

Oral History of Mark Tuohey
Sixth Interview
November 28, 2018

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

Mr. Marmon: We're going to discuss some earlier cases.

Mr. Tuohey: In the 80's, there was a prosecution emphasis in the Department of Justice on Government Defense Contract Procurement Fraud. Those investigations were conducted under the rubric "Ill Wind". The Fraud Section at the Department of Justice, together with the US Attorneys Office in Alexandria, Eastern District of Virginia (also known as the "Rocket Docket" because cases were tried with great dispatch) conducted the investigation of several defense contractors, most of which were on the west coast, and included Northrup Grumman, Litton Industries and several other less known contractors. The investigations focused on a combination of alleged offenses including bribery and gratuities, false statements and the like, all of which were alleged to have been involved in the rewarding of contracts, and the conduct and reporting of contract developments by the defense contractors to the government. The first case I was involved in was the representation of George Kaub, a senior procurement official at Litton Industries in Los Angeles. Mr. Kaub, along with several other defendants from Litton, were charged with bribery and false statements. The case was tried before a jury in Alexandria in 1983. After a two-and-a-half-week trial, the jury acquitted Mr. Kaub of the serious counts of paying bribes and gratuities, and convicted him of

the lesser count of false statement, for which he was sentenced to a half-way house for six months.

Following that case, I represented another Litton government affairs official, Chris Murphy, who was also charged with a series of false statements in connection with a Litton contract with the Defense Department. That case was tried in 1984 in front of Judge Tim Ellis in the Eastern District of Virginia (a judge who is very much in the public eye in a critical sense - currently presiding over the trial of Paul Manafort in Virginia). Mr. Murphy was acquitted of a number of counts, but was convicted of one count of false statement. He received a sentence of six to eight months in a half-way house.

In 1985, Litton again called on me to be part of the trial team of an interesting and bizarre case involving the procurement activity surrounding the construction of 680 class nuclear submarine. The case involved a Litton subsidiary, Ingalls Shipyard, located in Pascagoula, Mississippi. The investigation was initiated by Admiral Rickover, the father of the modern day nuclear submarine program. His navy procurement team alleged that the Ingalls construction team mislead and lied to the government regarding the status of the procurement and the amount of money involved in the cost overruns. The case was indicted in the Eastern District of Virginia in 1984. Judge Albert Bryan, a senior judge in the Eastern District dismissed the case. It was appealed to the Fourth Circuit, which reversed Judge Bryan and remanded the case back to the Eastern District of Virginia. Upon receipt of the case, Judge Bryan immediately transferred it to the federal district court in Jackson, Mississippi. A trial team of lawyers from Washington,

DC and Jackson, Mississippi were assembled. It was an expansive defense effort involving lawyers, investigators, forensic experts, accounting experts, and the like. The government's prosecution team was led by two Assistant US Attorneys from Alexandria, Virginia. In fact, the US Attorneys Office in Mississippi, which had not been involved in the investigation, recused itself from the prosecution of Ingalls, a major employer in Mississippi. It was my sense that the Jackson prosecutors believed the case was improperly charged. Judge William Barber, a new United States District Judge in Jackson, was assigned to the case. From the beginning, the Judge felt the government was overreaching and arrogant in its approach to the case. Early in the trial proceedings during the selection of the jury, the prosecutor's opening statement suggested the case was important to the government and the Defense Department to protect the integrity of defense contracting. George Hewes, a prominent Jackson lawyer and lead counsel on the defense team, suggested in his opening statement that the case was also important to the citizens of Mississippi. The prosecutors vehemently objected. During a bench conference, the judge was somewhat mystified by the government's vigorous objection. After the discussion at the bench, he directed the parties to have a seat. In a remarkable colloquy, Judge Barber explained to the jury that the court's ruling on legal issues at the bench conference was conducted out of the presence of the jury, but when the court decided the issue, the court had an obligation to explain his ruling to the jury. The court explained Hewes, a man of great integrity, and one of Jackson, Mississippi's most distinguished and trusted trial lawyers, was quite correct in suggesting to the jury that the case was also

important to the citizens of Mississippi since Litton was the largest employer in Mississippi. When the judge finished his discussion with the jury, he called counsel to the bench, looked the two prosecutors squarely in the eyes, and asked if they had any further objections they'd like to make. The case was tried for two and a half months. At the end, a few days before Christmas in 1985, the jury acquitted Ingalls. It was a sweet victory, and the trial was a great experience for me.

The fourth defense contracting case I tried was a civil case involving Linton Industries before Chief Judge Bryan in the Eastern District of Virginia. After a six to seven-day trial, the Judge rendered a verdict in Litton's favor.

