the Year in 2012 by the Women’s Bar Association of DC.

She lives in the District with her husband and two children, both of whom attend DC Public Schools.
**WILLIAM B. SCHULTZ**

**Biographical Sketch**

Bill Schultz is the General Counsel of the Department of Health and Human Services. Before joining HHS, Bill was a Partner at Zuckerman Spaeder LLP.

Bill has also served as Deputy Assistant Attorney General at the U.S. Department of Justice. He was responsible for overseeing all Civil Division appellate litigation and the Department’s Tobacco Litigation Team. Prior to Department of Justice, Bill was the Deputy Commissioner for Policy for Food and Drug Administration, where he was the principal advisor to the Commissioner on all significant policy issues and responsible for development and management of all regulations.

Before joining FDA, Bill was the Counsel to the Subcommittee on Health and the Environment (Rep. Henry A. Waxman, Chairman), Committee on Energy & Commerce, U.S. House of Representatives, where he worked on health care, FDA, tobacco and trade legislation.

Bill also served as an attorney with the Public Citizen Litigation Group, where he litigated law reform cases on administrative procedure, state and federal constitutional law, antitrust, voting rights, product liability, nuclear power, and food and drug law, and where he argued dozens of appellate cases, including several in the U.S. Supreme Court. Bill started his career as a law clerk to Judge William B. Bryant, U.S. District Court, District of Columbia.

For almost 10 years, Bill taught civil litigation and food and drug law at Georgetown University Law Center. He received his BA from Yale University and his JD degree from the University of Virginia Law School. He is a member of the District of Columbia and Virginia bars.
REMARKS FOR UNVEILING OF PORTRAIT OF JUDGE GREENE

Mr. Chief Judge -- may it please the Court:
Judges, family, colleagues and friends of Harold Greene.

This is the 31st year of my professional relationship with Harold Greene. He's also my friend. And this is an occasion to share with you some observations about him and his public service.

Judge Greene is personable, self-mocking and easy to like. He enjoys human contact and has a gifted mind and a quick wit. He writes well and quickly. Harold is committed to public service; and cares about the law and fairness. And he has the courage to seek out and master challenges.

Is he perfect? Almost. He has only one limitation that I know of: lack of complete modesty.

Recently, one of Harold's law clerks was complaining about judges thinking they are almost deities. Quick as a wink, Harold shot back, "What do you mean, almost."

Service in the Civil Rights Division
When I entered the Department of Justice in 1961 as an Assistant to the Solicitor General, Harold had been there for four years. He joined the Civil Rights Division upon its creation by Congress in 1957, and became the first Chief of the
Appellate Section. Harold held that post until the Voting Rights Act was assured of passage in 1965.

With notable exceptions led by Frank M. Johnson and Skelly Wright, most of the district judges before whom the Civil Rights Division was litigating uniformly ruled in favor of the defendants. So Harold and his small band of five or six lawyers took an unending stream of appeals to the Fifth Circuit where Chief Judge Tuttle and Judges Rives, Wisdom and John R. Brown drew on Harold's briefs to reverse and begin the correction of long-standing wrongs.

Of course, signal civil rights cases went to the Supreme Court where Harold's name and hand were on every brief. The case names are a "hall of civil rights fame," to mention just a few: *Baker v. Carr*, presenting the question whether the Fourteenth Amendment protects against gross malapportionment; *Gray v. Sanders*, whether county unit plans that diluted the votes of residents of populous counties are constitutional; *Louisiana v. United States*, whether the State's "constitutional interpretation test" for qualification as a voter violated the Fifteenth Amendment; *Shuttlesworth v. City of Birmingham*, whether state convictions of blacks for sitting in at lunch counters constituted a denial of equal protection of the laws; and *Griffin v. School Board of Prince Edward Country, Virginia*, whether the closing of public schools facing desegregation
worked a constitutionally impermissible discrimination against blacks.

