

Oral History of Mark Tuohey
First Interview
October 1, 2018

This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit. This is the first session of the oral history of Mark Tuohey. Bill Marmon is the interviewer. The interview is taking place at Baker Hostetler, Mark's law firm.

Mr. Marmon: Good morning!

Mr. Tuohey: Good morning, Bill.

Mr. Marmon: We want to start with first things. Where were you born? When were you born?

Mr. Tuohey: I was born on September 27th (I just turned 72), 1946 in Rochester, New York to Mark H. Tuohey, Jr. and Josephine Slattery Tuohey. I am the oldest of seven children and when I was born, my father, having returned from World War II a year earlier, was completing up his college education. And so my first year of life was spent in Olean, New York at St. Bonaventure University where my father completed his college degree.

Mr. Marmon: Tell us a little more about your Dad and your Mom.

Mr. Tuohey: My father was born in Rochester, and, after college, he joined the FBI in 1946. His father's family hails from Galway, Ireland and his mother's family from Germany. My mother's parents were born in Tipperary - Michael Slattery and Margaret Horrigan. They came to the United States in the early 1900s and settled in Rochester, New York, where my parents grew up. My father had two siblings and my mother had three sisters, one a nun, and a brother, a priest. Both families lived on the west side of the city. They were great folks, good parents.

Mr. Marmon: Did you know your grandparents?

Mr. Tuohey: I did. My grandmother, Elma Bornkessel Tuohey died in 1954 at the age of 54. My grandfather, Mark H. Tuohey Sr., owned Rochester Heel Company and died

in 1962 at the age of 62. My grandfather Tuohey was very generous. As oldest of seven, in an Irish Catholic family, I felt special. Grandpa Tuohey always took good care of me. When I had a project for school or an organization, e.g. to craft a science project or build an item, my grandfather brought me down to his shop to help me complete it. My grandparents on my mother's side, Michael and Margaret Slattery, lived very close to the parish school I attended, St. Monica's Grammar School. During the eight years of grammar school, I went to my grandparents almost every day for lunch. My grandfather, with a touch of the brogue, loved to chat. He was a great Tipperary hurler in Ireland. He spent many years as a postman in Rochester, which was a very suitable job for somebody who loved to chat with folks. My grandfather would talk to people all day long downtown, delivering his mail. In fact, he often did not get home until dinner or after!

Mr. Marmon: What were the circumstances of their coming to the United States?

Mr. Tuohey: The Great Irish Famine in the latter part of the 19th century, especially in the west of Ireland, was devastating. My grandparents were among the many Irish immigrants who came across to New York thru Ellis Island, and they made their way to Rochester.

My journey in life also began in Rochester, New York where I was born on September 27, 1946. Just after my birth, I moved to Olean, New York, while my father, having returned from World War II (as a marine officer in the Pacific) to finish his college education at St. Bonaventure University. After graduation, my dad joined the FBI. His first assignment was in New Orleans.

I spent a couple of years in New Orleans, and then my father was transferred in 1948 to Chicago where the next two Tuoheys, my sisters Suzanne and Nancy, were born. And we moved from Chicago back to Rochester in about 1951. And that's where I grew up and went to school.

Mr. Marmon: How old were you then?

Mr. Tuohey: I would have been five.

Mr. Marmon: These Irish connections -- an important part of your personality and your life?

Mr. Tuohey: A very important part of my life. I became an Irish citizen in 1992. I have an Irish passport and have spent -- we'll get to this later -- a lot of time in Ireland professionally and socially over the years. I am very devoted to my Irish heritage, as are my entire family.

Mr. Marmon: You were six years old when you came to Rochester. Where did you go to grammar school?

Mr. Tuohey: St. Monica's Grammar School, over on the west side, the second largest Catholic parish in Rochester during those years. I had great years in grammar school, a lot of friends, played sports. The 19th ward was a great place to grow up in those days. Rochester, in the '50s and '60s, was a blend of ethnic neighborhoods: Irish, Italian, German, African American and Hispanic. My father was very involved in the FBI, but he and my mother were also, over all the years they spent in Rochester, very involved in the life of the community, and certainly the Catholic community. My mother's oldest sister was a St. Joseph nun, and her brother was a priest. My father was very involved in a number of organizations during those years. Growing up in Rochester taught me a good deal.

