The Honorable Thomas A. Flannery

U.S. District Court for the District of Columbia

Interview conducted by:
Daniel R. Ernst, Esquire

February 12, 1992
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>1</td>
</tr>
<tr>
<td>Oral History Agreements</td>
<td></td>
</tr>
<tr>
<td>Thomas A. Flannery</td>
<td>ii</td>
</tr>
<tr>
<td>Daniel R. Ernst, Esq.</td>
<td>v</td>
</tr>
<tr>
<td>Biographical Sketches</td>
<td></td>
</tr>
<tr>
<td>Thomas A. Flannery</td>
<td>vii</td>
</tr>
<tr>
<td>Daniel R. Ernst, Esq.</td>
<td>viii</td>
</tr>
<tr>
<td>Oral History Transcript of Interview on February 12, 1992</td>
<td>1</td>
</tr>
<tr>
<td>Index</td>
<td>A1</td>
</tr>
</tbody>
</table>
NOTE

The following pages record an interview conducted on the date indicated. The interview was electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

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

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PREFACE

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

Copies of the transcripts of these interviews, a copy of the transcript on 3.5" diskette (in WordPerfect format), and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges' Library in the United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcript and diskette are available at other locations.

Such original audio tapes of the interviews as exist as well as the original 3.5" diskettes of the transcripts are in the custody of the Circuit Executive of the U. S. Courts for the District of Columbia Circuit.
Historical Society of the District of Columbia Circuit

Interviewee Oral History Agreement

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, THOMAS A FLANNERY, except as otherwise provided herein and in Schedule B attached hereto, do hereby grant and convey to the Society and its successors and assigns all of my right, title, and interest in the tape recordings and transcripts of interviews of me as described in Schedule A hereto, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions, herein provided.

2. The foregoing transfer is subject to any exceptions specified in Schedule B hereto.

3. I also reserve the right to use the tapes and transcripts and their content as a resource for any book, pamphlet, article or other writing of which I am an author or co-author.

4. I authorize the Society, subject to any exceptions in Schedule B attached hereto, to duplicate, edit, publish, or permit the use of said tape 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.

[Signature]
Interviewee

[Signature]
Date

SWORN TO AND SUBSCRIBED before me this 13th day of [Month], 1993.

[Signature]
Notary Public

My commission expires [Date]

ACCEPTED this 29th day of [Month], 1995 by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.
Schedule A

Tape recording(s) and transcript resulting from one (number) interviews conducted by Daniel R. Ernst (Interviewer) on the following dates: February 12, 1992.

1/ Identify specifically for each interview, the date thereof and (1) the number of tapes being conveyed, and (2) the number of pages of the transcript of that interview.
Schedule B

Exceptions to Oral History Agreement

(Please initial only those provisions that you wish to apply, and only if you wish to limit the use of your interview.)

1. ____________ The entire tape and transcript shall not be made available to anyone other than myself, the interviewer, and the Society without my express written permission until [state date or event].

2. ____________ The following page(s) ________ and the tape relating thereto shall be closed to all users until [state date or event], except with my express written permission.

3. ____________ It is agreed that the Society shall not authorize publication of the transcript or any part thereof during my lifetime without my express written permission, but that the Society may authorize scholars, researchers and others to make brief quotations therefrom without my written permission.

4. ____________ It is agreed that the Society shall not authorize publication by others of the transcript or any part thereof, including brief quotations, during my lifetime without my express written permission.

5. ____________ I retain all of my right, title, and interest in the tapes, transcripts and their content, including literary rights and copyrights, until [state date or event], at which time these rights shall vest in the Historical Society of the District of Columbia Circuit.

6. ____________ In the event of my incapacity, I designate ________ of ________ to make decisions related to the use of my oral history interview. Upon the death or incapacity of this designee, I authorize the Society to make such decisions on my behalf.

7. ____________ I impose the following additional conditions [describe]:
Historical Society of the District of Columbia Circuit

Interviewer Oral History Agreement

1. Having agreed to conduct an oral history interview with Thomas A. Flannery for the Historical Society of the District of Columbia Circuit, Washington, D.C., I, Daniel Robinson, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings and transcripts of interviews, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society, to duplicate, edit, publish, or permit the use of said tape 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 interview or the information contained therein until it is concluded and edited, and that I will then use such information only if and to the extent permitted by the Society.

Interviewer Date

Sworn to and subscribed before me this 9th day of August, 1993.

Notary Public

My commission expires My Commission Expires April 14, 1996.

Accepted this 23rd day of March, 1995 by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.
Schedule A

Tape recording(s) and transcript resulting from \underline{one} (number) interview(s) of \underline{Thomas A. Flannery} (interviewee) on the following date:

February 12, 1992 68pp transcript

1/ Identify specifically for each interview, the date thereof and (1) the number of tapes being conveyed, and (2) the number of pages of the transcript of that interview.
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United States District Judge
District of Columbia

Office address:
U.S. Courthouse
333 Constitution Avenue, N. W.
Washington, D. C. 20001
Phone: (202) 273-0742

Born: Washington, D. C.
May 10, 1918

Judge Flannery was appointed United States District Judge for the District of Columbia on December 6, 1971, and entered on duty December 20, 1971. He graduated from the Columbus Law School (Catholic University) LL.B., 1940. He took senior judge status on May 10, 1985.


Judge Flannery is married to the former Rita Sullivan and has two children: Thomas A. Flannery, Jr., and Irene Marie Flannery. He is a member of the American Bar Association and a Judicial Fellow in the American College of Trial Lawyers.

DANIEL R. ERNST

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EMPLOYMENT

1988- Sydney University Law Center Washington, DC
1988-94 Associate Professor of Law.
1987 University of Wisconsin Law School Madison, WI

EDUCATION

1983-89 Princeton University Princeton, NJ

1986-88 University of Wisconsin Law School Madison, WI

1980-83 University of Chicago Law School Chicago, IL

1976-80 Dartmouth College Hanover, NH

MAJOR PUBLICATIONS


viii


**BOOK IN PRESS**


**REVIEW ESSAYS, BOOK REVIEWS AND OTHER WORKS**


"Working-Class Heros and Others," *Reviews in American..."


PRESENTATIONS


"The Buck’s Stove and Range Company Case." Fifteenth Annual North American Labor History Conference, Wayne State University, Detroit, October 1993.


PROFESSIONAL LICENSURE AND ASSOCIATIONS


PERSONAL

Born: July 16, 1958

Married: August 1983, North Caldwell, New Jersey, to Joy Marie Swanson

Children: Anna Rebecca Ernst, born January 2, 1988
Daniel Gordon Ernst, born December 11, 1990
The following is the transcript of an interview with Thomas A. Flannery, Senior Judge, United States District Court for the District of Columbia, conducted by Daniel R. Ernst at the judge's chambers on Wednesday, February 12, 1992, for the Oral History Project of the Historical Society of the District of Columbia Circuit.

FLANNERY: I was born in Washington, D.C., at 707 Second Street, NW, which is three or four blocks from the present site of this courthouse. My father was a carpenter. He had lived in his early years in Delaware and had come to Virginia at an early age, where he lived on a farm for a period of time before he came to Washington. His father had come to the United States from Ireland and settled initially in Delaware. My mother was born in Washington, D.C., and her mother was born in Washington, D.C. Her grandparents came to this country from Ireland. My mother was a housewife; she never worked; she always remained at home with the children. My father worked, as I say, as a carpenter. In later years my father became ill and was unable to work. We had a large family, five children, so I worked at one job or another from the time I was about 14 years of age. I attended Gonzaga High School, which is located

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at North Capitol and I Streets, which is a short distance from this courthouse. After graduating from high school in 1937 instead of going on to college, which was what I wished to do--go to Georgetown--I went to work and went to law school at night. You could go to law school immediately without going to college in those days, and I went to the old Columbus Law School, which is now part of Catholic University. I don't think I had ever intended to be a lawyer; I just wanted first to go to college and then decide what to do, but after I finished law school I took the bar examination and passed it--but then the war was impending, (it was about 1940, 1941) and I just waited until I was drafted. I was drafted in early 1942, went into the Air Force, and applied for Officers Candidates School and became an officer. I entered the intelligence service, air intelligence. I attended the Intelligence School in Harrisburg, Pennsylvania, and thereafter was assigned to combat intelligence work and sent overseas with the 9th Air Force. I went overseas about a month after the allied forces landed in Normandy, and served with the 9th Air Force in support of the First, Third and Ninth armies as they proceeded across Europe into Germany. I participated in six campaigns. I came back to the States, and I just didn't feel like going to college at that point. I had grown up rather rapidly
in the war. I had a lot of command responsibility, and just felt too old at that time to go back to college.

ERNST: Could I stop you and go back over some points? Were you the first person in your family to go beyond high school, to get more than a high school education?

FLANNERY: Yes.

ERNST: And did any brothers and sisters follow you?

FLANNERY: My oldest sister went to accounting school; she became an accountant. My brother started college but never finished. No, none of the others ever finished.

ERNST: Did this require some savings on the part of your father to put you through? You said you worked.

FLANNERY: I worked, my father had no savings. We were, to put it bluntly, just poor, and my oldest sister, when she graduated from high school, had to go to work. My father at that point had become rather ill, and she was the sole support of the family for a while. My sister is almost 6 years older than I, so as soon I graduated, I had to go out and help support the family.

ERNST: Why did you become a lawyer rather than begin some nonprofessional job?

FLANNERY: Well, at Gonzaga I received a scholarship to law school, an academic scholarship, so I decided to do that.
ERNST: Would you say that the law school experience didn't leave any lasting impressions on you? Was there anything significant that stayed with you?

FLANNERY: Well, I enjoyed it. It came to me easily, and when I came back after the war, I said, Well I have this law degree; I might as well use it.

ERNST: Was your father at all politically active?

FLANNERY: No, no he wasn't.

ERNST: So the law degree wasn't perceived as a helpful way to launch a political career?

FLANNERY: No, as a matter of fact politics as such didn't exist in Washington, D.C.; we didn't have the vote yet. And there was no political future in Washington. All the governing officials were appointed by the President. We were ruled by a commissioner system as you may know. Back in those days there were three commissioners, all three appointed by the President. There was no council as such or legislative body.

ERNST: What legal work did you do immediately upon graduating in 1940 before you were drafted?

FLANNERY: Well, not much really. I had a job at the Treasury Department as a clerk, and I couldn't get started in the law, because I knew I was going to be drafted shortly.

ERNST: Do you recall how you got the clerk job at the Treasury Department?
FLANNERY: Through a civil service examination.

