Oral History of Mark Tuohey
Fourth Interview
November 7, 2018

This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit. This is the fourth session of the oral history of Mark Tuohey. Bill Marmon is the interviewer.

Mr. Marmon: We're going to talk about your early law firm days before you joined Vinson & Elkins.

Mr. Tuohey: When I came out of the Department after the prosecution of Congressman Dan Flood, I interviewed with several firms. I came close to accepting the offer from Arent Fox to join their litigation group. At the last minute, I became aware that the largest law firm in Rochester, New York - Nixon, Hargrave, Devans & Doyle - whose reputation I knew well, had a Washington office. The Chairman of the firm called me to meet with Administrative Partner in Washington. I received an offer to join the DC office. At that time, I was considering an eventual return to Rochester and run for Congress, and the firm's presence in Rochester would facilitate such a decision. I accepted the offer from Nixon Hargrave and started in late, 1979. The DC office was small with about a dozen lawyers, although that later changed when one of its major clients, Gannett, moved its headquarters to the Washington metropolitan area in 1982. I began to build a white-collar defense and investigations practice working with my former colleagues from the US Attorneys Office who were now in private practice. I began as Counsel with the understanding that I would become a Partner within a couple of years. I built my own practice at the firm and served some of the firm's clients as well. I enjoyed the firm and its lawyers, and I spent time in Rochester every few months. After

several years, I decided that I would not pursue political office in New York, and decided to leave Nixon-then a small D.C. outpost – and look for a larger DC presence.

Several friends left their respective firms and opened a boutique and asked me to join. Although I eventually wanted a larger D.C. presence, I decided to join them for a short period while I decided what large firm was the right fit. That short period lasted several years, and a number of interesting matters were referred to me, which kept me busy – assisting in the representation of the Litton Industries Ingalls Shipbuilding Co. in federal court in Jackson, Mississippi in a case where DOJ alleged fraud by the shipyard in the reporting of cost overruns in the SSN 680 nuclear submarine construction, and the representation of the President of Community Savings and Loan / EPIC, a major Maryland Savings and Loan / Real Estate syndicator that failed because of the Maryland Savings and Loan collapse in 1985.

The first case, referred as the 680 Submarine case, involved the preparation of a trial defense to a questionable indictment filed in federal court in Alexandria, Virginia, dismissed by the trial judge, reversed and remanded by the Fourth Circuit, and then transferred the case to the federal district court in Jackson, Mississippi. After a three-month trial, the jury, on December 11, 1984, just before Christmas – returned a verdict for the company, a wonderful Christmas present! In the second major case, my client and four other officers of the Community Savings and Loan were sued by the State of Maryland with fraud and mismanagement, and later charged by the Baltimore US Attorneys Office with

fraud. This representation was a major and complex undertaking that involved preparing two six-month trials – a civil damage trial in the Circuit Court of Montgomery County, followed a year later by a criminal trial in federal court in Baltimore – over a period of three years. Fortunately, after an intense learning curve to understand the details and nuances of the packaging and sale of mortgages in the secondary securities market and the regulatory framework of the Federal Home Loan Bank Board System, we managed to avoid a fraud verdict in the civil suit, settling for a compensatory damage verdict, and, after a six-month federal criminal trial, Chief Judge Walter Black of the US District Court in Baltimore, found my client and the other defendants not guilty.

In early 1986, during the investigative phase of Maryland civil case, Bill Bittman, a well-known Washington trial lawyer and partner at Pierson Ball and Dowd, called and asked me to join him for dinner in New York City, where Bittman was in trial defending former Labor Secretary Ray Donovan (later acquitted by a Bronx jury). Bill urged me to consider joining the firm and building a white-collar practice. I decided this was the type of firm that fit my interests – substantial DC presence and depth. In 1990, the firm merged with the Reed Smith firm, which added more depth. I joined the firm in 1986, where I continued the representation of Clay McCuistion, Community Savings and Loan President, which involved a six-month civil jury trial in Rockville, Maryland in 1988 where the jury found our clients liable for mismanagement, but not liable for fraud, and the court assessed fines. At some point before the trial ended, the Baltimore US Attorney represented that his office would likely not charge our clients for

criminal violations if the civil jury did not find our clients liable for fraud. Notwithstanding the verdict, the Baltimore United States Attorney's Office charged McCuistion, Community Savings and Loan, and two other bank officers with criminal fraud. The trial was set for October, 1991 before Chief Judge Black in Baltimore federal district court. We decided to waive a jury and present the case to a learned and street-smart judge, who we believed would listen to the evidence (as opposed to jurors who had experienced the inability of their fellow citizens to recover their savings). At the conclusion of the case, the judge deliberated in chambers for a brief period to draft his remarks, and announced his verdict – NOT GUILTY.