And when case-by-case litigation proved the inadequacy of existing federal laws, Harold put his experience, intelligence and creativity into drafting of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Victory, it is said, has 100 fathers, defeat is an orphan. Well, Harold is a true father of these great laws of the Second Reconstruction.

**Appointment to the Bench**

In 1965, President Johnson nominated Harold for the Court of General Sessions, the District of Columbia's trial bench. Even The Evening Star praised the selection and Senator Philip A. Hart noted the qualities that would make Harold an outstanding judge:

> "All of us who had daily discussions in developing [the Voting Rights Act] were impressed with the quickness of mind of Harold Greene, his magnificent temperament, his ability to adjust to and understand competing points of view, and to contribute materially toward the resolution of conflicts.

Harold served on that bench for 13 years, 12 of them as Chief Judge.

He was a "triple threat" player, strong as a judge, as an administrator, and as a leader. He worked unstintingly to elevate the caliber of the court and guided it through growth from 16 to 44 judges and a total reorganization under the 1970
D.C. Court Reform Act which expanded its jurisdiction in the image of a full state court system and renamed it as the Superior Court. And in his spare time, Harold worked to conceive and secure $40 million for construction of the new courthouse.

I recall in 1967-68 seeing Chief Judge Greene in action, affirming his commitment to fairness and respect for individual rights. Harold, Mayor Walter Washington and I, as the Attorney General's representative, were making plans for handling mass arrest situations. Harold was adamant that there would be no mass arraignments or truncated procedures. He held fast to this position during the disturbances following the assassination of Dr. Martin Luther King, keeping the court open around the clock for five days, drawing on the bar for volunteer lawyers for those accused, and arraigning in the regular way each person charged with a violation of law.

Service as a Judge of the U.S. District Court

In March 1978, President Carter nominated Judge Greene for this District Court. Again the Senate, the bar and the press applauded the choice. Representative was the Washington Post which called it "an excellent selection," and added:

"[It is] sad only in that it will mean a loss to the local court that he guided so ably to an unprecedented level of respectability. * * * During his tenure, Judge Greene has earned a reputation both as a legal scholar and a skillful director of the transformation of the old disorganized Court of General Sessions into a large powerful Superior Court
of state-court rank -- today one of the best urban court systems in the nation."

You have heard the observations of Harold by Judge Wald of the Court which sits in judgment on the correctness of his rulings, and by Judge Oberdorfer who has been his colleague on this Court for virtually Judge Greene's entire tenure. As I prepared for this afternoon, I puzzled as to what I might add.

First, as a practicing lawyer and former president of the D.C. Bar, I can attest that the members of the bar hold Harold in the highest regard as an outstanding judge among the members of this excellent Bench. He is a "repeater" in the American Lawyer's "Best of the D.C. Circuit" evaluations.

Second, I can comment on Harold's service 1978 to '86 on the Judicial Nomination Commission of the District of Columbia. The seven-person Commission is responsible for naming the Chief Judges of the D.C. Court of Appeals and Superior Court and for selecting and presenting to the President three candidates for each judicial vacancy. Harold was steadfast in seeking quality along with diversity. His evaluations carried special weight and were instrumental in maintaining a strong and representative bench.

Finally, I can say a few words about Judge Greene's biggest case, United States v. AT&T, which brought him national fame and, for a significant period after the settlement, intense personal pain. While resolution of the case led Time Magazine to name him a runner-up "Man of the Year," citizens from far
and near sent letters "To Judge Greene who destroyed our phone system."

Judge Greene got the massive case when he joined this Bench in 1978. The Complaint, charging AT&T, the nation's largest corporation, with monopolization of the telecommunications market had been filed in 1974, but lay dormant over the ensuing 3-1/2 years.

Harold determined to prove that the federal courts could handle big antitrust cases and, with what he viewed as excellent lawyering on both sides, brought the suit to trial just after New Year's in 1981.