Mr. Marmon: What did your father do when he left the FBI?

Mr. Tuohey: He was named Public Safety Commissioner in 1966, which meant he oversaw police, fire, and EMT departments. He loved his job and was respected and admired by police officers and firefighters because he cared for them.

He grew up as a law enforcement professional. And that continued throughout his life. He stayed with the city until roughly 1971, when he was named by the Chairman of Eastman Kodak as the Director of Health, Safety and Security at Eastman Kodak, in those days, Rochester's largest employer. The three largest companies when I was growing up were Kodak, Xerox, and Bausch & Lomb. The city really was the beneficiary of those three major companies because they were large, prosperous companies, and they were very generous to the city and to the educational institutions, and the like.

Mr. Marmon: Tell me about your schooling after elementary school.

Mr. Tuohey: After elementary school, during my first year in high school – which as I look back, was *way* too young to make those kinds of decisions - I entered the seminary, St. Andrew's Seminary which was then the local minor seminary. The major seminary, St. Bernard's, was referred to as "The Rock". During that year, I decided it was way too early to commit to that kind of life, so I left and enrolled at McQuaid Jesuit High School, one of the two Catholic boys' high schools in the 1950s and 1960s, the other being Aquinas Institute. Aquinas was founded in 1902. My father, my uncles, and my wife's father and uncles went to Aquinas. McQuaid was opened in 1956, so I was trained by the Jesuits. McQuaid was a

formative experience for me and I relished the experience – great classic education, fun sports and great friends.

Mr. Marmon: Which sports?

Mr. Tuohey: I played soccer and basketball. In grammar school, we had a very active CYO program, so in 7th and 8th grade I played football and basketball and baseball. It was a very competitive CYO program. In high school, soccer, some basketball and swimming.

Mr. Marmon: What does CYO stand for?

Mr. Tuohey: Catholic Youth Organization. Very active. In grammar school, CYO basketball and football was very competitive and Monica's competed very well. In football, we wore pads, practiced every day, and played a schedule of eight games of tackle. In basketball, we played fifteen games and won the diocesan tournament in eighth grade

Mr. Marmon: Tackle?

Mr. Tuohey: Oh yes. We had our own gym at St. Monica's. We were very competitive.

Mr. Marmon: What position did you play?

Mr. Tuohey: In football – half back; soccer - left wing; basketball - point guard.

Mr. Marmon: How about baseball?

Mr. Tuohey: I played Little League Baseball and one year of Pony League Baseball, which was the next level up, and then that was it. Sports were a part of my young life, for sure, as sports has been in terms of participation for all three of my sons.

Mr. Marmon: Were you active in any other activities in High School? Any extracurricular activities?

Mr. Tuohey: I was on the Student Council. I was one of the editors of the school newspaper called "The Lance." I was involved in Debate and Oratory. And I was certainly involved in the booster club which was a popular organization that supported the sports program. Yeah, I would say I was active in high school.

Mr. Marmon: What were your favorite courses?

Mr. Tuohey: I think over the high school and college experience history and English Literature would have been my favorite courses.

Mr. Marmon: Did you take Latin?

Mr. Tuohey: Six years - four years in high school and two years in college. Back in those days, Jesuit high schools required four years of Latin.

Mr. Marmon: I think that four years of Latin is a fantastic background

Mr. Tuohey: Oh, in terms of word derivation, very much so. In fact, back then, I could recite until very recently the opening verses of the Aeneid or the Iliad. I loved the experience.

Mr. Marmon: Social life:

Mr. Tuohey: I knew Marty in high school. McQuaid, like Aquinas, had relationships with the three Catholic women's high schools. On the west side of the city, St. Agnes, where my sisters and cousins attended; on the north side of the city, Our Lady of Mercy, where my wife, her sisters, her mother and aunts went. And also on the

north side of the city, Nazareth Academy where my mother and her sisters attended and where my aunt, Sister Jamesetta [Slattery] was the Principal. She later served as Director of the Rochester Anti-Poverty Program in the mid-1960s, and in that position, addressed the Democratic and Republican platform meetings in 1968. She was a great woman and I relied on her for a lot of advice, as did my father when he was Police Commissioner. She used to write a lot of his speeches.