Ironically, the lead defendant, Tom Billman, fled the country before the criminal trial began. A few years after our trial concluded, he was arrested in Paris and extradited to the US. After his trial, he was convicted and sentenced to fifteen years, which he served. The entire experience was quite an expansive engagement, from working with Arnold & Porter to try to marshal the assets from the properties on which mortgages were held by the bank, to spending six to seven months in trial on the civil case and a year later, six months on the criminal case.

Between 1992 and 1995, I was again retained by Litton Industries to defend two separate Litton officials in connection with the "Ill Wind" procurement fraud cases brought by the US Attorneys Office in the Eastern District of Virginia (Alexandria). In both cases, my clients were acquitted of the major counts (bribery) and found guilty of a minor count (false statement). In addition, I

defended on of the officials in a related civil fraud case in Alexandria federal court, and the court found for the Litton defendants.

In 1992, I was elected President-Elect of the District of Columbia Bar (DC Bar), and worked closely with my dear friend Jamie Gorelick during her term as President. In June 1993, I began my term as President of the DC Bar, a rewarding experience heading one of the nation's largest and most important bars. During that two-year term, given the time-consuming responsibilities as Bar President, I spent less time in the office than my other years at the firm. In the summer of 1994, after my presidential year ended, I was starting back on a full docket when Ken Starr contacted me (as we had talked about), and I agreed to serve as the Principal Deputy Independent Counsel, which I did for one year. I did not have to resign from the firm, by this time renamed Reed Smith, but I spent much of my time at the Office of Independent Counsel.

Mr. Marmon: Let's talk about the years you served as President of the Bar and the columns you wrote. I read those and was particularly engaged by the one discussing the need for civility.

Mr. Tuohey: Civility in the profession became a very important and pervasive concern to practicing lawyers, especially trial lawyers, in the 90's. With all the pressures surrounding dispute resolution in our system of jurisprudence, emotion and intemperance became pervasive. Leaders of the bar called more attention to civility, and more training for lawyers about the profession and its values. Trial judges reacted and became outspoken about the lack of civility in the courtroom.

It became a major issue. The DC Bar developed some approaches and training materials. There was a constant drum-beating among our members to deal with the civility-training and supervision of lawyers, especially at the large firms. Mandatory continuing legal education was another issue. The DC Bar established a distinguished panel, led by Dean Jack Friedenthal of George Washington University Law School and Marty Minsker, a partner at the Miller Cassidy firm, and an experienced group of practitioners and academics to study the issue and shape an approach to continuing legal education. We then presented the Court with a proposal for mandatory CLE. As it turned out, after a year and a half, the DC Court of Appeals decided that it would not act until the matter was submitted for referendum to the members of the DC Bar. By that time, my term ended and the next Board of the Governors decided not to pursue a referendum since the Board believed that it was unlikely to pass. We continued with voluntary CLE, but mandatory ethics training and that is the current practice, notwithstanding that 40 states now have mandatory CLE. We also focused that year on the relationship between court appointed lawyers and the administration of the courts in order to improve the working conditions, financial support and timeliness of payments to the court-appointed lawyers. We established a task force that looked carefully at this issue, and presented a thoughtful report to the Chief Judge of the Superior Court and the Chief Judge of the DC Court of Appeals, and changes were implemented as a result.

As every Bar President and Board of Governors has done, we promoted pro bono volunteer work and more comprehensive training for pro bono lawyers. We also

established a program where lawyers could volunteer in the elementary and high schools and work with kids to provide academic assistance, counseling and activities out of the classrooms, i.e., sports and arts. We established a pool of lawyers to volunteer at DC public schools. Finally, we hosted a series of conferences for Bar leaders in the region and in major cities to promote these projects. All in all, it was a very successful year. We also amended several sets of rules that affect how a mandatory bar operates.

Mr. Marmon: That takes up to 1995.