After 11 months of trial, 350 witnesses, thousands of exhibits, thousands of stipulations of fact, and the Court's denial of an AT&T motion to dismiss filed at the end of the Government's case, the parties in January 1982 presented a proposed consent decree embodying the terms of an agreed settlement. The terms required AT&T to divest itself of the 22 operating companies providing local phone service, representing approximately 75% of the Bell System's assets valued at $150 billion, while allowing AT&T to retain its long-distance operations, research labs and equipment manufacturing facilities. The operating companies were required to provide AT&T's long-distance competitors with equal access to their local lines and were restricted from entering certain business where they might
use their control of local service to gain improper advantage over competitors.

After seven months of Tunney Act proceedings to assess whether the terms of the proposed decree would serve the public interest, the Judge approved the settlement and divestiture went into effect on January 2, 1984. Harold confessed he arose that morning with trepidation and experienced intense relief when he lifted his telephone and heard the familiar dial tone.

But the public was unrelenting. Citizens everywhere reacted as if a national calamity had occurred. A stream of adverse comment and hate mail erupted. The common complaint was, "If it ain't broke, don't fix it." Emblematic was a cartoon in the Washington Post depicting a harried Harold Greene tangled in an octopus of telephone cords and dangling receivers. Harold couldn't go anywhere without being challenged for wrecking the world's best phone system. I saw this myself one night when Harold and Evelyn came to my house for dinner and faced a barrage of hostile questions from other guests.

In December of 1984, a Washington Post commentator fantasized as follows: "The President decides to name Judge Greene to the Supreme Court. The call, however, cannot be completed because of circuit overload."

As we know now, the dire predictions proved false. Five years later, Fortune Magazine reported:

"Today the great majority of the country's telephone customers, large and small, declare
themselves satisfied with the service they receive. * * * The industry has evolved into an entrepreneurial, freewheeling marketplace where customers and many shareholders are reaping rewards."

Computerworld reaffirmed that assessment in 1992, noting that AT&T stock had almost doubled, long-distance rates were down 35%, the pace of innovation had accelerated, and, while the cost of local service was modestly up, the cost of equipment to consumers was down.

Harold has summed it up: "Competition is the lifeblood of the American system. It brings down prices and speeds up innovation. That's been the effect here."

Conclusion

Harold Greene would have made a great Justice. In my view, one I know is widely shared, Harold Greene has been for 18 years and is now a great force for justice on this United States District Court for the District of Columbia.

Thank you.

Stephen J. Pollak
NOTES ON PREPARING YOUR OWN WITNESS FOR DEPOSITION BY OPPOSING COUNSEL

1. Ask if the witness has ever had his deposition taken before. (The masculine herein includes the feminine.) Ask if he has ever testified in court before.

2. Describe what the physical setting will be like: position of opposing counsel, your position, reporter's position.

3. Explain the purpose of a deposition: to permit the opposite side to discover information that may aid it in the law suit; to lay a foundation for impeaching the witness on the stand. Explain what impeachment is--use of an inconsistent statement to cast doubt on credibility. Emphasize the breadth of questioning permitted. Questions may be asked that seem to him irrelevant, but they must be answered. Explain that you can instruct him not to answer certain questions, but that this is unlikely to occur.

4. Explain that the witness's duty is to tell the truth to the best of his ability. Explain that as counsel for the company or organization, you are instructing him that you want him to do no less.

5. Explain to him that he should not be thinking about shaping his answers to avoid damaging disclosures. He should leave litigation strategy to you, and simply answer the questions honestly. Every witness I have seen prepared has regarded this as an interesting and important point--and contrary to their expectations. He should not and need not volunteer information if he is not questioned about it. He should simply listen carefully to the questions, answer truthfully, and go no further. Add that he shouldn't worry if all the information that is being drawn out of him appears to be damaging. This is the other side's deposition. If you see fit, you will ask him to clarify certain matters at the end of the deposition, but you will not be trying to prove your entire case at this time.