Anyway, getting back to your question, the relationship between McQuaid and the three Catholic women's high schools was ongoing. I met my wife in the course of that relationship during high school. We did not date in high school but attended many of the same events. We started dating the summer after Marty's graduation from high school in 1965. That summer, we both worked at the Martin de Porres Center in the inner city. Marty worked with young women, and I ran a combination tutoring/sports program for a lot of young men. And that's when we started dating.

Mr. Marmon: And you're a year older than she is?

Mr. Tuohey: One year.

Mr. Marmon: Tell me about your college acceptance?

Mr. Tuohey: I ended up choosing to St. Bonaventure University. Really for me, it came down to Holy Cross and Bonaventure. I had friends going to both schools, and as you might imagine. Jesuit high schools regularly sent graduates to Jesuit colleges. Many of my McQuaid classmates went to Jesuit colleges: Holy Cross, Boston College, Fordham, Georgetown, Lemoyne, Canisius. I was very familiar with

Bonaventure because of my father, and I had been to Bonaventure basketball games with my father. And I decided that's where I wanted to go. So I started at St. Bonaventure in September of 1964. I had a very fulfilling and interesting four years at Bonaventure where I served as freshman class president, sophomore class president, then elected to the Student Senate in my junior year. In my senior year, I was elected Student Body President, as my father had been in 1946. The front page of the school newspaper, in announcing my election in an article written by a dear friend and classmate, who spent forty years as a very respected journalist for the *Washington Post*, Jacqueline Trescott, wrote the story about my father and I following the same path. It was a very fulfilling four years.

Mr. Marmon: What did you major in?

Mr. Tuohey: History, minored in English.

Mr. Marmon: Did you play sports?

Mr. Tuohey: Freshman year, I played soccer but I didn't finish the season simply because I decided to enter the race for freshman class president in October. I played in four or five games, but with campaigning and studies, and wanting to be fair to both, I decided to step back from playing soccer.

Mr. Marmon: Were there issues that came up before the student council or the senate?

Mr. Tuohey: Many. My junior year, I chaired the Cultural Affairs Committee, and we presented the first year-long comprehensive major cultural program at the University. That experience was fantastic with events every other week: speakers, concerts, plays, lecturers, etc. I remember spending time with Leslie Frost, the

daughter of Robert Frost, who gave me one of Frost's unpublished poems; Arthur Schlesinger, Jesuit theologian, Avery Dulles, later Cardinal Dulles, (brother of Allan and John Foster Dulles), who spoke about the famous *Time* magazine cover story, "Is God Dead?" I later reminisced with Cardinal Dulles about his speech during my law school days at Fordham. It was a very interesting four years, but during those four years I dated Marty, who attended Nazareth College in Rochester. Marty is the second oldest of seven. Her mom and dad, now deceased, were great folks. Her father was a prisoner of war for a year in Germany during World War II. He rose from being a lineman for the phone company to serving as vice president. Ray built his own house and could do any task with his hands, but shortly after retirement, he contracted Alzheimer's and suffered for eight years in the VA hospital. They were great folks, but when it came to college and tuitions, Marty, an honor student, who could have gone away to college, felt it was important that all her siblings should go to college. And so she decided to go to Nazareth, which was local. Very good school, but local. She lived the first two years at home and the last two on campus to help her parents afford to send all her younger siblings to college. We dated throughout her college years, and we got married a week after her graduation in June of 1969. We're celebrating 50 years this June.

Mr. Marmon: Other issues?

Mr. Tuohey: In my senior year, when I served as student body president, the Vietnam controversy hung like a cloud over every college campus in America, including Bonaventure. It generated lots of very serious and angry debate. I was in ROTC,

which made me eligible for a deferment for law school. But it was a very emotional issue, as you might imagine. For example, I remember being at a student body president conference at Rutgers in the late fall of '67, where one of the featured speakers was General Lewis Hershey, the director of the draft – a very unpopular man. I was sitting with a group of student leaders who I had just met, including Mark Rudd from Columbia, who was a very angry man. I remember him looking up at Hershey when he was talking and saying, with words to the effect, “Somebody’s going to kill him.” Ironically, that summer after graduation, when the Greenwich Village townhouse blew up. Those responsible, including Rudd, went underground for years. That comment resonated with me. It was a very tough time. Campuses were exploding, anger was in the air. Finally, during my final semester at Bonaventure, a group at the university invited the beat-poet, Allen Ginsberg to speak. The president of the university, a very scholarly philosopher, called me into his office, together with the director of the campus radio station, where he told us that after consulting with various university presidents, he decided not to allow Ginsberg to speak on campus. My colleague and I told the president that it was a mistake, that an important value of Catholic, and particularly Franciscan and Jesuit education, was the exchange of ideas. We assured the president that if the speaker got out of line, he would be escorted out. The president did not change his mind. There was a huge fray on the campus about this. So, my senior year witnessed a real schism on campuses across the country due to the Vietnam conflict.