Mr. Tuohey: I completed my tenure as the Principal Deputy Independent Counsel in August, 1995. In September, 1995, I started with Vinson & Elkins ("V&E"). My 16 years with Vinson & Elkins took on a much more national and international cast in a firm with offices and clients in Europe, Russia, the Middle East and Asia.

Mr. Marmon: Let's talk about why you switched.

Mr. Tuohey: V&E is a large international law firm that provided more opportunity, more resources, and a wider bandwidth for someone of my background – litigation, white-collar corporate criminal defense, corporate criminal investigations and congressional investigations. While I had a great experience at Pierson Ball / Reed Smith, V&E was a larger world, a bigger pond. When the firm approached me, I decided to accept the opportunity.

Mr. Marmon: Tell about the start of your career at Vinson & Elkins**.**

Mr. Tuohey: Vinson & Elkins was a large international law firm with its headquarters in Houston and a major practice in the oil and gas / energy world. I had the responsibility to build a white-collar investigation and trial practice at the firm. There was no infrastructure for such a practice at the time. To build the infrastructure required recruiting lawyers, both within and outside the firm, to the group. As we grew, we had to persuade the partners in the firm (and their clients) of the utility of using our white-collar capabilities to deal with those kind of problems, rather than referring those matters to other firms. Over sixteen years, we built a very strong presence in the white-collar practice world, including a team in our London and China offices. One of the clients served right away was Enron, the largest client of the firm. Until Enron's collapse in 2000, our team was involved with matters domestically and internationally. We conducted internal investigations for Enron in the United States, United Kingdom, India, China, Russia and South America.

Mr. Marmon: What do you mean by internal investigations?

Mr. Tuohey: Internal corporate investigations occur when a company is on notice that it may have a problem with internal misconduct such as corruption, bribery, gratuities, violations of securities law, procurement or environmental regulations, or other violations of federal or state law or company compliance policies. The company may learn from internal or external sources, including government regulators, law enforcement or third parties. The company then hires an outside law firm, such as V&E, to conduct an internal investigation and report its findings to the company for further action. In that situation, we would initially meet with company

officials, and if government authorities had initiated the matter, we would attempt to persuade the authorities to hold off while we conduct an investigation. We would disclose the results, to the extent we could under ethics rules and the attorney-client privilege, to resolve the matter. We conducted these investigations in a number of situations. In situations where the government was already investigating, we would conduct our own investigation. Internal corporate investigations has become a substantial practice area in large firms.

Mr. Marmon: You report results to the management of the company?

Mr. Tuohey: Typically, the company's Board of Directors set up an audit committee to be the responsible entity to whom outside counsel would report. It could include the general counsel as well. In a publicly traded company, it is often the audit committee so there is a record. We would conduct the investigation using internal resources of the company and the firm, and, as needed, outside forensic experts, to interview witnesses, review documents and report our findings. In these situations, the company itself or an individual, officer, director or employee of the company could be exposed to criminal prosecution. Representing the institution was one phase of this work. The other side of that coin involves representing individual senior officials or managers of the company while another firm represents the company. At Vinson & Elkins, we represented major companies, as well as individual officers and directors in these kinds of investigations and at trial.

Mr. Marmon: Were you involved in the Enron bankruptcy?

Mr. Tuohey: The firm was involved as one of the principal outside counsel to Enron. I was not involved in the Enron bankruptcy litigation, although I recommended one of my law school classmates, Dennis Cronin to represent the firm in the bankruptcy proceeding. In addition, I served on the V&E team that worked with our outside counsel, Williams & Connolly, in the SEC investigation.

Mr. Marmon: What other cases did you handle?

Mr. Tuohey: I represented Frank Joklik who was the non-executive Chairman of the 2000 Salt Lake City Olympics. When the controversy broke in 1996 with the allegation that there were improper payments and gratuities to IOC members from around the world, I came in to represent Frank Joklik. Latham & Watkins represented the Salt Lake Olympic Committee ("SLOC") as lead counsel, and some other operations officers had separate counsel. The matter took a while to resolve. Mr. Joklik was cleared of any wrongdoing, although he did step down at the request of the Board, which was influenced by the elders of the Mormon Church. For appearances sake, he stepped down, but everyone acknowledged there was no wrongdoing by Joklik. Any alleged wrongdoing would have occurred in the operations area. For the good of the Salt Lake Olympics, Frank stepped down and former Governor Mitt Romney took over. It ended well for Frank in the investigation - he had no knowledge of what was going on in the operations area. The allegation was that the operations folks, in trying to be responsive to the IOC members who would make inspection visits to Salt Lake and expect elaborate gifts – a practice that existed in the Olympic site for many years. Two members

of the operations group, the CEO and CFO were charged, but the federal judge later dismissed the case against them.

