

Oral History of Mark Tuohey
Seventh Interview
December 5, 2018

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

Mr. Marmon: We're going to talk about your work at the ABA – American Bar Association—
and other Bar work.

Mr. Tuohey: Prior to serving as President 1993-94, I had several relationships with the Bar in the District of Columbia. In 1974, during my service as an Assistant US Attorney in DC, I was asked to get involved in the Young Lawyers Section of the Bar Association of the District of Columbia. The Bar Association of DC is the voluntary Bar, whereas the District of Columbia Bar is the mandatory bar. Back in the day, the Young Lawyers Section was a very active association for young lawyers in the District. Several my colleagues from the US Attorneys Office were involved in YLS leadership: Tom Queen, Chief of the Misdemeanor Trial Unit and Rick Cys, Deputy Chief the Misdemeanor Trial Unit, served as Chairs of the Young Lawyers Section. They, together with AUSA Paul Friedman, served on the YLS Executive Council. In those days, there were 3,000-4,000 members in the YLS. It was very active. Kathleen Sheekey, a close family friend over the last 40 years, was the Executive Director of the YLS in 1974. In 1975, I was asked to serve as the editor of the YLS newsletter, which was published quarterly.

We reported on the activities and events of the YLS. In my capacity as editor, I wrote editorials on several topics, including the death of Supreme Court Justice William Douglas, the role of US Attorney of Earl Silbert in the Watergate prosecution, the importance of civility in the profession, and the like. There were a number of fun social events each year, resulting in a number of new friendships and relationships. In addition, the YLS was involved in overseeing the Criminal Practice Institute, which was put on annually by lawyers at the US Attorneys Office and the DC Public Defender Service. This annual event contributed to the positive personal relationships between prosecutors and defense attorneys (which I've discussed) – it all began there. I was elected Chair of the YSL in 1977 and served as Chair from June 1977-June 1978. During that time, the YLS published editions of the Criminal Jury Instructions (used both in the US District Court and Superior Court) and Civil Jury Instructions. We also published the DC Practice Manual, a very useful compilation of pertinent regulations that related to the practice of law in several areas. The YLS was a major contributor to law practice in the District of Columbia during the 70's. While it has continued to be a major contributor over the years, the YLS was a vital cog in the legal profession in the 1970's.

In 1977, while I was Chair of the YLS, I also became involved in the Young Lawyers Division of the American Bar Association, a very robust organization of thousands of lawyers across the country between the ages of 26-36. I first became involved in the YLD as a Chair of the Continuing Legal Education Committee, which put together several national institutes during 1978-79. In addition, I was

elected and served for several years on the Executive Committee of the YLD. While I was a member of the YLD, I was chosen as the YLD Member of the Council of the ABA Section of Litigation. In 1980, I served as Secretary of the Litigation Section Council and on the Council of the Section from 1980-1990. In 1979, the ABA President appointed me to the ABA Committee on Continuing Legal Education, a committee that oversaw ABA's CLE (Continuing Legal Education) programs. The committee consisted of 10 members of the bar from around the country. During 1979, the committee was chaired by Robert Emerson, a distinguished lawyer from Huntington, WV. Bob stepped down as Chair in 1980. On Bob's recommendation, the ABA President appointed me as Chair of the Standing Committee on CLE, and I served in that capacity for five years until 1985. It was a worthwhile experience. The Standing Committee members included members of the private bar, several federal judges and law professors, including Justice Stephen Breyer when he was a professor at Harvard Law School and Counsel to Senator Edward Kennedy. All in all, it was an outstanding group of lawyers who advised the ABA staff and leadership on CLE programs. Several future ABA presidents served on the Standing Committee as well. The Standing Committee interacted with the American Law Institute and its CLE arm –the ALI/ABA Committee on Continuing Professional Education – I served on that committee for five years after the Standing Committee Chair period, ending a ten-year Chair period.

Mr. Marmon: What did the Committee do?

Mr. Tuohey: The ALI/ABA Committee is responsible for its own CLE program in cities throughout the US. Its headquarters is in Philadelphia on the campus of the University of Pennsylvania. The ALI/ABA had relationships with the Practicing Law Institute, the ABA Standing Committee and state bar CLE programs. During the 1980's the ALI/ABA and ABA Standing Committee established a satellite network for the transmission of legal education programs. A joint committee was set up to oversee the satellite network, and I served for two years as the first Chair of that joint committee. The work of the joint committee was critical in establishing a comprehensive framework to provide CLE throughout the country, especially to small firms and solo practitioners, at a relatively reasonable cost.

My years with the ABA and ALI/ABA committees in continuing legal education were at the forefront of expanding continuing legal education to practitioners throughout the country. Over the years of serving in these capacities and the years after, I have participated as a panelist on legal education programs involving trial practice, congressional and corporate internal investigations, evidence, civil procedure and legal ethics.

After my experience with ABA and ALI/ABA CLE and the Litigation Section Council, I served on ad-hoc committees involved in special projects for the benefit of lawyers including small firm and solo practice issues, such as the provision of partial or issue-based representation (particularly for solo practitioners) and pro-bono legal representation.