ERNST: Well, okay. What did your family think of your being a lawyer?

FLANNERY: Well, they were very proud as a matter of fact that I had passed the bar. Judge Curran, who later became the chief judge of the district court here, knew our family quite well. We came to know him when he married a cousin of ours who was very close to our family. Ed Curran used to visit with us occasionally, and I sort of looked up to him as a model. I admired him very much. He became a police court judge in the Municipal Court, then he became United States Attorney, then eventually became judge on this court, then chief judge. I always looked up to him as an ideal.

ERNST: Did you observe any of his trials when you were in law school or your early practice?

FLANNERY: Yes, yes I watched his trials. He was in the police court when I was in law school, I believe, and he was United States Attorney while I was in the army. I have to stop and think about that. He was United States Attorney during part of the war. I suppose he was appointed to the bench perhaps at the tag end of the war just around that time.

ERNST: Was the police court a real eye opener? Did you feel like you were being indoctrinated into what the legal profession was like by watching police court trials?
FLANNERY: Yes, that was my initial impression of the system of justice.

ERNST: Moving then to the war. You mentioned one of the lasting consequences was that you no longer felt like you wanted to go back to college, that you were ready to move on with your career.

FLANNERY: Yes, I had grown up; I had been an officer; I had certain responsibilities, and I felt I had outgrown college. My view at that point was, What can they teach me in college at this point?

ERNST: I have interviewed one person, Paul Dean, the former dean over at Georgetown, who came from a rather sheltered, I think, Catholic background in Ohio. For him going into the Navy was of major significance. He really saw a world that he didn't have a clue existed, and I think in part because he was educated in the course of this in officer training, he really changed his value system in a lot of ways. Any elements of dissatisfaction from where you had come from, any ambitions that came out of this experience?

FLANNERY: No, I still believed and still I think I'm affected by my Jesuit education, and I hadn't rejected the basic values I had been taught. I was exposed to a lot of things in the armed services for the first time which I hadn't even been aware of in the sort of sheltered life I had led, and so I grew up quickly. I think that in
my early life I was a rather shy, somewhat introverted person, but I became much more self-confident, much more worldly wise after being through the military experience. I came back with a different, more confident attitude and my ability to handle things.

ERNST: Were you surprised by Washington when you came back? People talk about the changes in Washington during the war. Were you struck by anything?

FLANNERY: Yes, the city had changed quite a bit and has, of course, continued to change. When I grew up it was like living in a small town, and when I came back it had changed considerably. It seemed to have a more cosmopolitan air about it. It just became bigger and more complicated. The small town atmosphere seemed to have disappeared.

ERNST: What was the nature of your law practice when you came back?

FLANNERY: Just general practice. I started taking some court-appointed cases, to get some experience, and I was able to get a job at the Justice Department in the Lands Division. I worked over there for a short period of time. Then I worked for a couple of small law firms and eventually had the opportunity to join the United States Attorney's staff in 1950, and that was the turning point in my legal career.
ERNST: One of the things I was able to turn up was some remarks of yours at the Judicial Conference in Williamsburg, where you said you commenced your training as a trial advocate at the U.S. Attorney's Office. Is there anything in the years before you went to the U.S. Attorney's office that we should dwell on?

FLANNERY: Not really. Where it all really began for me in terms of becoming a trial lawyer was in the U.S. Attorney's Office. I learned so much there.

ERNST: How were you able to get the position?

FLANNERY: Well, actually Judge Curran was of some assistance to me. He had been the United States Attorney, and I expressed my interest to him in trying to get in the United States Attorney's office. He spoke to the U.S. Attorney, and the U.S. Attorney interviewed me. I had to wait about a year, but finally Maury Fay, G. Morris Fay the U.S. Attorney, hired me as an assistant.

ERNST: You had done some court-appointed work before.

FLANNERY: I had done some court-appointed work.

ERNST: Had you done any criminal work for the small firms you were associated with?

FLANNERY: Yes.

ERNST: And were they all misdemeanors?

FLANNERY: They were misdemeanors for the most part.

ERNST: Well, what can you tell me about the U.S. Attorney's office? How large was it at the time?
FLANNERY: Well at that time, I think the staff was about 45 assistants, now it's well over 250. It was small. I started my career in the office over in what had become the municipal court, and I spent a little less than a year over there trying misdemeanor cases, and then I was transferred to the U.S. District Court section of the office. This court then was located at Indiana Avenue in the old District Court building. I spent ten years in the District Court division, nine of those years in the criminal division. Then I decided to leave the office and go out into private practice, so I spent a year in the civil division brushing up on civil procedure and how to try a civil case.

ERNST: Were the other assistants when you came in of similar background? Were they Washington residents for the most part?

FLANNERY: Yes, they were as a matter of fact. Some of them had been in that office a long time. Two of their best trial lawyers had been in the office about 25 years. Jack Fihelly and Charlie Murray both had been in that office over 25 years, and they tried all the important cases. It took quite a while, three or four years, before I was given the more important cases, that is, the highly publicized cases to try.

ERNST: What supervision, if any, did you have in the early years?
FLANNERY: Very close supervision. Very close.

ERNST: Was there any particular person who you answered to or who reviewed your work?

FLANNERY: Yes, John Conliff was the chief of the Criminal Division: he supervised us very closely. He would assign the cases, and then you would have to report to him on how the case was going. If you were having any problems you would have to check in with him, and he would visit the courts from time to time to watch how things were progressing. So we had very close supervision until we reached the point where we no longer required it.

ERNST: Did you think he was a good teacher?

FLANNERY: Very good.

ERNST: It sounds attractive, to have someone to teach you. Are there any early cases or any incidents where Conliff reviewed your work and you learned an important lesson about lawyering?

FLANNERY: Not specifically. But a lot of District Court judges weren't hesitant about calling you back into their chambers, from time to time, and pointing out certain things to you that you had done wrong.
ERNST: You mentioned on one occasion Alexander Holtzoff. Is there anything you feel you can say about some of those experiences or encounters with Judge Holtzoff?

FLANNERY: Yes. I don't remember the evidentiary point involved, but I can remember my first experience with Judge Holtzoff. I was trying one of my first cases before him. It was a three-day trial, as I recall, and in the middle of the trial he suddenly got very upset, and said, You can't ask that question! He called me up to the bench and said, Have you ever read McCormick on Evidence? I said, Yes, your honor. Well don't you know that you can't ask this question? I forget specifically what the question was, but I had asked an improper question or asked it in an improper way, and so he lectured me at the bench for three or four minutes. I stepped back and proceeded with the case, and then, after the trial was over, he called me up and he said, Mr. Flannery I would like to see you. He called me up; he sort of took a liking to me. We became very good friends later on. He said, I didn't mean to embarrass you, and then he proceeded to expound on this legal principle that he was trying to emphasize, and that was my first experience with him. And I remember another time I was trying a case in his

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court and after it was all over, he called me back and said, You know, you tried that case pretty well. You made one mistake. You cross-examined the defendant quite well. You really had him in a corner, but instead of stopping, you proceeded to ask additional questions and he rehabilitated himself. You made a mistake there. The jury convicted, but you could have lost that case. Remember this: always conclude your cross-examination at a high point. When you've scored a good point, stop. Don't continue because the jury will either forget the good point you have made or else the defendant will rehabilitate himself and you'll lose the advantage you had gained.

ERNST: Do you think he shared similar insights with defense counsel or other lawyers whom he had appearing before him?

FLANNERY: I don't know whether he did or not. I had the impression there were certain lawyers he liked and certain lawyers, well, he just didn't have any interest in. He perhaps would guide a defense lawyer, too, if he was the sort of a person he found acceptable.

ERNST: It was something he would do with younger lawyers.

FLANNERY: Younger lawyers, yes.

ERNST: Now were there other judges who were willing to teach from the bench?
FLANNERY: Not to the extent that Judge Holtzoff would, but I can say this, there were other judges for whom I had great admiration. Judge Tamm, Judge Keech, I thought, were both excellent trial judges.

ERNST: Could you tell us what you admired about them?

FLANNERY: Their ability to control the court. They were firm without being autocratic. They were in charge, and I always admired that in a judge, because a judge who isn't firm and who doesn't control the court tends to let lawyers take advantage of him, or if he doesn't rule quickly on things, things sort of get out of hand. A carefully prepared case can be destroyed by a judge who will let the attorney on the other side get away with improper questions or improper ways of proceeding. I used to like judges who would take control, not in a mean way, but in a firm way, who would run the court according to the rules of evidence and proper procedure. That's what I admired about those judges, and other judges too. I thought Judge Youngdahl was a good judge, also.

ERNST: Do you recall any moments where you were angry at the way a judge was proceeding in a case, a case when you were in the U.S. Attorney's office?

FLANNERY: I can't recall any specific instances at the moment, but I do know that there were certain judges who didn't have the ability to really control their court, and it
would make it difficult to try a case before them. You knew that this judge would let everything in, as they say, and there would be no organization or no proper way of proceeding. That was difficult to deal with.

ERNST: Could you talk about any friendships that you developed when you were in the U.S. Attorney's office? I imagine that was a setting with quite a lot of camaraderie.

FLANNERY: Yes, we were a close-knit organization, and I did form some lasting friendships. I suppose one of my best friends in the office was Harold Titus, who later became the United States Attorney. As a matter of fact, he became the United States Attorney when I left the position to take this job, and we worked together. We were on the same floor, up on the third floor, on the west side of this building for nine years. John Doyle was a good friend of mine, in the U.S. Attorney's office. He became a judge on the Superior Court. So was Victor Caputy; he remained with the U.S. Attorney's office, I think, 30 years or so. Quite a few assistants became judges. Joseph Hannon was in the U.S. Attorney's office; he became a judge on the Superior Court. Fred McIntyre was in the office with me; he became a judge. Many of them went to the Superior Court as judges. Bill Bryant, who is a judge on this court, was in the U.S. Attorney's office during that period. Oliver Gasch was the principal assistant
to Mr. Rover, who became the United States Attorney when Eisenhower became President. Oliver then became U.S. Attorney and was U.S. Attorney for a long time, about six years I believe.

ERNST: When you joined the office, did you think it might lead to judicial office? Was that part of the attraction of the job?

FLANNERY: I would say, yes, I saw that as possibility. I didn't think it would ever happen, as far as I was concerned, but I saw it as a possibility. My main attraction to the U.S. Attorney's office was that it appeared to be such an interesting exciting job. Being in trial trying cases -- that is what it's all about and I really enjoyed doing that.