Another interesting matter I handled with several of my partners was the investigation of the Los Alamos National Laboratory in Los Alamos, New Mexico in 1996. I spent the summer of 1996 in Los Alamos conducting an investigation into the potential theft of highly classified confidential information. We represented the University of California, which was under contract with the Department of Energy to operate the lab. We reported to a Committee, which included the former Chief of Naval Operations, the former Deputy Director of the CIA, the Provost at the University of California Berkley, and a physicist from Yale, among others. We concluded our work over a period of six weeks and presented an oral and written report to the Board of Overseers.

Mr. Marmon: That was confidential report, so you don't want to talk about?

Mr. Tuohey: Because we were required to have top-secret clearance, I cannot discuss it further. I also needed a top-level security clearance (Q-Clearance) at V&E when I represented Nora Slatkin, the former Executive Director of the CIA under John Deutch, in conjunction with the allegations that Deutch took classified information off the premises. He later plead guilty to a misdemeanor. Nora was cleared of any involvement.

Mr. Marmon: How'd you get involved with Ireland?

Mr. Tuohey: I became involved with Ireland and Northern Ireland in the 1980's during the Troubles. Initially, through my relationship with David Byrne, a barrister in Dublin, who later became Attorney General of Ireland in 1998. I attended meetings in New York, Dublin and Belfast with US, Ireland and Northern Ireland lawyers about legal proceedings in Belfast. The Supergrass Trials in Belfast during the Troubles were deemed unfair and lacking due process. "Supergrass" was a term used to describe the closed proceedings to prosecute the IRA members and other similar paramilitary organization members for murder and other related crimes. The trials were held before one judge with no rules of evidence, and verdicts based on hearsay and immunized testimony. Lawyers from the US, Ireland and Northern Ireland were involved in looking at approaches that could provide greater due process.

Mr. Marmon: How did the US lawyers get involved?

Mr. Tuohey: There was much concern about the lack of due process, so bar associations and individual lawyers became involved, especially Irish lawyers. In 1986, the Litigation Section of the ABA, as part of ABA's annual meeting that year in New York and London asked a few of us to set up a satellite CLE program after the London meeting with the bar in Ireland and the bar in Scotland. Irish barristers and American lawyers put on a program in Dublin and Edinburgh on the use of technology in litigation; Irish and Scottish barristers put on a program on the art of oral advocacy. Focusing on the strengths of the respective trial lawyers in Europe and the US, we put on a day and a half program. It also featured in Ireland, a couple of large events, a lunch and dinner, where you had most of the

Irish Bar and judges and 500 American lawyers and judges. And, the same thing in Edinburgh. I served as Chairman of the program. David Byrne was the Ireland Chairman. We also invited barristers from Northern Ireland to set up program in Belfast after Dublin. We met for two days in Belfast, and we really did get into the weeds on some of these issues involving the procedures for dealing with the terrorist trials. That informed me for a lot of other things that I later did in Ireland and Northern Ireland, particularly with the Patten Commission in 1998/99.

During the 1980's and 1990's, I spent time in Ireland on a regular basis. In 1998, Bertie Ahern was elected the Prime Minister, and he named my dear friend, David Byrne Attorney General. I helped advise the Attorney General on issues related to Ireland, in particular, the Irish tribunals, which were similar in concept to my Independent Counsel experience. I also advised on issues where I had experience in the states, including combatting drug trafficking and organized crime.

We established a group of US lawyers and judges including Chief Judge Thomas Hogan from the US District Court in Washington, Chief Judge Matt Byrne from the US District Court in Los Angeles, and the heads of the organized crime and narcotics sections at the Department of Justice. We met with the Irish Prime Minster and Attorney General to discuss issues that Ireland was beginning to confront, and how to deal with them.