Mr. Marmon: Where were you in this schism?

Mr. Tuohey: I had serious doubts about the Vietnam War, but I was in ROTC, and I knew that I could very well end up serving in Vietnam at some point. I tried to be an honest broker, decided we had to listen to both sides. Some of the ROTC military staff, because I was student body president, questioned my statement on the war while I was in the ROTC program. I told them that while I may end up having to go, I did not have to agree with the war, and that in my position I had a responsibility to be an honest broker. In any event, I think the year after graduation – when I was at Fordham Law was worse. But I had a very good experience in college. I made a lot of friends, lifelong friends. Next, of course, was law school for me.

Mr. Marmon: Tell me about your decision to go to law school.

Mr. Tuohey: You know, I think that at some point, and maybe it was in college, I knew that is what I wanted to do. My father always hoped I would join the FBI, and I thought about it, but I decided that the law, as a dynamic institution, really affected in so many ways peoples' lives. Was I influenced by Perry Mason? Probably. I was not thinking detailed thoughts about corporate reorganizations or estates and trusts. I knew I wanted to be in the courtroom. And I also knew pretty early on in law school that I wanted to have the experience as a prosecutor. I wanted to be a trial lawyer. That is what influenced my decision to join the United States Attorney's Office. I had a wonderful experience at Fordham. During my first year in the law school, I served as a resident advisor in a house on the undergraduate campus up at Fordham with 60 sophomores, juniors and seniors in the house. Great group, and I enjoyed that experience. (I had been a resident advisor during my senior year in college), which paid for my room, board, and

tuition. I enjoyed that year on the undergraduate campus. I married Marty on June 14, 1969, after my first year at Fordham. We moved into a rent-controlled apartment in the Bronx. During my second year, I was notified - out of the blue - that my deferment was conditional upon the needs of the army and that I was going to have to finish up this year and go on active duty. That made no sense to me, and I actually went to Indianapolis to the Army department that oversaw deferments and argued my case to no avail. So after exams, in May - in the midst of huge anti-war protests over the invasion of Cambodia, Marty and I packed up, stored our things and drove to Ft. Sill, Oklahoma to serve a two-year hitch. I spent almost two years, then came back to Fordham for my third year.

Mr. Marmon: And where were you?

Mr. Tuohey: I was stationed at Fort Sill, Oklahoma. I was assigned - at the request of the Provost Marshall - to serve as a military police officer stationed at Fort Sill Stockade where I had multiple responsibilities: correctional officer at the stockade and post MP duty officer several days a month. I served in that capacity for the first year, until I received orders. There were two jails in Vietnam during the war: the Marine brig at Danang, and the Army jail at Long Binh (about 30 kilometers north of Saigon). Shortly before I was scheduled to leave, the President issued an executive order to the effect that all two-year ROTC officers were ordered to complete their tours at 22 months rather than 24. As a result, since an officer could not be assigned to Vietnam for fewer than 12 months, my orders were cancelled and I remained at Sill for the completion of the service and returned to Fordham Law School for my third year in September, 1972.

I leaned toward the Manhattan DA's office under Frank Hogan, the legendary Manhattan DA. During September, I began interviewing for a job after graduation. I interviewed with John Keenan, the Chief Deputy and now a distinguished federal district judge in the SDNY. Judge Keenan and I had a great interview and he told me he would recommend that I be hired. I looked forward to the prospect. In the meantime, one of my old friends from McQuaid, David Larimer, an AUSA in Washington, called me in late September, 1972 to inform me that the US Attorneys Office decided to experiment and hire a few of the entering class direct out of law school, rather than through clerkships or work experience. I told him that I was very interested and sent my resume to the office. After several days of interviews, I was told to return for the final interview with the then United States Attorney for the District of Columbia, Harold Titus. After the interview, Harold Titus offered me the position which I immediately and enthusiastically accepted. Then I finished up school, although, on reflection, the break from school for the army was consequential. When I returned, I was named an editor of the *Urban Law Journal* and spent that year writing a Note and editing articles. It was a memorable year, and my final year in New York.