6. He should try to answer truthfully, but briefly. He must listen carefully to the question, reflect, then answer if he has understood it. If not, he should simply state that he does not understand the question. He should not anticipate additional questions in making a response.

7. He must remember that he is speaking for the record. He wants to give answers that he can live with in the future.

8. Talk to him about knowledge. A question generally asks him only what he knows. He does not know what someone else has told him, though if he is asked what someone else has told him, he can answer that. Many questions have only three possible answers: "yes," "no," and "I don't know," (or "I don't remember").
9. If he is asked a numerical question, he may well not know the answer. If he is asked to estimate, or give his best estimate, he may do that if he has some basis for it, though he should make clear that he is only estimating.

10. The deposition may cover large periods of time. The questions should specify what period of time an answer is sought. If the question does not, the witness should ask for clarification or supply a time frame in the answer.

11. A question may contain an assumption about a matter of fact. If so, the witness should consider whether he accepts the assumption as a fact. If not, he should state that he does not, or make clear that he considers the question hypothetical. Caution him about answering hypothetical questions.

12. If he is asked about a document, he should not answer until he has received it and read it over carefully—all of it, not just the part about which he is questioned.

13. Warn him about answering very broad questions with incomplete answers. To pick a glaring example, a company's EEO affirmative action officer may be asked "what he did" in furtherance of the company's affirmative action plan. Assuming that he did a large number of things that could not reasonably be listed or remembered, he must understand how to keep his answer open-ended. E.g., "These are some of the things I did. I cannot remember the others." Etc. (Practice questions are useful to drive home points 8-13.)

14. He may find himself answering a long string of questions "I don't know" and begin to feel, or be made to feel by opposing counsel, stupid or incompetent. Warn him against this feeling, since it may affect his answers. It is perfectly natural not to know a lot of details. It is merely a lawyer's trick for opposing counsel to try to throw a witness off stride by asking a lot of these questions.

15. Warn him that he may find the opposing counsel irritating. In that event, his impulse may be to try to retaliate in his answers. Warn him strenuously against giving in to this impulse, since it will make his answers careless and less accurate. Tell him that the opposing counsel may be deliberately trying to anger him for just this reason.

16. Warn him conversely about the danger of finding the opposing counsel too friendly, which may give rise to a natural impulse to please or satisfy the opposing counsel. He must maintain his own objectivity and remember that he is speaking for the record. It is a formal occasion.

17. Similarly, warn him that he should not be concerned about pleasing you in his answers.
18. Describe what your own role will be at the deposition. Warn him that you may be saying very little. Tell him why this is so: it is the opposing counsel's deposition; your role is to object to questions that you believe are in improper form, but opposing counsel is not obliged to rephrase them. Furthermore, you are not usually trying to prove up your case at the deposition.

19. Work out a signal with him for the occasions on which you wish to object to the form of a question. E.g., placing your hand on his arm. When this happens, he should not answer the question, but remain silent until you have spoken and finished your colloquy with opposing counsel. It is possible, but unlikely, that you will instruct him not to answer a question.

20. Tell him that the depositions, if long, will be interrupted by short breaks. He should keep you informed if he is uncomfortable, tired, etc. You are there to look after such matters, to keep opposing counsel from harassing him, etc.

21. Tell him that there may be a number of colloquies between opposing counsel—about documentary production, forms of questions, etc. These may appear to him to be angry or heated. He is not to concern himself with them or worry about them.

22. Finally, opposing counsel may ask him if he has discussed his testimony with you. He should not be embarrassed about answering affirmatively, since such discussions are perfectly proper. You told him what to expect at the deposition, that he should answer questions truthfully, etc.