From 2010-2013, I served as Chair of the ABA Standing Committee on Government Relations, a responsibility that oversaw the ABA's relationship with state and federal government legislators. The ABA Standing Committee on Government Relations had multiple functions relating to federal government outreach. In particular, the Standing Committee oversaw the promotion and operation of ABA Day, an event which occurs annually in May, where ABA members from all 50 states spend two days in Washington meeting with their Congressional representatives and discussing areas of interest related to their state and other federal governmental issues important to ABA. Another role of the Standing Committee was to coordinate delegates from all 50 states to discuss issues of importance to the Bar and community as a whole - issues such as tax, insurance, specific legislative initiatives and of course, the most important - the provision of legal services to the poor, and to funnel those issues to the appropriate members of Congress who oversaw and participated in committee work related to those specific issues. The Standing Committee worked with experienced and knowledgeable staff in the ABA Washington office to promote the important relationships between the Bar and lawmakers.

On the matter of legislative initiatives, issues would emerge in the sections of the ABA and be transmitted to the House of Delegates for debate and decision.

When the initiatives involved potential legislation, the House of Delegates would send these issues to the ABA legislative staff, which reviewed and fine-tuned the proposed legislative issues, present them to the Standing Committee for review, communicate with the appropriate legislative staff in the House and Senate, and

then begin the process to move those legislative efforts to congressional consideration and ultimately a vote. That describes the process of how the legal sausage was made. Specific legislative issues included a wide array of issues affecting the profession as well as the general public.

I have not served on the ABA Judicial Selection Commission. The Commission has representatives from all the eleven numbered Circuits and the Federal Circuit, Supreme Court and the 94 Federal Districts around the country. I have been interviewed by the ABA Commission innumerable times about specific judges, most recently, Justice Brett Kavanaugh, who worked for me in the Independent Counsel office.

However, in the selection of federal district trial judges, the US Attorney and the US Marshal, for the District of Columbia, I played a major role between 1992-2000. In the early part of 1993, while serving as President Elect of District of Columbia Bar, together with Jamie Gorelick, who was then serving as President of the DC Bar, we developed a proposal for the new President, Bill Clinton, to permit the DC Bar to establish a Federal Judicial Selection Commission for District Court judgeships, the US Attorney and US Marshal (modeled on the commission established in New York by Senator Moynihan). The Commission consisted of lawyers and non-lawyers who would review the credentials of individuals to serve in these positions. The Commission would select finalists for each open position and forward those names to DC Delegate Eleanor Holmes Norton. Delegate Norton would then send the selected name to the White House for formal nomination by the President. Up to that point, the selection of federal

judges in the District was the product of the White House staff and President with no input from the DC senior political official. The only exception to this long-standing practice occurred during President Carter's tenure, when Attorney General Griffin Bell established a nationwide advisory committee for all federal judicial nominations to the President. Our proposal localized the practice for the District of Columbia from the Commission to Congresswoman Norton to the White House. The White House Counsel at that time was Lloyd Cutler, and he agreed that the idea made sense. Initially, the White House wanted three names for each judgeship. We persuaded the White House to permit the senior democratic official, Congresswoman Norton, to make the final selection, and send only one name to the White House, like the practice in New York under Senator Moynihan. Ultimately, the White House agreed. Congresswoman Norton embraced the notion and decided the DC Bar would select eight lawyers for the Commission and Norton would select six lay persons. Congresswoman Norton selected Pauline Schneider, who succeeded me as the President of the DC Bar to serve as Chair. I was asked to serve on the Commission, which I did for the entire eight years of the Clinton administration. During that process, the Commission interviewed many candidates and selected finalists for 8-10 federal district court judgeships, two successive US Attorneys, including Eric Holder, who later became Attorney General, and several US Marshalls. We chose very capable lawyers who exhibited community engagement and sensitivity to the important issues and persons who would come before the court. Those judges included

Gladys Kessler, Paul Friedman, Jim Robertson, Ricky Roberts, Ellen Huvelle, Colleen Kollar-Kotelly, Emmitt Sullivan and Henry Kennedy.

The Federal Judicial Selection Commission was active during the Clinton and Obama presidential terms, but not active during Republican presidential terms including George Bush and Donald Trump. It is my hope that the Commission will remain active during future democratic presidential terms and possibly republican presidential terms. The local Judicial Selection Commission is similar to the statutory commission for the selection of DC Superior Court and DC Court of Appeals judgeships. In those cases, the nominations are sent to the White House for its selection among a group of nominees.

I will continue to serve in one capacity or another, as I am able, because an organized bar is a vital part of the profession and a vital contributor to the growth and development of individual lawyers, as well as the institution as a whole.

I have been involved with international bar associations, as well, including the Irish Bar, the Bar of England and Wales, and the International Bar Association. Over the years, I have been involved with the Irish Bar on a number of issues, including advising the Attorney General on the Irish tribunals, which are creations of the judiciary to investigate matters of governmental concern, not unlike the former independent counsel institution. I also consulted the Bar Council of Ireland in conjunction with certain legal issues. I also participated on several panels with the Bar of England and Wales on the issue of the divided professions – division of solicitors and barristers, and the advisability of creating the ability of

clients to consult with both solicitors and barristers and the ability of barristers to practice in law firms. I am a member of the International Bar Association and have been involved in several committees over the years, including white-collar crime, ant-corruption and law and media.