ERNST: It sounds to me that after your military service you would have been rather poised in arguing your first case. Is that right?

FLANNERY: Well, I would be less than candid if I didn't say I was nervous. I was always a bit on edge even when I had had years and years of experience when I got up and addressed the jury. I would always feel a little nervous, but once I got started then it all disappeared. I was always somewhat apprehensive prior to starting a trial and sometimes in more important cases prior to giving my closing argument. I would be worried: Now I hope I can pull this off; I hope that I
can make a good argument. I hope this is one of my better days. You know you have your good days and your bad days.

ERNST: Did you have a model for closing arguments? Was there someone you thought did it right?

FLANNERY: Oh, particularly in the early days, I used to go around and observe good trial lawyers. The best lawyer of his time during my early days was a gentleman named Leahy, William Leahy, and whenever he would try a case I would go to court and watch him. He was really good, and there were others I would watch and maybe pick up a few tips from the way they conducted themselves.

ERNST: Was there a standard set of procedures that you worked through to prepare for a trial? Something you got from your superior at the U.S. Attorney's office or you discovered for yourself worked well?

FLANNERY: Well, I would always have a check sheet. I put a yellow piece of paper down on the end of the desk when I would stand up to cross examine or even on direct examination. I wouldn't look at it while I was conducting the examination, but before I concluded I would always say to the court. Bear with me, your honor, and then I would go back and make sure that I had covered the essential points. That's just a routine thing, but it's a little habit I developed just to make sure I didn't miss anything. In my closing
arguments I would usually jot down maybe five or six thoughts, just have it on the desk, and while I was talking I would walk around and once in a while just glance over to make sure I covered everything. I never completely relied on my ability to remember everything because if I would have done that I may have overlooked an important point.

ERNST: Do you recall any closing arguments of which you are particularly proud?

FLANNERY: None stick out really. I can remember certain cases. I remember one case I prosecuted when I was an assistant U.S. attorney which involved the murder of a policeman. This case particularly outraged me and I gave that case special attention, and made a rather strong argument. The jury returned the death penalty in that case. It was never carried out -- it was commuted later on by the President -- but the case bothered me.

ERNST: Do you mind saying something more about the case? What it was that bothered you about it?

FLANNERY: Well, the fact that the policeman who was killed was a young person, about 25 years of age, and he had a wife and two little children, and he was a clean-cut, nice fellow. He was on a stake-out with another officer in the area of the old Griffith Stadium up on Florida Avenue. He was in a liquor store in a neighborhood where there had been a series of hold-ups. He and his
fellow officer staked themselves out in the rear of this liquor store, and lo and behold two robbers came in, and held up the liquor store owner. The two policemen burst out of their hiding place, the two robbers fled up, I think, First Street, First and Florida Avenue. One robber continued north, and the second robber headed west into an alley. The first policeman chased the robber north, and the second police officer followed the other robber up the alley. The alley took a sharp turn to the right. The robber waited behind that turn, and as the policeman came around the corner, he just shot him two or three times and killed him, then he fled. Well, they apprehended him eventually, and apprehended the other one too, and they brought them both to trial. They were both tried for felony murder, and I pushed for the limit on the case. The jury found defendant number one guilty of armed robbery only, although technically he could have been convicted as an accessory to first-degree murder, and they convicted the second one of first degree murder. He was sentenced to the electric chair, but after several years, the President commuted his sentence to life.

ERNST: Do you recall the judge?

FLANNERY: The judge was Judge Dickinson Letts.
ERNST: You mentioned that after a while you asked to be transferred over to the civil side, and you said that was in preparation for moving into private practice. You also said there were some attorneys who were there for fifteen to twenty years. Why did you decide it was time for your move into private practice?

FLANNERY: Well, Oliver Gasch and I had become rather close; he's a good friend of mine. The administration changed, and Oliver was to be replaced by a Democrat -- Oliver was a Republican -- and the office was changing. The new United States Attorney, Dave Acheson, came from Covington and Burling and made a lot of changes in the office. I could see the whole office changing, so I decided I would leave and join a private firm. With that in mind I went to the civil division. In the meantime Judge Jones was appointed to this court as a District Court judge. He had been a senior partner at Hamilton and Hamilton, a local law firm. A judge on this court who was a good friend of mine, Richmond Keech, knew that I was looking around; I had told him that I was thinking of leaving. Apparently Mr. Hamilton had asked Judge Keech if he could recommend any experienced trial lawyers who were a bit older, someone in his early 40's or something like that or late 30's, who could take Bill Jones's place as a chief litigator in their firm. Judge Keech called me round
to his chambers one day, and said, Are you still interested in leaving the U.S. Attorney's office? I said, Yes. He dropped the conversation at that point, then he called me up about three days later and he said, You're going to get a phone call shortly, and you may be interested in the job that is going to be offered to you. He didn't elaborate on it. So a few days later the phone rang and it was George Hamilton, Jr., the senior partner in Hamilton and Hamilton, and he said, Mr. Flannery, I would like to talk to you. I went up and talked with him, and one thing led to another, and he offered me a job as an associate with that firm. So I decided to take it.

ERNST: What was attractive about the firm?

FLANNERY: Well it was an established old-line Washington law firm and, they had a very nice practice. It was a small firm, six partners I believe, but they had good clients. They represented the Potomac Electric Power Company, and they represented a few railroads and the American First Bank. They had nice retainers and a very good practice, a large estate practice. They didn't do any criminal work. I was quite flattered to receive that offer, and I didn't have to hesitate over it. I talked it over with my wife and she said, Fine, take it.
ERNST: Did the firm have any practice before the agencies?

FLANNERY: No, not before the agencies. They were general counsel for the Washington Terminal Company, which was located in the old Union Station. They did a lot of work for the Pennsylvania Railroad Company, the Southern Railway Company, the RF&P Railroad and the Atlantic Coastline Railroad. They had a lot of railroad cases.

ERNST: What were those cases? Were they personal injury?

FLANNERY: They were mostly defense, personal injury cases, and no agency work as such.

ERNST: In 1962 there were some firms -- Arnold and Porter, Hogan and Hartson -- that were geared toward a national practice and practice before the agencies. There were also firms that provided first-rate services to Washington-located clients. Were you looking for one kind of firm over another?

FLANNERY: I wasn't looking for one particular kind of firm. I wanted a firm which could use my expertise as a trial lawyer, and certainly this was that opportunity. Judge Jones had been doing trial work, and that's what I was best at, so I would not have been particularly interested in administrative work at that time because I didn't have a background in it.

ERNST: Were you the only senior litigator in the firm?
FLANNERY: Yes.

ERNST: Were there junior people associated with you during the period you were at this firm?

FLANNERY: Well, there was an associate there who had been working closely with Judge Jones. After Jones left he decided that he would leave too, probably because he had hoped to take Bill Jones's place, but it just didn't work out that way. After he left, with the assistance of Judge Keech, I recruited Steve Trimble, who is now a prominent local practitioner. He's with Hamilton and Hamilton; he's now the senior partner there. Steve has been quite active in the local bar; he's been president of the bar association and has been very, very active. So I brought Steve aboard. Steve at that point was working in the Corporation Counsel's office as an assistant corporation counsel, and he had a background of trial experience. The two of us handled the litigation work for the firm.

ERNST: You felt he was an experienced trial lawyer when you hired him?

FLANNERY: Well, not highly experienced. He had enough experience to be of assistance to me.

ERNST: Could you talk about training him? What kinds of things you thought were important to teach him?

FLANNERY: Well, when Steve joined us, I broke him in by having him start to take depositions under my supervision, and
then when I would come to court to try some of our cases I would bring Steve with me. He would start off by sitting at counsel table, and then I would teach him how to take over some of the witnesses, and eventually to try a case on his own. This took a period of time but Steve developed very quickly and he was a fast learner. He had, by the way, served as a law clerk to Judge Keech, so he had been well-trained by Judge Keech. Then he had gone on to the Corporation Counsel's office. He was a quick learner and quickly became a very expert trial lawyer.

ERNST: You said you had brought on an associate to do the trial work. Did you have free play within the firm to try the cases as you saw fit?

FLANNERY: Yes.

ERNST: Did you feel you had an appropriate amount of decision-making within the firm?

FLANNERY: Oh, yes. When the time came to settle cases I would always confer with the senior partner, and say, Well, this case can be settled for such and such an amount. I think we should recommend to the client that we settle the case for this amount. I would get the approval of the senior partner before we finalized it with the parties.

ERNST: Do you know if there were any clients of the firm that came principally because they admired your trial work?
FLANNERY: No, I can't say that. We had a well-established practice, clients who had been with the firm for many, many years. It wasn't the type of practice where we had to go out and seek new business. We had plenty of business to keep everybody happy and satisfied.

ERNST: Did you miss criminal work at all?

FLANNERY: Yes, I did. As a matter of fact, just to keep my hand in -- this was before we had the Criminal Justice Act -- I would take court-appointed criminal cases. It was fun to try a case against some of my old associates as a defense lawyer, and I used to do that occasionally. I would bring Steve Trimble with me on some of those cases.

ERNST: So part of the fun was to be on the other side from your old peers. Were there other aspects of it that were fun as opposed to your normal practice?

FLANNERY: It was interesting to see a criminal case from the other side. I can remember trying a couple of robbery cases. I tried a rape case on one occasion, and it was interesting to talk to these defendants and get their version of what had happened. Even though I didn't often believe them, I would give them a good defense and sometimes the jury would acquit these people.

ERNST: Were you surprised to find how much the criminal law had changed while you were doing civil litigation at Hamilton and Hamilton?
FLANNERY: Well, I kept up with the law and read slip opinions religiously so . . .

ERNST: Even when you were at Hamilton?

FLANNERY: Oh yes, yes, I would read the slip opinions. I would read them on the weekends and keep current, so I really wasn't caught by surprise by anything. As a matter of fact I had an on-going interest. One client I did some work for because of my prior background in the U.S. Attorney's office was the Board of Trade in the District of Columbia. They were interested in legislation designed to strengthen the criminal law to increase penalties and things like that. It was one of their functions, of course, to be against crime and to represent the business interests, and they retained me to be a sort of an advisor to them on pending legislation. I went up on the Hill a couple of times and testified in favor of certain legislation on behalf of the Board of Trade. So I had a continuing interest in criminal law and never really lost interest in it. I always missed the U.S. Attorney's office. I missed the excitement. The work at Hamilton was much more lucrative and not as much of a strain on me as the U.S. Attorney's office had been, but I missed the excitement and the action down at the courthouse.
ERNST: I should go back and ask. Do you recall what your caseload was like as an assistant U.S. Attorney? How many cases were you carrying?

