Interview with William H. Jeffress, Jr.

Fourth Interview – May 4, 2012

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is William H. Jeffress, Jr. The interviewer is Professor Angela J. Campbell. The interview took place at Georgetown Law.

MR. JEFFRESS: I spoke about Louisiana. I spoke about my friend Judge Reggie. I did not mention another man who became a very good friend named Camille Gravel. He was kind of the dean of the criminal defense bar in Louisiana. He ran for Senate one year; he was the executive counsel to Governor [Edwin] Edwards; he chaired the constitutional convention. He was a towering figure and became one of my great heroes in the practice of law. Died four years ago at age ninety-one.

He and I tried a lot of cases together. He was one of these old-style orators who could really enchant a jury. He represented Otto Passman in 1978 or '79, who was indicted in what they called "Korea-gate." He got that case moved from Washington down to Ouachita Parish, Louisiana, and tried the case down there. I still have a tape of his closing argument where it's difficult to hear the end of it because the court reporter is crying so hard into the microphone. (laughter) Literally. "Otto Passman trailing clouds of glory." (laughter) So he recommended me and brought me into a lot of cases that he handled.

One of those was Governor [Edwin] Edwards, who was indicted for the first time back in 1985 by a U.S. Attorney named John Volz on supposedly trafficking in hospital certificates of need. I represented a co-defendant who was alleged to have paid bribes. Edwards was truly a character. He was represented by Jim Neal in this case, from Nashville. We had a great time in that case. And I got to know Edwin.

I'll tell you one story about him to show you how he survived all those years by a sort of self-deprecating humor. We're in court one day and the government calls its plea-bargained witness–star witness–and he testifies. He had a lot to say about my client, not too much to say about Edwards. But on cross-examination he admitted that he lied the first time he went to the grand jury, he lied the second time he went to the grand jury, and he lied in a civil deposition. So we broke for lunch and went outside the courthouse. Edwards was a sitting governor at the time. So the reporters came up and stuck a microphone in his mouth, and said, "Governor, do you think it's right for John Volz to call as his star witness a three-times confessed liar?" And Edwards didn't miss a beat, he said, "Oh, I don't know, I might have to testify myself." (laughter)

But anyway, it was eleven to one for acquittal and wound up a hung jury. And the Justice Department, to their eternal shame, decided to retry it. We retried it the following year; didn't even put on any defense, and were acquitted in very short time.

That was one of the very interesting cases that I had in Louisiana. Another was a case for a congressman on vote-buying charges in Lake Charles, Louisiana. It was a case that Camille Gravel had, but he had represented a witness and was forced out of the case. I came in about two months before trial and tried it, and he was acquitted.

I remember selecting the jury. There was this old man. The judge asked the standard *voir dire* question, "Now, the charges in this case are vote-buying. Does anyone have any strong opinions about this offense that would make it difficult for you to serve as a juror?" Nobody ever holds up their hand on a question like that. But this old man held up his hand. "Yes sir, yes sir." So he stood up and in the hearing of all the other jurors he says, (imitating voice of an old

man) "Well, if he was accused of murder I'd cut off his head soon as anybody," he says, "but I don't know, this vote-buying doesn't sound like much of a crime." (laughter)

But we had—gosh—I guess the first case I tried down there was that antitrust case in '75. And the last case I tried was in 2000, where I represented the insurance commissioner. And there were a lot of cases in between. It got to the point where I knew the judges and lawyers in Baton Rouge as well as I knew them in Washington.

PROF. CAMPBELL: Would you say the legal culture and the political culture in Louisiana were very different than here in Washington?

MR. JEFFRESS: Well certainly the political culture. I mean, we have a focus on national politics, and our local government is purely a local government; it doesn't have the equivalent of a governor.

The traditions in Louisiana are quite different. It's fairly tolerant of minor misconduct. At the time Edwards was, I thought, a very, very effective governor, at least in his first two terms. Did an awful lot for the state, but contributed to the reputation of the state as faintly corrupt. I think that reputation chases away new industry and so forth in a state. Anyway, I would say it's quite different.

The courts no; the federal courts are not that different. As a matter of fact, I've tried cases in a lot of different states before a lot of different judges who I didn't know. Only once that I can remember, did I ever feel uncomfortable or that I was treated differently because I was from Washington, D.C.

PROF. CAMPBELL: Do you want to tell me about that case?

MR. JEFFRESS: Actually, that case, I had tried in bankruptcy court in New Orleans a case which we had lost and the appeal goes to a district judge. And the district judge was named

"Tut" [Lansing Leroy] Mitchell, long deceased now, so I can talk about him. But I got up there and argued the case, and he gave me a hard time. Then the local lawyer stands up and the judge says, (in a Louisiana accent) "Tom, come up here and tell me what this case is really about." (laughter) I felt like a stranger. But that's very rare.