Respond to questions using your own language rather than accepting questions' whenever the question is ambiguous or incomplete.
SJP RECOLLECTIONS OF TRIP TO THE JOHNSON RANCH

At about 9:15 on Friday night, September 29, I received a call from the Attorney General. He said that I should be at Andrews Air Force Base at 8:50 in the morning to go to the Ranch. He said there would be Barefoot Sanders, Eddie Weisl, and himself and perhaps another and that he was not sure what the purpose of the trip was. I am now back from the trip to the Ranch on Saturday. The purpose was for the President to announce the appointment of Dean Griswold as Solicitor General, Ed Weisl as Assistant Attorney General in charge of the Civil Division and myself as Assistant Attorney General in charge of the Civil Rights Division.

We flew down in a Jet Star taking three hours and fifteen minutes. The President and Mrs. Johnson met us when we landed, and we drove back to the Ranch house. The President went in to change from his western clothes for a family picture, and Mrs. Johnson chatted with us on the lawn. Then she left for the picture, and we continued chatting. Bloody Marys were served.

One by one the President called those who had come down in to speak with him. The Attorney General came out and asked me if it would be satisfactory for me to come over initially as a Special Assistant and then to be appointed Assistant Attorney General as soon as John Doar had completed the trial of the criminal case against those charged with the Neshoba County murders. I said it sounded good provided the President would make clear that I would assist during the transition to the new D.C. government.

The President then called me in and said that he would be announcing my appointment as a Special Assistant to the Attorney General for urban problems, civil rights and crime. The President asked Ramsey what my pay would be, and Ramsey said he could give me no higher than an 18, which was $25,600. The President asked me what I was earning, and I said $26,000.
He said that I could stay on the White House payroll until I moved to the Assistant Attorney Generalship. Shortly thereafter we gathered together with the President, Mrs. Johnson, his two daughters, Pat Nugent, and Chuck Robb, and went over to the outbuilding where the press conference was to be held. The President was joined by Dean Griswold and Ed Weisl on his right, Mrs. Johnson and I on his left. He made the announcements, and I will attach to this a copy of the transcript.

I recall a feeling as the announcements were made that it was a thrill to be a part of this activity and present.

After the press conference, we drove with the President to greet some visiting legislators who had been touring his birthplace home.

After that, we returned to the ranch house where I called Walter Washington to tell him of the President’s action. Walter was out on a walking tour and I advised Banetta. She asked if I was pleased and if this was what I wanted. Those were questions I expected, and I said that it was the right decision and the right action and it would be right. I also called Ruth and told her. I cut that conversation short as the President was about to talk to Chief Justice Warren to tell him of the actions on a call placed by Ramsey Clark. We were in the President’s office there which is a pleasant, ranch-style room with the President’s desk and two secretary desks at the other side of the room.

After the telephone calls, we were invited to stay on for lunch, or indeed had been invited earlier. We went into the dining room which was very colorfully set in Mexican china with Mexican food to be served. Mrs. Johnson sat at one end of the table and the President at the other. I was on the President’s left, Dean Griswold on his right. Ramsey Clark was on
Mrs. Johnson’s right, and Ed Weisl on her left. Also at the table were Lynda Bird and Chuck Robb, Barefoot Sanders, and a friend of Lynda Bird’s boyfriend. The luncheon discussion was informal and pleasant.

The President was quite friendly to me and seemed interested in me. At one point in the lunch, the President turned to me and addressed the entire table saying how proud he was of me for having successfully steered the Reorganization Plan for the District of Columbia through the Congress. The President said that it was a magnificent job and that the people of the United States and the nation itself owed me a real debt of gratitude. The President said that I had exceeded his expectations and had done more than he had expected. He said that it was very rare that this ever occurred as he generally found that people did not do as much as expected. Mrs. Johnson then asked why when this Congress was so difficult the Reorganization Plan had gone through. I advised her that there had been a number of crucial decisions including the President’s own decision to delay sending up the plan until we had talked to each of the Congressmen about it. The President commented that he felt that the Reorganization Plan had bypassed the District Committees and felt somewhat sheepish about this. He said in a humorous vein that he had campaigned for Congress on the court-packing plan and then when he got to Congress, it had already been defeated. He drew from this the parallel that it was not wrong to proceed by the Reorganization Plan if this was the only way to get the job done.