FLANNERY: As an assistant? Well I'm trying to remember. It was heavy, I'll tell you that. It resulted in me being in court practically almost every day trying cases. You would finish one case and maybe get a day or two off and then start another one. It was just one after another. I guess I carried 30 or 40 cases. We would just grind them out, one after another.

ERNST: I believe you served on one of the judicial conferences committees that was considering the D.C. Court Reform Act. One of the issues discussed at that time (as I've read in the Ellison Report) was the caseload in the U.S. Attorney's office. Did you have a sense that matters were worsening in the U.S. Attorney's office and that the pressures were really getting intolerable?

FLANNERY: Yes, yes, it was. The caseload was getting heavier, and I was certainly sympathetic to that, and I think I took that position on the Ellison committee.

ERNST: So that was a point you felt strongly about it?

FLANNERY: Oh, yes.

ERNST: One other thing from this period. Your biography states that you were a special hearing officer for the Department of Justice between 1964 and 1969. Could you tell me something about that work?
FLANNERY: Yes. I became interested in that work through Roger Robb. Roger Robb was a very prominent trial attorney in Washington who later became a judge on the United States Court of Appeals. He called me up one day, and said that he had been working as a hearing officer and he wanted to give up the work. He was looking for a qualified person who might be willing to take over that responsibility and asked whether I would be interested. Thereafter, I agreed to accept the position. I was appointed by the Justice Department to review the claims of conscientious objectors to military service. My function was to interview these people and to give them a hearing and then to make a recommendation to the Department of Justice as to whether their claim for conscientious objection to war should be sustained or denied. The Department of Justice would send me a file, and I would get in touch with the person and they would come in to see me, and I would tell them I was going to afford them a hearing and explained the procedures to them, and asked if they would like to bring in witnesses or what they would like to present to prove their conscientious objection to military service. We would agree on a date, and I would hold a hearing in my office. The subject would appear with his witnesses, and they would testify, and I would question them, and then I'd consider it, and
ERNST: I would then write a report, summarizing the evidence and stating my recommendation. [END OF TAPE] . . . I found some of them to be sincere and some after questioning I didn't.

ERNST: Were some of them Jehovah's Witnesses?

FLANNERY: Yes.

ERNST: I know it was not done much then, but did you know anyone who was a conscientious objector in World War II? It was such a different war.

FLANNERY: It was a different war. No, I really didn't. It happened so seldom. There was a well-known movie star who claimed that he was a conscientious objector. I can't remember his name, but I can remember reading about the case and wondering about it because it was a claim that was so seldom raised by anyone. But in my own personal experience, I have never known a conscientious objector.

ERNST: I could imagine that having gone through World War II, you would treat a claim of conscientious objector with some skepticism, but I think the rules must have been relatively straightforward. Did you worry about bias at all on your part? Was it important to distinguish between the Vietnamese War and World War II in any way?

FLANNERY: Well, I tried to push whatever bias or preconceived feelings I had about conscientious objectors out of my
mind and view each claim fairly. I did the best I could with it. And I did sustain some claims of conscientious objection. There were some people I was convinced were just making the claim just to avoid military service. Questioning would bring out that this belief had not been held for a long period of time but just developed recently. Usually when that occurred, I became skeptical, but if a person had a life-long history of belonging to a particular religious sect, and there was nothing to indicate that this was a newfound belief, I would find in favor of such a person.

ERNST: Did you discuss doing this work with Mr. Hamilton?

FLANNERY: Yes. He said, If you would like to do it, fine, it's all right with me. It didn't really take that much time.

ERNST: Sounds like it would be manageable.

FLANNERY: Oh, yes, there really weren't that many claims that came to my attention.

ERNST: Well I guess I would like to get you to the U.S. Attorney's office and I think the best way would be through the court reform act. I don't know if that is in fact true. While you were at Hamilton and Hamilton, were you doing work for the D.C. bar or the bar association or for the judicial conference?
FLANNERY: Well, I would be appointed as a member of the judicial conference just about every year. I had as I say an ongoing interest in criminal law, and I hadn't been out in private practice very long before I began to think about perhaps coming back to the United States Attorney's office, as the United States Attorney. I saw that as a very attractive position, something I really felt qualified to do because I had some pretty good ideas for reorganizing the office. I began to think in those terms, so that's why I was particularly interested in working for the Board of Trade and making known my interest in the criminal law. I think I became recognized as a sort of an expert in criminal law and a proponent of a sort of conservative view on the enforcement of criminal law.

ERNST: Did you ever testify before congressional hearings?

FLANNERY: I did testify a few times.

ERNST: That would be straightforward for a researcher to find. Are there other places researchers should look for positions you took while working for the Board of Trade? Were there any speeches that you happened to give?

FLANNERY: Most of my speeches were given when I was U.S. Attorney. I can remember one time I appeared on a T.V. program on behalf of the Board of Trade. We talked about crime in general and law enforcement and called
for stricter enforcement of the criminal laws. That was some years ago. The chief of police went on that program with me too. I had that exposure.

ERNST: Well, that's something.

FLANNERY: And my views were well known to the business community through the Board of Trade. I spoke to the Board of Trade several times. I was generally known as the spokesman for strict enforcement of the criminal laws. I took exception to the Durham rule on insanity and made known my views about it.

ERNST: I actually did jot down the chronology on the Durham rule, when it was in effect. I know it was gone when you were U.S. Attorney.

FLANNERY: They had modified it somewhat by the time I became U.S. Attorney.

ERNST: What was your objection to the Durham rule?

FLANNERY: It was too broad. Under the Durham rule, if it was established that a defendant had a mental disease and that the crime was a product of the mental disease, then the defendant was entitled to be acquitted. But the term mental disease included not only psychosis but also personality disorders. One who had a personality disorder had a mental disease. To carry this to the absurd -- some juries would really carry it to the absurd -- if the defendant could establish that he had a personality disorder and that he committed the crime
of rape or something of that nature because of the personality disorder, then he was entitled to instruction that he could be found not guilty by reason of insanity. I thought that was absurd. And I made my views known quite strongly.

ERNST: Another reform in the D.C. court system at about this time was the Bail Reform Act. Did you have a position on bail reform?

FLANNERY: Yes. I thought that the bail act should be much stricter, that it should be much more difficult for those charged with serious crimes to be released pending trial. And I was a believer in preventive detention. In those very serious crimes there should be a period where a defendant could be detained without bail.

ERNST: Did you testify specifically on the Bail Reform Act?

FLANNERY: Yes.

ERNST: For Georgetown a very important event, and I think, for all Washington, were the riots after Martin Luther King's assassination. And I've recently did a little research into how the clinics at Georgetown did some assistance for the courts. Do you recall the riots? Did they confirm any thoughts you had about the criminal justice system or were they just an unusual event?
FLANNERY: That was an unusual event. I remember, of course, the situation very well. I can remember standing at the corner of Connecticut and K, getting the bus to go home one evening, and watching the stores along Connecticut Avenue being looted. I stood there watching the stores being looted and seeing the plumes of smoke going up around the city when the fires were set. I represented some of those defendants as a court-appointed attorney.

ERNST: I know the courts called out to the bar. That was my next question, whether you came down.

FLANNERY: I represented some of those defendants, and the jury wouldn't convict any of them. I can recall I tried two or three of those cases. There was one acquittal, and I think there were two hung juries. There were certain juries that just wouldn't convict at all, period.

ERNST: And this was for?

FLANNERY: Breaking into stores and taking clothes and things like that.

ERNST: Were you down there during that weekend or were these cases tried later?

FLANNERY: These people were indicted and tried later. No, I didn't come down that weekend. Let's see those riots, what year was that?

ERNST: April, I think, of 1968.

FLANNERY: '68, yes.
ERNST: Could you just describe the process whereby you became U.S. Attorney? I don't know exactly how to phrase the question. You were notable for the stands you were taking in criminal law. Do you know how the Department of Justice settled on you?

FLANNERY: Well I know I was being considered, and I made it known that I was interested, and there were some people who pushed my name to the extent they could. I always thought I was the best qualified, but I wasn't sure I would be the one. I remember being home -- I think it was a weekend -- and my phone rang. I answered the phone, and a woman at the other end of the phone said, Mr. Mitchell would like to speak with you. John Mitchell got on the phone and said, Mr. Flannery, I've been hearing some good things about you. He said, I would like to talk to you. So he said, Are you free today? I said, Today? Yes, I can make myself available. He said, Well, suppose you come down to the Department of Justice in a couple of hours? This was a holiday, I believe, or a Saturday. He said, Identify yourself at the Tenth Street entrance, and the guard will bring you up to my office. So a couple of hours later I drove down to the Department of Justice and met the guard and he took me up to the fifth floor in the Department of Justice to an office where I met Mr. Kleindienst for the first time. We chatted a little,
and he said, Let's go in and talk to Mr. Mitchell. So we went in and talked, and he said, Mr. Flannery I've been hearing a lot of nice things about you. Tell me a little bit about yourself. So I told him a little bit about myself. We talked, small talk, and talked about the criminal law for about an hour, and he said, Are you really interested in being the United States Attorney? And I said, Yes, I really am. He said, Well you've had a lot of trial experience but you haven't had any administrative experience. He said, There's a lot of administration connected with that job. Well, I think I can handle it, I said. I'll put it to you this way: if I can't handle it, feel free to ask me to leave: I'll leave. All right, he said, I'll recommend your appointment to the President.

ERNST: Did you have a fairly well defined set of goals when you came in as U.S. Attorney?

FLANNERY: Yes. My goal was first of all to reorganize the office. The emphasis up to that point had been on prosecution of common-law street crime: robbery, murder, rape, the crimes of violence. I thought there was insufficient attention being given to the prosecution of white-collar crimes as opposed to crimes of violence. I thought also that too little attention was being given to the apprehension and prosecution of the major criminals, the ones who were causing a lot of
these crimes by selling the heroin and the cocaine and bringing heroin and cocaine into the District of Columbia. I thought some emphasis should be placed on apprehending and prosecuting those people. So when I became the United States Attorney the first thing I did was to have a staff meeting of all the assistants. First of all, I intended to change the organization of the office. I thought some chiefs of divisions had occupied positions of influence too long. The office needed a fresh outlook, and so I appointed Harold Titus as my principal assistant. He was a friend of mine, had been a friend for years.

ERNST: Did he have administrative expertise?