Over a three or four-year period in the mid-80s, I tried three jury trials and one non-jury trial in the Eastern District of Virginia. I came to believe that the "Rocket-Docket" used an appropriate process for the conduct of litigation in federal court. Over the years, it has made more and more sense to me as a litigator to have that kind of dispatch and reasonable acceleration to get through a trial docket. Chief Judge Bryan initiated the accelerated trial practice in Eastern Virginia, and is considered a model for district courts throughout the country. It is a method to accomplish speedy dispositions of criminal and civil cases in ways that benefit the administration of justice.

Together with the two six-month trials in Circuit Court of Maryland and the Federal Court in Baltimore involving Community Savings and Loan, and its president Clay McCuiston, which I previously described, the 80s were a busy

time for me in trying cases before judges and juries. Although I had learned to hone my in-court skills early on in my career in the US Attorneys Office, and later the Department of Justice, these experiences helped me to hone my defense skills.

Lessons learned would be several: 1) The importance of civility in dealing with opposing counsel and adverse witnesses; the civility in the conduct of trials and pre-trial preparation and discovery; and civility in resolving issues with opposing counsel. Today, in the second decade of the 21st century, we continue to see problems with civility between and among counsel. It diminishes the professionalism that is required in our work, and what the public expects from us. Those early years in private practice gave me a bird's eye view of how civility is critical to the administration of justice and the resolution of disputes for which lawyers are responsible and accountable – that's the most important lesson I learned in the 80s when I was beginning my experiences as a defense attorney; 2) the importance of careful preparation. It leads to the resolution of disputes pre-trial and the effective resolution by trial, by judge or jury. Preparation, preparation, preparation. Those are the two most important lessons I've learned and lived by in all these years of dealing with trials and dispute resolution; 3) precision, especially in a written product. Precision in writing was drilled into me by Judge John Terry, now a senior judge on the DC Court Appeals and former head of the Appellate section in the US Attorneys Office. He taught me how to write. Persuasive writing was not a skill thoroughly and properly covered in law school. Presentation matters to a court. Precision is important in articulating points to a jury or court you want to make and that go to the heart of your

position. Those three are the basic lessons I've honed and lived by. They have served me well.

Mr. Marmon: Policing.

Mr. Tuohey: I grew up in a law enforcement family. I learned to have great respect for law enforcement. My father was an FBI Special Agent and later Commissioner of Public Safety in Rochester, NY. My first professional experience after law school was at the US Attorneys Office where I dealt with police and the FBI on a daily basis. While there are law enforcement officers who make bad decisions, and sometimes corrupt decisions, I have had positive experiences dealing with law enforcement personnel over many years, and I respect the critical role these men and women play in our daily lives.

In 1997, the Council of the District of Columbia Council, through the Co-Chairs of the Judiciary and Public Safety Committee, Jack Evans and Cathy Patterson, decided that a broad investigation into the management and operations of the Metropolitan Police Department was needed due to a series of incidents which raised questions of serious mismanagement. In the late 1960's and early 1970's, under the leadership of Chief Maurice Cullinane, the Metropolitan Police Department was one of the best urban police departments in the country. However, over the years, the department lost its way. There were several factors that contributed to this problem. By 1997, Larry Soulsby had become the Chief, and the department was in bad shape. Soulsby had no leadership abilities, and was personally and professionally a disaster – and his conduct dragged the

department down with him. There were a series of missteps over the previous ten to fifteen years that contributed to the decline as well – hiring, training, promotions and administration, to name a few. In 1997, the Council passed a resolution authorizing a wide-ranging investigation of MPD and provided for subpoena power of documents and individuals to testify. The Council appointed me Special Counsel to lead the investigation, and I brought several of my colleagues at Vinson & Elkins, including my “right-arm”, Bill Lawler to assist me. Bill Lawler had worked with me at Pierson Bell for several years prior to joining the US Attorneys Office. After an eight-year stint as an AUSA, Bill joined me at Vinson & Elkins, and we worked on many matters. He worked closely with me during this investigation. We put together a plan of action that included investigating a number of subjects and issues – recruiting, hiring, promotions, supervision, discipline (including operation of the internal affairs unit), training - both in the Academy and on the job and overall police administration. We examined the quality of the various units – homicide, sex squad, robbery squad, burglary squad, youth division, procurement and internal affairs. We utilized subpoena power to interview numerous civilian and law enforcement witnesses, many of whom testified during six public hearings on these issues. It was an exhaustive investigation. The report at the end of the investigation was comprehensive with two volumes of exhibits. It touched on every aspect of policing. We put together several former police commissioners from New York, Boston, San Diego, Chicago and Houston as an advisory team which provided tactical guidance during the investigation. As we approached the