After lunch, we went in the ranch house living room and chatted with the President for perhaps one-half hour. He wanted to know what the reactions of the District Committee members were and urged that I make certain that each of the nominees to the City Council understood
the conflict of interest laws and were in compliance with them. There was discussion, of course,
of other matters at lunch and after lunch.

After about thirty minutes, the President got up, we said thank you. He said to me I will
be seeing you, and then Mrs. Johnson drove us to the plane.

On the way back, both Barefoot Sanders and Ramsey Clark commented on the nice
words the President had said about the work that I had done. Ramsey particularly said that it was
very very rare for the President to make the kind of statements he made to me. He said that
rarely did the President think someone had done more than he had expected, and rarely did he
make such a comment.

SJP
WASHINGTON, AUG. 21—BEHIND THE BACK CONFERENCE—Billy Carter's two lawyers stretch to confer for a moment, behind their client's back, as the president's brother continues his testimony Thursday on Capitol Hill before the Senate Judiciary subcommittee, which is studying his dealings with Libya. At left is Henry H. Ruth Jr., and Stephen J. Pollak is at right. (AP LAGERPHOTO) (rf51626stf) 1980
Doar Leaves Rights Division, Pollak Named as Successor

By John P. Mackenzie
Washington Post Staff Writer

The White House announced yesterday that John Doar, who served as chief of the Justice Department's Civil Rights Division, has resigned as chief of the division. Doar's departure is not expected to bring a shift in Government civil rights policy. Pollak, who served as Doar's first assistant in 1965 and 1966, is known to have shared Doar's preference for quiet but vigorous enforcement of Federal law.

Doar, a Republican who will be 48 today, made a mark within the Justice Department for his painstaking methods of gathering and presenting evidence to persuade judges and legislatures to open up public accommodations and voting booths to Negroes. We were proud for the successful prosecution of the killers of Viola Liuzzo in the aftermath of the 1965 Selma march and the killers of three civil rights workers in Mississippi. Occasional criticism from civil rights groups and the President's own administration that he handled these cases with too much vigor and too little respect for due process of law has done serious damage to the efforts to desegregate Negroes in the South. The President formally abolished the post in September and named Pollak a special assistant to Attorney General Robert F. Kennedy.

Pollak, 39, is a graduate of Dartmouth College and Yale Law School. He has served in the Solicitor General's office and in the Department of the Interior's Civil Rights Division, which Pollak now heads.

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The District's New Liaison Man
In Difficult Role at White House

By BENJAMIN FORGEY
Star Staff Writer

Stephen who?
Stephen Pollak, that's who.
A lot of people were asking
this question and getting, just
about this last January when
President Johnson announced
the name of the brilliant
young lawyer he appointed to
succeed Charles Horsky as
the White House adviser
on National Capital Affairs.
Pollak was unknown to many
in the confusing array of
agencies, departments and congres-
sional committees which make
up the government of the
District of Columbia. He was
unknown also to many outside
this governmental circle who
make it a point to know what's
going on in the District.

Nevertheless, those who knew
Pollak before his appointment as
the District's man in the
White House contend he is the
ideal man for the job.
The 38-year-old attorney
possesses the kind of virtues
which produce encomiums from
former bosses who want to
indeed, have to—get things
done. Pollak's jumps from job
to job, the establishment ladder
have been both rapid and
sure-footed.

East to School
Born to a large family in the
Chicago suburbs, Pollak went
east to school and was Phi Beta
Kappa as a junior at Dartmouth.
After three years in the Navy,
during which he served as
a deck officer of a destroyer
patrolling waters off Korea,
Pollak enrolled in law school
at Yale. There, he won the Jewett
Prize for highest grades in his
second year and was manag-
ing editor of the Law Journal.

Good family, good school,
good service, beautiful grades:
When Pollak received his law
degree from Yale in 1956, the
world, in a manner of speaking,
was his.