FLANNERY: No. No, he didn't. I'll get to that later. So then I replaced the chief of the criminal division and the chief of the grand-jury division. Joe Hannon was chief of the civil division; he was outstanding; I let him stay where he was. I replaced the chief of the municipal-court division and moved my own people in there.

ERNST: What did you look for in those new people?

FLANNERY: Well, I looked for people who shared my views that the office should place a greater emphasis on those areas I've mentioned. I knew some of the people who had been there. I knew Donald Smith. I thought he was an excellent lawyer with a fine background in criminal
law. I made him the new chief of the criminal division. Harold Sullivan was just a line assistant, but I had known him for a while, and I thought him to be an outstanding prosecutor. I made him chief of the newly formed organized crime section. I appointed Seymour Glanzer, who had played a small role in prosecuting white collar crimes, as chief of a new white-collar crime section and gave him four assistants in his new section. He had been working alone on white-collar crime, so I formed a new section, gave him four assistants and said, You are now chief of the white-collar crime unit. And then I appointed Henry Greene, who is now a judge on the Superior Court, as my administrative assistant. Then I went to the Department of Justice. I had known Sylvia Bacon for a long time. She's a judge on the Superior Court now, but Sylvia, in my view, had been a pretty good administrator. I recruited her from the Department of Justice, where she had a responsible position, persuaded her to come to the U.S. Attorney's Office in an administrative capacity. She would be principally responsible for the administration of the office. I also went to the Department of Justice and recruited Earl Silbert, a very bright lawyer, and persuaded him to come with me. I created a new job for him, executive assistant to the United States Attorney. He
occupied an office adjoining mine. I was confident he would be an excellent administrator. I believed he would be good at whatever I gave him to do and he fulfilled every expectation.

ERNST: How did you know him?

FLANNERY: I knew him by reputation. I had observed him and heard a lot of good things about him. I didn't know him well personally, but his reputation was outstanding. So I recruited him and Sylvia, whom I had known. She had been an assistant U.S. attorney in the civil division. I then recruited another person. Luke Moore was United States Marshal for this district. He had been a former assistant U.S. attorney. I knew him, and I always liked Luke, and I thought he was a fine man and a good lawyer. He was highly respected by the black community, and I thought that we should have an outstanding black lawyer in charge of the municipal court division of the office. I persuaded Luke to come with me, and he became chief of the then municipal court division, which later became the Superior Court division of the U.S. Attorney's Office. Luke had had administrative experience as the United States Marshal, but I had heard that Luke wasn't the greatest administrator in the world, although he's a great lawyer and had a wonderful personality and would be excellent in communicating with the black community.
So I assigned two assistants who would handle mostly administration and assist him. It all worked out beautifully once we got the machinery in place. Within a couple of months it started really operating, and the office ran like a well-oiled machine. Then we put some of these plans into execution. The prior United States Attorney and prior administrations had never used the wiretap as a tool. Even though there was a wiretap statute on the books, Ramsey Clark, former Attorney General, never used it because of his personal objection to the use of the wiretap. I didn't share that feeling, and after some conferences with the people in the Department of Justice, we decided to start utilizing the wiretaps. We started to use it in a major narcotics case. I began to utilize special grand juries and work in conjunction with law enforcement agencies and take an active role in investigation of crime, as well as the prosecution. We empaneled a couple of special grand juries and would bring special matters to their attention and secure indictments. We started a wiretap on a major drug peddler in Washington named Jackson, and we were fortunate, because in the course of listening to the taps, we found out that he was calling a phone number in New York. The federal drug agency investigated those numbers in New York and found out they were
listed to members of organized crime. So then we really got interested and we traced the people from New York so that when they came to Washington they could be surveilled. I had a couple of my assistants working with the agents in monitoring the wiretaps and actually participating in the surveillances. These people would come down and meet with Jackson and others. Instead of moving in immediately we widened the net until we got everybody we thought was involved. Then we decided to arrest the principals the next time they came down from New York. One day 3 Mafia people came down from New York. They met Jackson and were arrested. Then we proceeded to arrest all the people whose names we had picked up on the tap. In the course of the wiretaps we discovered that a high-ranking police officer, a sergeant on the narcotics squad, was on the payroll of Jackson. The result was that we indicted fifty people. We indicted them in five separate indictments. In the principal indictment we placed Jackson, Mafia defendants from New York, the crooked policeman, and a couple of other principals. There was a lot of publicity about this. I announced that I was going to try that case personally, and I did. The trial lasted over three months. We convicted all the defendants. Then I turned the four other indictments over to my assistants to try, and we were very successful. I think
out of the fifty people that had been indicted we convicted either forty-four or forty-five. Out of those who were not convicted, I think we dismissed two, and three people were killed during the pendency of the trials.

ERNST: Was Attorney General Mitchell or the White House following what you were doing closely?

FLANNERY: Oh yes. Mr. Mitchell was very interested in the wiretap investigation and very pleased with the result of it.

ERNST: I don't actually recall from the lore of the Nixon presidency whether the trials made it into campaign speeches or served as examples of his administration's approach to crime. Basically your dealings with the Department of Justice were with John Mitchell?

FLANNERY: Actually, most of my contacts with the Department of Justice were with Mr. Mitchell's deputy, Mr. Kleindienst. I would see Mr. Mitchell only occasionally.

ERNST: Was there any civil libertarian criticism of how you were conducting the trial. Did the wiretap produce any critiques or attacks?

FLANNERY: None at all. We were very careful to follow the statute precisely, and we were not criticized because of the way it was used. While the wiretap in the Jackson case was in effect we would report to Judge
ERNST: We had gotten the warrant from Judge Jones, and we would report back to him every week or so on the progress of the tap, in order to justify the maintenance of the tap, and so it was closely supervised. We followed the statute religiously, and there was no criticism.

ERNST: That was a clearly a major event in your term as U.S. Attorney. Were there other accomplishments that you look back on?

FLANNERY: Yes. Seymour Glanzer did a great job as chief of the white-collar section. He mounted a number of prosecutions. I recall one case he had involving massive fraud in defense contracting, and he secured some indictments. The indictments and the evidence supporting the indictments were so strong that they all pled guilty, but a great deal of work went into putting the case together.

ERNST: It strikes me that you were pioneering two areas of criminal prosecution that have since exploded. Did you have a sense that you were being a pioneer in doing this? The special grand jury, for example, was that something that had been done before or did you improvise?

FLANNERY: It had been done before in other jurisdictions but never here. I think my administration as U.S. Attorney refocused the whole aim of the United States Attorney
in this jurisdiction, and it has never gone back to what it was before. We changed it dramatically.

ERNST: This all happened before the Court Reform Act. Did that have any effect?

FLANNERY: Court reform was taking place during that same period.

ERNST: During that same period. Did that give you more freedom to reshape the U.S. Attorney's office?

FLANNERY: No. I don't --

ERNST: The court still retained --

FLANNERY: This court still had jurisdiction of some of the local crimes during that period. Jurisdiction was transferred to Superior Court in stages, and I think perhaps stage one took place early on in my tenure as United States Attorney. When I became a judge in 1971 we were still trying the murder cases. I tried a number of murder cases as a judge, so the first stage of the transfer had taken place. It hadn't been completed. One thing we did involved a large backlog of criminal cases in this court when I became the United States Attorney. The judges were quite concerned about it and I met with the judges and told them that I was prepared to assist in ridding the court of that backlog. My plan was to assign three assistants to each of 8 judges, who would try only criminal cases, and those assistants would remain with those judges and just try criminal cases, one after
another, until we whittled away the backlog. The court liked that idea, and they assigned eight judges on this court in a crash program to try just criminal cases. I assigned three assistants to each of those eight judges, and we just funneled those criminal cases in there one after another, and eliminated the backlog.

ERNST: Was that staff that you had or staff that you had to borrow?

FLANNERY: That was staff I was getting as the plan evolved, because one of the first things I did when I became United States Attorney was to advise the Justice Department I needed more help, and they were very, very helpful in that regard. They gave me the authority to hire many more assistants. I hired at one point about twenty assistants, so we had the manpower. We had enough experienced assistants to assign at least one experienced assistant to each of these eight judges, and then the other two would be less experienced, and the senior assistant would supervise the younger assistants. This was a great training program for assistants. It worked beautifully for all concerned, the judges, and my assistants.

ERNST: When did the U.S. Attorney's office in hiring assistants start looking for national law schools as opposed to hiring locally? How many U.S. attorneys in your tenure, for example, were Washington-trained and
basically of Washington origin and how many were pulled in from national law schools?

FLANNERY: Well, as the office got larger more assistants began to be hired who were from out of town. It's true that when I became assistant back in 1950 it was largely a local group of lawyers. I guess it was during my tenure that we began to look further afield and we began to get more applications from people from major law schools along the east coast and throughout the country, and hired fewer from the local schools.

ERNST: Did you lose any senior staff while you were U.S. Attorney? Say, the people whom you named whom you put in charge of your divisions?

FLANNERY: Yes, I lost a couple of those I had replaced as chiefs. I offered them other positions in the office, but they decided to leave. I was sorry to see them leave, but change was necessary.

ERNST: Well is there anything else about your work as U.S. Attorney that we should discuss?

FLANNERY: I don't think so except to say that I enjoyed that experience very much as United States Attorney. I was very fortunate in many ways because I received such excellent cooperation from the Department of Justice. I was very fortunate that I came in at a time when there was great interest in the United States Attorney in Washington, D.C., because President Nixon had made
crime one of his principal issues and specifically mentioned crime in the nation's capital as a situation that had to be improved. I came in with that view of the administration, and as a result, I got a great deal of cooperation from the administration. Any time I asked them for more assistants, the answer was yes. I told the Department of Justice, "Raise the salaries! I can't keep these people unless you raise their salaries!" The Justice Department replied, "We understand, the salaries will be raised." So I had complete cooperation. Then I was very fortunate to be able to get the experienced staff that I had. I had probably the best staff assistants of any U.S. Attorney's office in the country, people like Silbert and Titus and Joe Hannon, Sylvia Bacon, outstanding people.'

ERNST: Would someone who hadn't had such strong ties to the Washington legal community have made the changes anywhere near as effectively?

FLANNERY: They couldn't have made the changes and wouldn't have known the people to get, to focus on trying to recruit. John Terry is another one I might say who had been in the office, and then went into private practice. I recruited John to come back; he's now on the D.C. Court of Appeals.
ERNST: Did you have any congressional testimony while you were U.S. Attorney?

FLANNERY: I used to go up and testify before the Senate District Committee occasionally. I had a very good relationship with Senator Tydings, who was the chairman of the Senate District Committee. I had known Senator Tydings before I had become U.S. Attorney.