end of the investigation, it was clear the District needed to find a new top-notch Chief. A group including several members of the business community who were involved with policing, Jack Evans from the Council, and myself as an advisor, interviewed Charles (Chuck) Ramsey, one of two Deputy Chiefs in Chicago. Ramsey was not chosen by Mayor Daley to succeed the then Chief in Chicago; instead, the other Deputy Chief was chosen (Mayor Daley told me years later he should have chosen Ramsey). Ramsey accepted the offer to become the Chief of Police in the District. His eight years running the Department transformed the Metropolitan Police Department into one of the nation's leading police departments. Phase two of this amazing transformation began when Mayor Fenty decided to promote Cathy Lanier to become the successor to Chuck Ramsey. Phase 3 was the promotion of Peter Newsham to succeed Lanier. Lanier and Newsham had been advanced and trained in management skills by Chief Ramsey. The District has had a marvelous twenty productive 20 years of policing since Ramsey's selection.

The Metropolitan Police Department review experience led to my being selected in 1997 by the Irish government to advise it on work of the Patten Commission in Northern Ireland. As part of the peace process ending 30 years of violence in Northern Ireland during the "Troubles", the governments of the UK, Northern Ireland and Ireland appointed a commission led by Christopher Patten, a member of the UK government, (the Patten Commission) to examine and reform policing in Northern Ireland and to create a new police service, replacing the Royal Ulster Constabulary (RUC) with the police service of Northern Ireland (PSNI). I was

asked by the Vice Chair of the Patten Commission, Dr. Maurice Hayes, to serve as an advisor to the work of the Commission during 1998-1999. In that capacity, I interviewed a number of police officials, Catholic and Protestant, citizens and members of political parties, and as well, antagonists in violence-members of the IRA, UVF and the like. My findings were submitted to the Commission, and the experience was a critical component of my work as a lawyer.

During Chief Ramsey and Chief Lanier's tenure, I served as an advisor to both on various aspects of policing. I was involved in the selection of Chief Newsham when I was serving as Chief Counsel of the Mayor, and served as an advisor to Newsham as well. I have had a close relationship with these three remarkable individuals who have led the city over the last twenty years and it was a privilege to assist in their work. The real beneficiaries of their work is the District of Columbia and her citizens.

I had the privilege to represent Chief Ramsey in connection with litigation filed in federal court over the arrests of demonstrators in 2003 in Pershing Park (in front of the Willard Hotel) during the World Bank meetings that year. There were a number of honest brokers and good-faith protestors who wanted to exhibit their first amendment rights in these demonstrations. However, a group of troublemakers from around the country made it very clear through communication over the internet that they intended to cause havoc during the World Bank meeting, disrupting traffic, blocking movement of people, and provoking violence against people and property, resulting in injury and damage. The Metropolitan Police prepared thoroughly for these demonstrations. However, it was clear that

serious measures, including arrests, were likely to occur because of the threatened harm to person and property. During the several-day World Bank meetings in May of 2003, there were a series of peaceful demonstrations where both the protestors and the police conducted themselves professionally, but the threatened trouble occurred. A group of demonstrators disregarded the police marching directives and caused injury to people and damage to property. They were cordoned off and funneled down 14th Street and 15th Street into Pershing Park, where they were arrested. Peter Newsham, then Deputy Chief was the site Commander at Pershing Park, and Chief Ramsey traveled throughout the demonstration activity sites. Chief Ramsey arrived at Pershing Park after a decision was made to make arrests. The controversy was whether a disbursal order had been given under regulations and legal precedent, and whether the disbursal order was necessary or not - a decision made by Deputy Chief Newsham. Several folks in that group who were not involved with the troublemakers, were also arrested. Litigation was filed. The Metropolitan Police Department was sued along with Deputy Chief Newsham and Chief Ramsey individually. I was selected to represent Chief Ramsey individually. The case was assigned to Judge Emmet Sullivan. Two classes of litigants were joined. Discovery took place over several years. Settlement was attempted, but rejected by the plaintiffs. Eventually, both cases settled, but it took twelve years. By the time the second case settled, I had left private practice to join the Mayor as Chief Counsel in 2015. A contributing factor to the long process was an allegation that the Department had intentionally destroyed evidence relating to what the police

department knew about the movements of the protestors, although the allegation was without merit and ultimately vindicated the police department. A Special Master (a Magistrate Judge) was appointed. There were two attempts at arbitration. In the end, it resolved itself.

Mr. Marmon: What were the terms of settlement?

Mr. Tuohey: The terms focused on several policy changes by way of regulation instituted in the Metropolitan Police Department, additional training, and a sum of money paid to members of both classes. It was around \$50,000 per an individual. One class had three to four individuals, the other had twenty people. All other cases settled out early. It was exhaustive and unnecessary expense of time to reach the resolution. The policies put in place eliminated loopholes and are responsible for conduct being changed.