In 1998, Prime Minister Ahern and Attorney General David Byrne asked me to assist in the work of the Patten Commission in Northern Ireland. I enthusiastically agreed. The Patten Commission was set up by the governments

of Ireland, Northern Ireland, and the UK to review and reform the police service in Northern Ireland, which was known historically as the Royal Ulster Constabulary (the "RUC"). The RUC had almost no Catholics and almost no women in a country that was 50% Catholic and 50% women. It was a three-year process of reform of policing, and bringing the department into modern policing standards. I was asked by the Prime Minister of Ireland and the Attorney General to serve as the liaison and advise of the Patten Commission's work. The Vice Chairman of the Patten Commission, Morris Hayes, after I met with him, asked if I would serve as an advisor to the work of the Commission.

Mr. Marmon: Patten Commission?

Mr. Tuohey: Christopher Patten was the former Governor General of Hong Kong and a member of Parliament. He did a very good job assembling a group of law enforcement professionals, lawyers and other social science experts, including law enforcement people from the United States to reform policing in Northern Ireland. It was a collegial group that did the work in a thorough and professional manner and in so doing, changed the face of police in Northern Ireland. I spent several visits and many hours over that year meeting with police officers, officials, citizens, and paramilitary members – in the Maze Prison and in their communities in East and West Belfast – to assess the landscape and make recommendations to the Commission.

Mr. Marmon: When did you become an Irish citizen / get an Irish passport?

Mr. Tuohey: Early 1990's. I'd show you the passport, but I'd have to get it back, because it's at the Secret Service. When I represented Tony Blinken, the Deputy National Security Advisor to the President, I had another security clearance process, and had to surrender my Irish passport during the investigation. It's long overdue, and I have to retrieve my passport.

Mr. Marmon: Do you remember when you got it?

Mr. Tuohey: I got the Irish passport in the early 90s.

Mr. Marmon: Why were you entitled to get it?

Mr. Tuohey: My grandparents were born in Ireland. My sons do not qualify since it is limited to children and grandchildren of native born Irish.

Mr. Marmon: Have you been following the current Brexit talks about Ireland?

Mr. Tuohey: I have. The beneficiary of those talks is going to be Ireland, as long as the UK does not close the border. The issue, if mishandled by the UK, may well affect the border between Northern Ireland and Europe. It has yet to be resolved.

The other major matter that began during my tenure at Vinson & Elkins, and took me all over the world, was representing the Chairman of a large international shipping company, International Oil Trading Company ("IOTC"), and its owner Harry Sargeant in a DOJ/DOD investigation. The company, under contract with the Department of Defense, delivered fuel and oil to the US troops in Iraq during the Gulf War. Mr. Sargeant's company had been in shipping for a number of

years. For this project, which was huge, he expanded the operations in order to receive the product at the Port of Aqaba in Jordan, store it, then transport over land to Iraq during a war with caravans of trucks, with plenty of security due to convoys being attacked at times when they entered Iraq. I represented him in an investigation of whether there was a violation of the FCPA. There was no merit to the claim and the company and Sargeant were cleared. I represented him for three to four few years. The matter involved travel to Jordan, Damascus, the Dominican Republic and London.

Mr. Marmon: Was the Foreign Corrupt Practice Act a problem?

Mr. Tuohey: In the end, no. The investigation went on for a few years. That matter left with me when I retired from V&E. It was concluded when I was at Brown Rudnick.

The Chairman of Brown Rudnick approached me in 2010, somehow with the knowledge that I decided to retire from V&E. They offered me the opportunity to build a white-collar practice as I had at V&E. In June, 2015, I joined Brown Rudnick.

Mr. Marmon: We did not get to Bob Ney.

Mr. Tuohey: Bob Ney was referred to me by a dear friend of mine, now deceased. Ney was a senior Republican congressman from Ohio and Chairman of the House Administration Committee, which gave him control over many congressional perks. He was under investigation in connection with the activities of Jack Abramoff, a lobbyist, who owned a restaurant on Pennsylvania Avenue that

entertained many members of congress. In particular, Bob was under investigation for a trip he took to Scotland in 2009 or 2010. At the end of the investigation, the Department of Justice informed me that they were going to charge Ney with failing to disclose to US customs monies in excess of $10,000 that he was bringing into the US. Ney had won $10,000 in a London casino and he asked his aide put some of the money in his suitcase so as to avoid having to disclose. He pled guilty. There was a silver-lining, because he was not charged with the conduct involving Abramoff, which I had to believe could be proved. Moreover, Bob had a serious dependence on alcohol, and the judge accepted our recommendation to direct the Bureau of Prisons to put him in an alcohol recovery program. He spent about a year there and he is sober today – he was helped.