ERNST: How did you know him?

FLANNERY: I think I first met him when I appeared at a seminar with him. It had to do with some aspect of criminal law. We were on a panel together and became acquainted that way. So he was very cooperative when I went up and testified before his committee.

ERNST: Well, are you ready to move on to the bench?

FLANNERY: Yes.

ERNST: You told us how you recall getting the phone call for your U.S. Attorney position. Do you remember the phone call for the judgeship?

FLANNERY: No, the judgeship developed this way. I didn't make it known explicitly that I was interested in the bench when I took the position of United States Attorney. I didn't state it directly, but I think the people at the Department of Justice knew that if I performed well as United States Attorney I would expect to go to the bench. I had been United States Attorney about a year and a half, when a vacancy occurred on this bench. One
day I happened to be with Dick Kleindienst, and said, Dick, I'm interested in being appointed to the United States District Court. There is a vacancy on the court, and I'm interested in it. I remember him saying to me, Well, I'm sorry; that position has already been promised to someone else, but if another vacancy occurs you will be a leading candidate. About a year later, Judge Walsh, Leonard Walsh, a District Court judge, who was a friend of mine, telephoned me. He knew I was interested in becoming a judge on this court. He said, "Now, I'm going to tell you something I haven't told anyone else but my wife. I'm going to resign; I'm going to take senior status, and I want you to know first." He said, "Now you know what to do." I said, "I appreciate that, Judge," and shortly after that I called Mr. Kleindienst and said, I would like to talk to you. He said, Sure, come on over. I went over to his office, and said, Remember a year ago, we discussed my appointment to the District Court? He said Oh yes, I remember it very well. I said, Well, there's going to be a vacancy on the court. He said, I hadn't heard about any vacancy. I said, Well, there is going to be one. He said, If there is anything I can do to make sure that you get that appointment I'll do it. I said, Well, Leonard Walsh is going to send in his resignation. The President will get it in a couple of
days. He said, All right. I'll handle it. And so that's how I got the judgeship.

ERNST: You were working with Mr. Kleindienst regularly, principally on the drug prosecution.

FLANNERY: Yes, on the drug prosecutions and matters that had to do with the office. If I needed more assistants I would call him up and tell him; I would go over and talk to him about it. I thought the assistants were underpaid, and I discussed that with him, and he assisted in getting raises for my personnel, things of that nature.

ERNST: How did you tell your staff that you were going to leave?

FLANNERY: I didn't want to be premature in making the announcement, so I didn't say anything until the President announced that he was going to make the appointment, because you are never sure of things like that until it actually happens. But when the President made the announcement I had a staff meeting, and I told them I was going to leave and that Harold Titus would replace me, and they all knew Harold and liked him.

ERNST: That was going to be my next question: were you concerned that changes you made would be carried forward? Obviously you weren't.

FLANNERY: No. Harold was appointed. It was between him and Earl Silbert, and I decided to appoint Harold with the understanding that Earl would move up to the number two
ERNST: That's good. And it was in that capacity that he did his Watergate work.

FLANNERY: Yes, I think that's right. Harold Titus didn't remain U.S. Attorney for too long a period. Watergate came along then, and I think he only had the job for a couple of years, then Earl took over.

ERNST: Okay. Well, do you have any recollections of your confirmation hearing? I haven't looked at that. Was it very straightforward?

FLANNERY: The confirmation hearing as judge was cut and dried. I went up one afternoon and talked to a subcommittee of the Judiciary Committee, which consisted of one person, Senator Hruska. He asked me a few questions. It was just pro forma.

ERNST: The way you said that made me think I forgot to ask you about your confirmation as U.S. Attorney. Was that more controversial?

FLANNERY: That was a little more controversial, in that when I went up for my hearing there was some opposition to me by a group which called itself, I believe, the Steering Committee of the Democratic Central Committee. They objected to me because at that point in my life I was living in Montgomery County, Maryland, and it was their view that a resident of the District of Columbia should
be appointed in this position, and they objected. Then I had a snag initially when the Department of Justice sent my name over to the Senate Judiciary Committee. Senator Mathias, Republican from Montgomery County, objected because he hadn't been advised that a person whom he backed for U.S. Attorney was being rejected, and he took it as a personal affront. His position was that the administration didn't show him the proper deference as the senior Senator from Maryland and was just trying to railroad this nomination through. His position was apparently, I don't know Mr. Flannery, and I have a candidate. So he held back forwarding the so-called blue slip. I understand the senators had to send a blue slip to the chairman of the committee, indicating they have no objection, and he wouldn't send in the blue slip. My nomination by the President was announced, I believe, in February, and he sat on it and nothing happened until, I think, April. I began to get impatient about the thing, and I called up Kleindienst, and I said, Listen, either this thing is going to go through or not. I can't do this; I'm embarrassed with my firm. I said, Either they are going to act on this or I'm going to withdraw my name. So he said, Now, well, wait a minute, don't get excited. So they worked it out with Senator Mathias apparently. He withdrew
his objection, and my name went through, but I was held up for a couple of months.

ERNST: So even though you were taking a strong stance on criminal law, that was not the basis for the objection.

FLANNERY: No, it was a personal matter with Senator Mathias. He objected because, as I understand it, this was a new Republican administration; he was the Republican Senator from Maryland; he hadn't been advised; Joe Tydings had been advised. He was a Democrat, and I don't know why they didn't notify Mathias, but apparently they spoke to Joe Tydings and didn't speak to Mathias, and he got his feather ruffled, which is understandable, I guess.

ERNST: I can imagine your frustration, waiting for this to get resolved.

FLANNERY: Yes, I was a little bit concerned about it, but it worked out all right. As far as the judgeship was concerned, however, I had my so-called hearing before Hruska in the morning, and they confirmed me by voice vote that same evening, so that went right on through.

ERNST: Did you think about your philosophy as you started judging?

FLANNERY: Well, I didn't really have a philosophy as such. As far as criminal law was concerned, I felt the criminal law should be strictly but fairly enforced and that constitutional rights of defendants should be strictly
protected. I wanted everyone who appeared before me whether as criminal defendants or civil litigants to receive a fair trial.

ERNST: Did you find yourself thinking about the trial judges you knew as a lawyer?

FLANNERY: Yes, I tried to model myself after them in that I attempted to borrow from them what I considered to be their best features, that is to always be prepared, thoroughly prepared in every case and to be considerate of people but at the same time to be firm and to operate my court in an efficient manner.

ERNST: One of the things you said you admired about Judge Holtzoff was the speed and mental agility he possessed, his ability to try two criminal cases back to back and handle motions while the jury was out. It almost sounds superhuman. Was that something you were aspiring to? Were there moments when you tried to do that?

FLANNERY: There were moments when I tried doing it, but I stopped doing it after a while, because if you try to do too much you wind up not doing a good job. Holtzoff was an unusual man. He was a legal genius, but there was a reason for that, too. Judge Holtzoff lived alone, he didn't have a wife or a family, and therefore his whole life was the law. I had a wife and family and other

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3 See supra, note 2.
interests than the law, so I couldn't ever be another Holtzoff, but I could try to emulate him in the sense that he was well prepared and he was efficient, but I think he tended to do too much, and I just couldn't do it. I wouldn't be capable of emulating Holtzoff.

ERNST: Were there any surprises when you became a judge? Anything you didn't anticipate, either about the experience of judging or your view of the legal profession?

FLANNERY: Not really. I had been around these courts so long that nothing came as a real surprise to me. I had worked before judges so many years and had tried so many cases that there were no real surprises. I did have some difficulty initially with handling the complicated administrative actions -- sometimes I would have to review the appeals from administrative agencies and things of that nature -- but I found they just required more time and preparation on my part, more delving into things, and I mastered that after a while.

ERNST: When I run back over some of the cases you tried, I was struck by the large number of environment-related cases which must have been new to you and a lot of work.

FLANNERY: Yes, they required a lot of work, an awful lot of research, certainly.
ERNST: Let's see. And that is the kind of administrative work that you were thinking of?

FLANNERY: I had those surface-mining coal cases, a whole series of those.

ERNST: Those are the ones that struck me.

FLANNERY: Those were difficult cases. They required painstaking reading of the regulations, the statute, the administrative record and the opinion of the Secretary of the Interior. I would just go through it and work out the issues, and then it became a judgment call. I did what I thought was right. In most of those cases I was affirmed, but in some I was reversed; it just came down to a matter of judgment, as I see it.

ERNST: In some of those strip mining cases, you went off with the agency and in some you overturned the agency's regulations.4

FLANNERY: I just tried in the final analysis to do what I thought Congress intended to be done. [END OF TAPE]

ERNST: We were talking about the strip mining cases and you were saying that you just did the best you can. I'm not sure whether we should talk about the coal cases or the Exxon case. Did you ever get a sense over the course of litigation that one side was being

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4 Business Week, March 17, 1980, p. 41; Coal Age, August 1984, p. 23.
overwhelmed by paper or money or resources and, if so, what did you do about that?

FLANNERY: Well you mentioned the Exxon case. That would be the case where I assessed Exxon over a billion dollars, I believe, in overcharges. In that case I thought Exxon had the advantage over the government lawyers. The government lawyers consisted of a small group of perhaps three or four, but Exxon had several major large Texas law firms on their side and they could generate a lot more paper than the government could, and I thought the government was fighting an uphill battle.

ERNST: In asking the question I didn't mean to imply that the government was always going to come out the winner.

FLANNERY: The government won that case. They did a good job. They deserve a lot of credit for the way they tried the case because really the resources on the other side were much greater.

ERNST: I asked the question because I saw an occasion where you addressed the tendency of the bar to pad memos and motions, and I thought, Here's a classic example of the "Haves" coming out ahead by snowing a less affluent opponent. I guess that's why I ask the question. I suppose there were limits to what you as a judge could do in a setting like that, except to strictly enforce the rules of the court.
FLANNERY: You can limit the number of pages they can file in a brief. I've used that, limited them to fifteen or twenty pages. That could cut down the paper to some degree, because many of these fifty-page motions are very repetitive. Then there are the reply briefs that are just a reiteration of what's been said previously. A judge can control that and I have attempted to do that.

ERNST: In newspaper reportage on your decision that the Exxon fee had to be distributed to the states, I recall there was some criticism from the federal government which felt this should be their money? What do you do when you get criticized in the press? Do you go home and kick the dog; do you just ignore it?

FLANNERY: Just ignore it.

ERNST: And there hasn't been any commentary in any of your cases that you terribly resent?