What he did with it was this:
He joined Covington & Burling,
the Washington law firm of
which Dean Acheson is a part-
ner. In addition, he is a bevy of
bright young lawyers, from
which numerous attorneys have
graduated into important
government positions.

Why Washington? Well,
"It was an opportunity to
have great interest and desire to be
in public service," according to
Gerhard Gesell, a C&B partner
with whom Pollak worked
closely for some time. "He told
us that from the beginning... and
were sorry to lose him."

Plum Job
Pollak left the firm in November,
1961, to take a plum job in
the Solicitor General's office
in the Justice Department. When
a slot became available in this
exclusive preserve, the chief
possess a long list of high cali-
iber, law-review-type can-
didates to choose from. Former
Solicitor General Archibald
Cox picked Pollak from the list, or,
as Cox put it, "I stole him from
Dean Acheson's law firm."

Then Pollak served as legal
counsel to the presidential task
force which shaped legislation
for the war on poverty early in
1964, and, after Congress adop-
ted the measure, he became first
deputy general counsel at the
Office of Economic Opportunity.

Not long thereafter, however,
John A. Farrell, then a spoken
chief of the Civil Rights Division in
the Justice Department, let it be
known he was in the market for a
first assistant. Cox admits that
he had "no little to do with
selling the idea that Pollak be
brought back to the Justice
Department to fill the post.
Pollak served in this important
capacity from March, 1965, until
he was appointed to the Presi-
dent's staff last January.

Combined Qualities
What are the qualities which
tend to extract such rave
reviews from so varied and presti-
gious a collection of bosses? First,
there is a well-trained, precise legal mind. "Pollak,"
Doray says, "gets a problem and analyzes it, and you can depend
on his analysis." Second, there
is a capacity to get along with
to manipulate bureau-
arecruies. The two do
necessarily go together, but
Pollak, Cox remarks, "has the
kind of energy in getting things
done you don't always find in
a good appellate lawyer."

This, of course, speaks highly
of Pollak's ability and ambition,
but does not necessarily spell
success in jobs in many ways is
the most difficult government
assignment he has landed so far:
The hours are long; the
problems, large; the authority,
small; the penalties for mis-
takes, stiff; the criticism, loud;
the hours, long. Some have raised questions about how
well and how deeply Pollak
knows the problems of
within the District and its needs.
"Yes," Horsky says. "Steve
took a lot of interest in community
affairs. He knew a lot of people
in the city, just the kind of people he'd have to
know to do a good job."
Pollak first
met his predecessor at Covington & Burling, where Horsky was a partner before accepting the White
House post. Horsky, obviously, was one of Pollak's
principal boosters for the job:
"Oh, I was all for him."

"Yes," says James Banks,
executive director of the United
Planning Organization, Wash-
ington's anti-poverty agency.
"I knew and worked with him when
he was with W.H.A. (the
Washington Planning and Hous-
ing Association, a private,
liberal housing group which also
was a training ground for
Horsky.) He has a unique under-
stands the great problems of the
District." (Pollak, incidentally, at
one point served as president of
W.H.A., as had Horsky before him.)

"Yes," said the Rev. Walter
Fauntroy, chairman of the Com-
mittee on Urban Renewal in the
District. "It's one of those six-
days-a-week, lo-to-12-hours-a-
week, kind of jobs. Cox admitted that Pollak most
likely will be the White House
in this field.

Out of His Way
In any event, Pollak is going out of his way to not open
himself to the kind of unending criticism which seems to be
endemic in the District's compli-
cated governmental arrange-
ment where big job titles are
easy to find and real authority,
more difficult. Last, for example,
Pollak was seen slipping unobtrusively into a
House District subcommittee
hearing. He sat quietly with
other spectators, almost unno-
ticed, and observed as Walter
Tobriner, president of the
District Board of Commis-
sioners, testified on the District
Crime Commission report.