Mr. Marmon: What was your law review note about?

Mr. Tuohey: My Note involved a constitutional law issue involving adoption in the New York Court of Appeals. It was a case of first impression in New York. It had to do with the rights of indigent parents in adoption proceedings so it was suited for an *Urban Law Journal* review.

We lived that year in a street-level apartment in Inwood, an Irish neighborhood in the northern tip of Manhattan. My cousin, Jim Costello, a well-known Irish saloon keeper at Runyon's (50th Street and Second Avenue), frequented by writers and journalists, cops and firemen, basketball coaches and announcers, offered us his apartment for a year while he took care of his brother, who had just been diagnosed with Multiple Sclerosis. So we did. We lived in this wonderful ground-floor apartment. I commuted to the law school on the D Train, and Marty drove to White Plains where she did social work. After I accepted the offer to join the US Attorneys Office, we made plans to move to Washington. After graduation, I went down to study for the bar exam in Washington and Marty worked until August, when we moved to DC.

I decided to take the DC bar. The US Attorneys Office advised me that the Chief Judges of the District's Courts (David Bazelon, D.C. Circuit; Bill Jones, US District; Gerard Reilly; DC Court of Appeals, Harold Greene, Superior Court) had advised the United States Attorney's Office that the new hires coming direct from law school had to be admitted to practice before starting at the office. The office helped place all of us until we were admitted to the D.C. Bar and sworn in as AUSAs. Henry Kennedy, Bernie Panetta, Dave Addis and I were the first four of our group sworn in on December 7, 1973, the same day we were admitted to the D.C. Bar. The rest of the group started over the next few months.

I arrived in DC in June and spent the summer with one of my college roommates and a couple of his buddies at their Georgetown townhouse while I took the bar review course at Georgetown Law Center. Of course, that was an interesting

summer because of the televised Watergate hearings. You can imagine that before and after class, we were glued to the televised hearings. Georgetown Law Center had recently moved to the new law school on New Jersey Avenue. So much for the summer of 1973. After the bar exam, I returned to New York to pack up and we moved to DC. We lived for a month at a house of a friend in Georgetown. We lived for the first year in an Alexandria apartment complex, and our oldest son, Brendan, was born on June 13, 1974. We then selected a home in the Shepherd Park neighborhood, upper Northwest, off 16th Street. We wanted to live in an integrated neighborhood. We spent the first four years on Holly Street, N.W., right around the corner from the house where the Hanafi leader, Haamas Abdul Khaalis, lived with his family. Khaalis led the 1977 siege and kidnapping of hostages in downtown Washington, a case which I prosecuted with my colleague, Marty Linsky, also a Fordham Law graduate. In 1978, we moved up 16th Street a few blocks to Locust Road, where we lived for 10 years. We moved across 16th Street in 1987 to our current home on Kalmia Road. We have spent virtually all of our time in Washington in this exceptional integrated neighborhood with very interesting people. When Devin, our youngest son, was a freshman basketball player at Colgate 1998, John Feinstein was writing his book, *The Last Amateurs*, a depiction of college basketball in the Patriot League, which, together with the Ivy League, did not give scholarships to scholar-athletes, Feinstein focused on one player from each of the schools (Colgate, Lafayette, Lehigh, Bucknell, Army, Navy, Holy Cross) to highlight each team's program. Devin was selected as the Colgate player. Speaking on behalf of himself and his

older brothers, who played at Colgate and Lehigh, Devin told Feinstein that the greatest gift his parents gave them was growing up in a neighborhood that was colorblind. So many of their friends today include those kids with whom they grew up. We have had a wonderful experience over these last nearly forty years in the neighborhood.

Mr. Marmon: Law School Professors who were memorable?

Mr. Tuohey: Law School professors who are memorable to me... There are a number: The legendary Dean of Fordham Law School, during my first two years, William Hughes Mulligan, also a famous Irish raconteur and the best after-dinner speaker in New York; his successor Dean Joseph McLaughlin, a great teacher of Evidence and New York Practice; Professor Joe Sweeney, Torts; John Calamari, Contracts and Gus Katsoris, Tax, were memorable.