FLANNERY: No, I do what I think is right, and that's it. I thought in the Exxon case if the money went into the treasury it would soon disappear. The way it's been used now, every year the states get the use of that money and will continue to get the use of that money for a period of time. They file reports every year with the Department of Energy, and I get copies of the reports.\footnote{Business Week, July 25, 1983, p. 99.}
ERNST: Where did the idea come from to do this?

FLANNERY: It came from, as I recall, Senator Warner, some legislation called the Warner legislation. He wrote an article how funds of this nature should be spent, and I borrowed from that to a large degree in working out the plan I eventually wrote up.

ERNST: That is a striking bit of innovation, I think. Were there other things, remedies that you ordered as a judge that you think were notable.

FLANNERY: Remedies?

ERNST: Well, a lot of what you did as a judge was just acting in keeping with the role models of good trial judges you've had and seen, but you couldn't have figured out that Exxon remedy just by looking at what Alexander Holtzoff had done. I want to see if there are any other bits of judging by you which people would think were important.

FLANNERY: Novel or important. Off the top of my head I can't think of any right now. You don't have any of my cases there do you?

ERNST: Well, this isn't quite what I had in mind. One of the things I did want to talk about since you really were in the center of things as a judge was the Ku Klux Klan trial.

FLANNERY: Oh, yes, that was an interesting trial. Well the way that came about was that again I was sitting home one
Saturday afternoon, and Warren Burger called me on the phone and said, Tom, I need your help. And I said, Well, Mr. Chief Justice, anything I could do to help you, of course, I'll do. He said, Well, you've heard of the so-called Greensboro massacre case in North Carolina? I said, Yes. Well, as you may know, he said, after their acquittal these defendants and others have been indicted for violation of the civil rights of the people they killed and wounded. He said, I assigned a Judge from Minnesota, Ed Devitt, to go down and try that case in North Carolina, because all the judges in the middle district of North Carolina have disqualified themselves. Ed Devitt is ill; he's in the hospital. I need another judge to go down and try that case: Would you do it? I said, Yes, I'll do it. He said, Fine; I appreciate that. He said, Get in touch with George Hart -- George Hart was chief judge of this court -- and he'll fill you in on what must be done. George Hart was chairman of the Intercircuit Assignment Committee for the judicial conference, so I contacted George, and George gave me the background on the case. I made arrangements to go to the middle district of North Carolina and confer with the chief judge of that district and get further briefings. I went down and talked to the chief judge, Chief Judge Ward of the Middle District of North Carolina. I
forget exactly how many defendants, eight or nine had been indicted for violating the civil rights of these defendants. He said he would be willing to assist in any way he could. So he introduced me to his chief clerk, and I made arrangements to set up a status call with the defendant's attorneys, and I went down and met with the attorneys. There were about 100 motions pending, so I made arrangements with the attorneys to come down and hear the motions. I set aside a couple of days for the motions, and I went down, took one of my law clerks with me. I had earlier brought all the motions back with me to Washington. We went through the motions. A lot of them were frivolous; a few had merit. Then I went down to North Carolina and heard the motions. I had previously reviewed most of the motions. The way I handled it was as follows: First I said, I've reviewed all these motions, and I'm prepared to rule on a number of them without any argument. I've read the papers on both sides; I don't need oral arguments. I went down the list of motions and denied about maybe seventy of them. Now, I said, this motion may have merit, so I'll have brief argument; ten minutes each side. All right, denied or granted. A few I took under advisement; they required a little thought. Then they wanted to file a second wave of motions. I gave them permission to file additional
motions. In the meantime I came back, researched the several motions I had taken under advisement, ruled on those, and went down and heard the second batch of motions, set a trial date, and we proceeded to try the case. I'm cutting through this rather quickly. I decided there had been so much publicity in the case that there would be an individual voir dire. I had the clerk send out jury notices, as I recall, to about 700 people. I anticipated there would be a lot of challenges for cause. I excused about, oh, half of them, almost 350, for cause. Then I decided to bring in groups of fifty for voir dire examination. As we selected jurors I put them aside until I built up a pool of about fifty prospective jurors. When the trial started, I issued a gag order, and I also ordered -- this caused a great deal of excitement -- that during the preliminary voir dire the press would be excluded. Well the press got very upset about that, and they filed a petition for a stay with the Fourth Circuit. In the meantime I had started selecting the jury. I got through I think the first day or so, when the Fourth Circuit issued a stay while they considered the arguments of the lawyers. I had to stop selecting the jury until they ruled. A day or so later they lifted the stay after they heard arguments and said they would issue an opinion later. They later issued an opinion
and said that, in view of the fact that I had stated that this was just a temporary exclusion of the press and that I would release the transcript of voir dire a few days after the panel had been selected, it was acceptable, and so they approved that practice.

ERNST: Why did you think it was important to close the voir dire?

FLANNERY: Well, I thought it would be prejudicial to the defendants and prejudicial to the jury-selection process, if the questions propounded to jurors were revealed in the press. Jurors waiting to be called would be less likely to answer questions fully, completely and candidly.

ERNST: I think I saw in the report that both sides agreed.

FLANNERY: Both sides agreed to that procedure. But it was the press that claimed that their first amendment rights were being violated. But anyway I got over that hurdle. It was quite interesting picking the jury in that case. I think I wound up eventually with as good a jury as one could hope for. The case was well tried. There had been a lot of excitement and furor at the first trial, the murder trial, which had lasted six months, but we had good security -- the courthouse area was well guarded -- and there were no demonstrations and things of that nature. The case
went fairly smoothly. It was a tremendously interesting experience.

ERNST: Interesting because it was the South? Washington is described as a southern town, but it's not North Carolina.

FLANNERY: That's right. I had to go into a different area of the country. The only person I took with me was a law clerk, and I hadn't known Judge Ward previously. I hadn't known the chief clerk; I didn't know any of the lawyers; I didn't know anyone. I was a complete stranger, and I was able to handle it satisfactorily.

ERNST: I suppose by the time you instructed the jury you had worked up a rapport with the jury?

FLANNERY: Yes, the jury became very friendly. Those jurors were really amazing. Some jurors came from as far away as fifty miles. I didn't sequester the jury. One gentleman on the jury was a farmer. He lived on a farm fifty miles from Winston-Salem, and he would drive back and forth from his farm every day. And I'm told that he would report to that courtroom at 7:30 every day. The jurors were never late. I made arrangements to have coffee and doughnuts served to them every morning and did everything to make their stay there comfortable, and they really enjoyed the experience. They were very nice people. I remember trial started early in January and didn't end until April, and on St.
Patrick's Day one of the jurors brought a cake in for me, and they had all signed a very nice St. Patrick's Day card. I was quite touched, because here were people I didn't even know, but we built up a rapport. It was quite a sacrifice for a lot of these people to serve on jury. There was one man on the jury who was in business for himself, and it was quite a sacrifice for him to do it. Some of them were farmers, and others worked in mills, just a cross section of people in that area. I was very impressed with their devotion to their duty.

ERNST: Could you have said no to that particular case?

FLANNERY: I could have, but, well, I was flattered that the Chief Justice would have thought that, first of all, I was the person he wanted, so I couldn't say no. I had known Warren Burger for a while, and we were friendly. He had served on the court of appeals for this circuit, you know.

ERNST: Right.

FLANNERY: I had gotten to know him while I was an assistant U.S. Attorney. Occasionally I would go upstairs and argue a criminal case before the court of appeals. Then I knew him when I was in private practice; I think he had heard me give a speech on crime at one of the judicial conferences. He liked what he heard, so, when I was down at court once in a while I would drop by and visit
with him. So I've known him for a while, and when he asked me I couldn't say no.

ERNST: One of the events in the aftermath of that trial, was some problem getting the grand jury transcripts back from the counsel. Am I getting that right?

FLANNERY: Yes, now that you mention it; I'd sort of forgotten that.

ERNST: I never saw what happened. I saw that you wanted them back.

FLANNERY: I have a recollection that I issued an order ordering counsel to return those transcripts to the prosecutors. They had refused to return them at the request of the prosecutor, but when they received my order, I'm told that they acquiesced and turned the papers back so it didn't become an issue.

ERNST: You didn't sequester that jury. Did you ever sequester a jury?

FLANNERY: Let me think about it. In the Tantillo Jackson case that was a sequestered jury.

ERNST: I don't know that case.

FLANNERY: That's the one I told you about earlier, when I was U.S. Attorney and prosecuted the case. Aubrey Robinson was the presiding judge. I'm sure we sequestered that jury. I tried a judge of the Superior Court for bribery, ten years or so ago. I didn't start off by sequestering the jury but something occurred during the
course of the trial which led me to sequester the jury, and I sequestered that jury. I don't remember specifically now whether I've ever sequestered any other jury.

ERNST: It sounds to me like you just trust your juries. Why do you hesitate to sequester them? It's got to be the inconvenience.

FLANNERY: It's inconvenient. You lose a lot of good jurors if you tell the jury, which you must, that this will be a sequestered jury. A lot of them will object to sitting on a sequestered jury and come up with excuses relating to family responsibilities and the like. You have to grant a lot of those requests, and as a result you lose a lot of very good jurors, so I would be opposed to the sequestering unless there was no other way to do it. I think most of the judges now on this court feel that way. When I was an assistant U.S. Attorney back in the '50s, occasionally judges would sequester juries, a highly publicized murder case or something of that nature. The trend now seems to be away from sequestering juries, unless it involves an organized crime case, where there is a real danger that jurors might be molested.

ERNST: What difference has it made that you came to the bench with significant prosecutorial experience? One might think you would be hostile to novel constitutional
claims, but for more ten years you have accepted them in a number of really important civil libertarian cases -- residency, oath-of-allegiance cases, the "squeal rule" for abortions.6 On the other hand, people must have come before you who have taken positions on the fourth and fifth amendment you just didn't accept. If there were someone who wanted to portray you as a person hostile to the fourth or fifth amendment guarantees, is there anything to tell him beyond pointing to your cases and saying that you did what you thought was right?

FLANNERY: That's it. I am guided by the opinions of the higher courts, the Court of Appeals and Supreme Court. I might disagree with an opinion of a higher court, but under my oath as I understand it, I don't make the law; I follow the law, and interpret the law. I might not be sympathetic to a particular litigant's theory, but I apply existing law until a higher court or the legislature changes it. You mentioned my ruling in the so-called squeal rule case. Because of my Catholic upbringing and background, I personally disagree with those who advocate unrestricted birth control and abortions. That wouldn't stop me from following the

law as laid down by a higher court, although it might be different from my personal beliefs. I think you have to divorce your personal beliefs and views from what the law requires. I operate on that principle.