In refusing to grant an inter-
view to this reporter, Pollak
said: "It's just how I conceive of
my responsibilities. I'm
advised to the President and I don't think that part of my responsibil-
ities are to be a public fig-
ure." End of interview.

"It's a difficult thing to walk
into all of a sudden, Horsky
remains the man of the moment,
days-a-week, 10-to-12-hours-a-
day type jobs." Horsky "sort of
tapered off" on the job, he says,
helping Pollak to learn his way
around while he, Horsky, got
---
back into the swing of private
law practice.

First Big Test

One of the things Pollak
walked into all of a sudden is the
President's plan for reorganiz-
ing the District government,
probably the most complicated,
delicate and politically hot
problem to come up in the
District since the struggle over
home rule in 1965.

The plan calling for replacing
the three District Commission-
ers with a single mayor-commissioner
and nine-member council,
first was outlined in a special
message to the Hill on Feb. 27,
and it can be assumed Horsky
did a lot of the spadework on the
message. This proposal cannot
be changed by Congress because
it comes under the President's
power to reorganize the execu-
tive branch. Thus an objection
on even the most picayune of
points by a key man in Congress
could mean defeat for the entire
measure—and there have been
objections on points more than
picayune.

Formal submission of the plan
to Congress was expected
several weeks ago, but the bill
has yet to arrive on the Hill. The
White House, obviously, is
having its share of trouble
getting the measure into shape.
The coming struggle over
reorganization will be a genuine
time of trial for Stephen Pollak.

For the rest, the issues one
gets involved in are as numerous
and as perplexing as the
problems which confront any
major city today, "multiplied by
six," Horsky remarks. The
multiplier factor, it has been
noted, is that frequently in the
District it's less a question of
getting the man who can do it
do it, but of persuading the man
who can stop it not to stop it.

Clearly, the job calls for a
tactician who is tactful in high
degree, a person with iron
nerves, a resolute constitution
and thick skin; someone who is
relaxed, generous, brilliant,
persuasive, committed, and,
perhaps, loving, kind and good.
Stephen J. Pollak is not THAT
man, but then, nobody is.

Family Man

Lawyers in C&S, the Solicitor
General's Office and the
Civil Rights Division, civil rights
leaders, and community volun-
teers who worked with Pollak
before he accepted the present
job are convinced Pollak has, in
reasonable mixture, the things

STEPHEN POLLAK

placed them with drawings his
kids made in school.

The family lives on the tree-
lined streets of Cleveland Park,
in a two-story stucco home
at 3314 Newark St. NW, and has
lived there for 10 years, since
Pollak joined C&B.

Pollak has been on the job for
two months, too little time to
evaluate his effectiveness. The
point is that to the Democratic
establishment and liberal com-

D-19
March 8, 1965

Honorable Sargent Shriver
Director
Office of Economic Opportunity

Dear Sarge:

After considerable thought, I have decided to accept the Attorney General's invitation to take on the responsibilities of First Assistant in the Civil Rights Division.

The decision was most difficult, for the past 11 months here have provided the best job and the most challenging experience of my career. I have enjoyed an excellent working relationship with Don Baker and feel that we have built a strong and capable law office.

The Civil Rights job is but another part of the war to open opportunity. It presents a special challenge to me personally and as an attorney because it offers the chance to participate directly in the development of the law in this field which is so sensitive and so central to the United States. In addition, it offers unlimited scope for creative trial and appellate advocacy and a chance to administer a large and complex legal staff.

The participation in the creation of OEO under your leadership has been a thrilling experience. Thank you for asking me to join the staff. I have enjoyed the work immensely.

Although this means the end of my formal tie to OEO, I hope that informally we will meet frequently and that you will call upon me professionally often, either for poverty
or civil rights problems. My personal commitment to the OEO programs will continue. I would like to think that another formal association with you is in the cards.

When considering this job, you said, "Come along, there will be lots of tough problems but it will be fun." It's been all of that.

Sincerely,