ERNST: I think that's a good place to stop. Thank you very much.

FLANNERY: All right.
INDEX

Acheson, David Campion, 19
American First Bank, 20
Atlantic Coastline Railroad, 21
Bacon, Sylvia, 37-38, 46
Bail Reform Act of 1966, P.L. 89-465, 80 Stat. 214, 32
Board of Trade
   see District of Columbia Board of Trade
Bryant, William B., 14
Caputy, Victor W., 14
Clark, Ramsey, 39
Columbus Law School, 2
Conliff, John, 10
Conscientious objectors, 26-29
Court Reform Act (District of Columbia Court Reform and Criminal Procedure Act of 1970, P.L. 91-358, 84 Stat. 473), 26, 43
Curran, Edward M., 5, 8
Dean, Paul Regis, 6
Democratic Central Committee, 50-51
Devitt, Edward James, 59
District of Columbia Board of Trade, 25, 30-32
District of Columbia Court of Appeals:
   Terry, John A., 46
District of Columbia, Municipal Court of, 5-6, 9
   Curran, Edward M., 5, 8
District of Columbia riots of 1968, 32-33
District of Columbia Superior Court
   see under Superior Court of the District of Columbia
Doyle, John F., 14
Durham rule (Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954)), 31-32
Eisenhower, Dwight D., 14-15
Ellison committee, 26

see also District of Columbia Court Reform and Criminal Procedure Act of 1970

Energy Department, U.S., 57

Exxon case, 56-58

see also United States v. Exxon, 773 F.2d 1240 (D.C. Cir. 1985)

Fay, George Morris, 8

Fihelly, John W., 9

Flannery, Thomas A.:
  Career ambitions, 2, 15, 30, 47
  legal role models, 5, 16

Early life and education:
  Columbus Law School, 2
  decides on legal career, 2, 3-4
  family background, 1, 3, 4
  Jesuit schooling, affected by, 6
  secondary education, 1-2

Judicial philosophies:
  Bail Reform Act of 1966, P.L. 89-465, 80 Stat. 214, opinions on, 32
  brief length, limitations on, 56-57
  criminal law, 30-31, 52
  defendants, rights of, 52-53
  Durham rule (Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954)), opinions on, 31-32
  higher courts, relationship with, 67-68
  judge's role in controlling courtroom, 13-14
  juries, sequestration of, 65-66
  precedent, following of, 67
  press, reaction to criticism from, 57
  requirements of law and personal beliefs, relationship between, 67-68

Legal career (prior to judgeship):
  with Hamilton & Hamilton:
    Congressional testimony, 25, 30, 32
    court-appointed criminal defense work, 24
      District of Columbia riots of 1968, 32-33
    criminal law, continuing interest in, 25
District of Columbia Board of Trade, advisor to, 25, 30-32
Bail Reform Act of 1966, P.L. 89-465, 80 Stat. 214, opinions on, 32
*Durham* rule (*Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954)), opinions on, 31-32
joins the firm, 19-21
Judicial Conference of the District of Columbia Circuit, serves as member, 26, 30
senior litigator, 21-24, 64-65
special hearing officer for conscientious objectors, U.S. Department of Justice, 26-29
Lands Division, U.S. Department of Justice, 7
private practice prior to joining U.S. Attorney's Office, 7
Treasury Department, U.S., clerk at, 4-5
U.S. Attorney for the District of Columbia:
appointment as, 34-35
confirmation hearings, 50-52
Congressional testimony, 47
criminal case backlog, elimination of, 43-44
goals for office, 35-36
Justice Department, U.S., relationship with, 45-46, 49
reorganization of office, 35-39, 46
organized crime section, 37
white collar crime section, 37, 42
*Tantillo Jackson* case (*United States v. James*, 494 F.2d 1007 (D.C. Cir. 1974)),
39-42, 65
use of wiretaps and special grand juries for investigation, 39, 41-42
U.S. Attorney's Office, U.S. Department of Justice, 25, 64
begins work at, 7-8
caseload, 26
in Civil Division, 19
in District Court Division:
colleagues, 14-16
experiences with judges, 10-14
major cases, 17-18
supervision, 9-10
trials, preparation for, 15-17
early career ambitions, 15
leaving, reasons for, 19
U.S. Army career:
drafted, 2
in air intelligence, 2
effect of, 6-7
On U.S. District Court for the District of Columbia:
appointment to, 47-49
confirmation hearing, 50, 52
environment-related cases, 54-55
goals as judge, 52-54
United States v. Exxon, 773 F.2d 1240 (D.C. Cir. 1985), 56-58
United States v. Virgil L. Griffin, et al (Ku Klux Klan case), 58-65
Gasch, Oliver, 14-15, 19
Glanzer, Seymour, 37, 42
Greene, Henry F., 37
Greensboro massacre case, 58-65
see also United States v. Virgil L. Griffin, et al
Hamilton, George, Jr., 19-20, 29
Hamilton & Hamilton, 19-25, 26-33
Hannon, Joseph M., 14, 36, 46
Hart, George L., Jr., 59
Holtzoff, Alexander, 11-13, 53-54, 58
Hruska, Roman Lee, 50, 52
Interior Department, U.S., 55
Jehovah's Witnesses, 28
Jones, William B., 19, 21, 22, 41-42
Judicial Conference of the District of Columbia Circuit, 26, 30
Justice Department, U.S.:
Attorneys General of the United States:
Clark, Ramsey, 39
Mitchell, John Newton, 34-35, 41
U.S. Attorney's Office, 9-19, 26
see also under Flannery, Thomas A., Legal career (prior to judgeship)
U.S. Attorney for the District of Columbia, 34-47, 49-52
TAF's reorganization of office:
organized crime section, 37
white collar crime section, 37, 42
United States v. James, 494 F.2d 1007 (D.C. Cir. 1974) (Tantiillo Jackson case), 39-42, 65
U.S. Attorneys for the District of Columbia:
   Acheson, David Campion, 19
   Curran, Edward M., 5, 8
   Fay, George Morris, 8
   Gasch, Oliver, 14-15, 19
   Rover, Leo A., 14-15
   Silbert, Earl J., 37-38, 46, 49-50
   Titus, Harold H., Jr., 14, 36, 46, 49-50
use of wiretaps and special grand juries for investigation, 39, 41-42
see also under Flannery, Thomas A., Legal career (prior to judgeship)

Keech, Richmond B., 13, 19-20, 22, 23
King, Martin Luther, 32
   see also District of Columbia riots of 1968
Kleindienst, Richard Gordon, 34-35, 41, 47-51
Ku Klux Klan case, 58-65
   see also United States v. Virgil L. Griffin, et al

Leahy, William, 16
Letts, F. Dickinson, 18
Mafia, 39-40
Mathias, Charles McCurdy, 51-52
McIntyre, Fred L., 14
Mitchell, John Newton, 34-35, 41
Moore, Luke C., 38-39
Municipal Court of the District of Columbia, 5-6, 9
   Curran, Edward M., 5, 8
Murray, Charles B., 9
Nixon, Richard Milhous, 45-46, 48, 49, 51
Pennsylvania Railroad Co., 21
Potomac Electric Power Co., 20
RF&P Railroad, 21
Robb, Roger, 27
Robinson, Aubrey E., Jr., 65
Rover, Leo A., 14-15
Senate District Committee, 47
Senate Judiciary Committee, 50, 51-52
Silbert, Earl J., 37-38, 46, 49-50
Smith, Donald S., 36-37
Southern Railway Company, 21
“Squeal rule,” 67
Sullivan, Harold J., 37
Superior Court of the District of Columbia:
  Judge tried for bribery, 65-66
  Judges:
    Bacon, Sylvia, 37-38, 46
    Doyle, John F., 14
    Greene, Henry F., 37
    Hannon, Joseph M., 14, 36, 46
    McIntyre, Fred L., 14
Tamm, Edward Allen, 13
Tantillo Jackson case (United States v. James, 494 F.2d 1007 (D.C. Cir. 1974)), 39-42, 65
Terry, John A., 46
Titus, Harold H., Jr., 14, 36, 46, 49-50
Trimble, Stephen A., 22-23, 24
Tydings, Joseph Davies, 47, 52
United States v. Exxon, 773 F.2d 1240 (D.C. Cir. 1985):
  inequities in legal resources, 56-57
  distribution of damages assessed, 57-58
United States v. Virgil L. 'Griffin, et al (Ku Klux Klan case):
  assignment of case, 58-60
  First Amendment issues and the press, 61-62
  grand jury transcripts, 65
  jury, relations with, 63-64
  jury selection, 61-62
  motions, method of handling, 60-61
United States v. James, 494 F.2d 1007 (D.C. Cir. 1974) (Tantillo Jackson case), 39-42, 65
U.S. Army, 2, 6-7
U.S. Attorney's Office, 9-19, 26
  see also under Flannery, Thomas A., Legal career (prior to judgeship)
U.S. Court of Appeals for the District of Columbia Circuit:
  Judges:
    Robb, Roger, 27
    United States v. Exxon, 773 F.2d 1240 (D.C. Cir. 1985), 56-58
    United States v. James, 494 F.2d 1007 (D.C. Cir. 1974) (Tantillo Jackson case), 39-42, 65
U.S. Court of Appeals for the Fourth Circuit, 61-62
U.S. District Court for the District of Columbia, 9, 10-14, 17-18, 52-68
criminal case backlog, elimination of, 43-44

Judges:
Bryant, William B., 14
Curran, Edward M., 5, 8
Gasch, Oliver, 14-15, 19
Hart, George L., Jr., 59
Holtzoff, Alexander, 11-13, 53-54, 58
Jones, William B., 19, 21, 22, 41-42
Keech, Richmond B., 13, 19-20, 22, 23
Letts, F. Dickinson, 17-18
Robinson, Aubrey E., Jr., 65
Tamm, Edward Allen, 13
Walsh, Leonard P., 48-49
Youngdahl, Luther W., 13

U.S. District Court for Minnesota:
Devitt, Edward James, 59

U.S. District Court for the Middle District of North Carolina:
United States v. Virgil L. Griffin, et al (Ku Klux Klan case), 58-65
Ward, Hiram Hamilton, 59-60, 63

Vietnam War, 26-29.
Walsh, Leonard P., 48-49
Ward, Hiram Hamilton, 59-60, 63
Warner, John William, 58
Washington Terminal Co., 21
Watergate, 50
Wiretapping, 39-42
World War II, 2, 5, 6-7, 28
Youngdahl, Luther W., 13