And I guess I would say the state court judge in Cincinnati who I tried the Marvin Warner case in front of, was kind of the same way, but he was very much influenced— those were elected judges, and Marvin Warner was the most unpopular man in the city of Cincinnati, and the trial was on camera. I think all of that influenced the judge to say what he thought people wanted to hear and act as he thought people would like to see him act. So, I guess that's enough about Louisiana.

PROF. CAMPBELL: Do you want to talk a little bit more about Cincinnati and the savings and loans scandal?

MR. JEFFRESS: Yeah, Marvin Warner was the owner of a state-chartered savings and loan that went broke in 1985. It was the largest state-chartered S&L. When it went broke, the state-guarantee fund didn't have enough money—didn't think it had enough money—to pay the creditors of the bank. So, all of the state-chartered S&Ls in Ohio were shut down for a period of time, freezing depositors' money, creating a panic, creating a march on the capitol. And all this was blamed on Mr. Warner who owned the S&L.

So the state appointed a special prosecutor, a private lawyer who brought this huge case. We went to trial in Cincinnati at the end of 1986. About a three-month trial, where it became clear that the president of the bank, not Mr. Warner, but the guy he had installed as president, had a cozy relationship with a broker who had sold the bank a lot of phony investments and caused the bank's downfall. And so the jury convicted the president of the bank of all the counts

– on eighty-eight counts. They acquitted Mr. Warner on all the fraud counts, but they found him guilty of some criminal negligence counts under the Ohio laws the way they interpret them. We appealed, and the court of appeals reversed the conviction on various grounds. I really thought it was an unfair trial by the judge, although I thought it was a perfectly fair jury. And the special prosecutor then took that to the Ohio Supreme Court. The day before the election in 1988 I guess it was, they issued an opinion that hadn't even been set in type yet and had all kinds of typos—but they obviously wanted to get it out before the election—reinstating his conviction. (laughter) So, my experience in Ohio was not a happy one.

PROF. CAMPBELL: And that was the end of the line for him?

MR. JEFFRESS: That was the end of the line. He got maybe a year and a half sentence. These were criminal negligence counts; they weren't the specific intent counts. And then we tried—he was indicted both in state and federal court—we tried the federal case after a change in venue in Ann Arbor, Michigan. He was acquitted on all counts because they were all specific intent counts. As a matter of fact, the jury never even looked at the exhibits. I think they retired at ten o'clock in the morning and returned the verdict at 1:30 and said they had actually taken the vote at 11:00, but they didn't want to leave before lunch. (laughter) So, that was an interesting case. It went on for a long time—two trials—one of them, I think, three months and one of them five weeks or something like that.

The other cases that are probably worth talking about—I represented ABC News in a suit by Food Lion. ABC on "Prime Time Live" had run a program narrated by Diane Sawyer on health and sanitation issues in Food Lion stores, and it was a very powerful program, very powerful. They had done it by having two producers, young women, obtain jobs at Food Lion.

PROF. CAMPBELL: I'm just going to pause it for a second. Okay, so we were talking about the Food Lion case.

MR. JEFFRESS: Yeah. So two producers had obtained jobs, one at a deli and one at a meat department, at two different Food Lion stores. And for a period of a week or two, as they worked on their jobs, they wore hidden cameras in their hairdo and recording equipment around their waist. And recorded a lot of pretty bad things. Food Lion employees saying some pretty upsetting things. Food that had gone past its sell-by date being taken back in the back room, and they would take that sticker off and put a new sticker on with a different sell-by date. Pretty extraordinary. So it caused huge damage to Food Lion.

Food Lion filed a lawsuit—not attacking the truth of the broadcast. They decided, I guess, they couldn't meet that standard. But they alleged that the newsgathering was illegal; that the employees were guilty of fraud in obtaining the jobs; breach of loyalty in performing the jobs; trespass by being on the premises without permission; might have been a couple of other common-law counts there. And we engaged in, oh four years, I think, of very contentious discovery and motions. It was not a nice case.

PROF. CAMPBELL: Who represented Food Lion?

MR. JEFFRESS: Akin Gump and a local firm in Winston-Salem. The Akin Gump lawyers were basically anti-union lawyers. Food Lion blamed this whole thing on the Food and Commercial Workers Union that had a corporate campaign against Food Lion. They said the Food and Commercial Workers Union put ABC up to this. So as I say, it was very, very contentious. And we finally went to trial before Judge "Woody" [N. Carlton] Tilley in Greensboro.

PROF. CAMPBELL: Was this a federal court?

MR. JEFFRESS: Federal court. And he ruled at the time of trial, he finally ruled what we had been contending all along, which was, Food Lion could not obtain reputational damages without meeting *New York Times v. Sullivan* standards of falsity and malice. So, the result of that ruling was that Food Lion's total claimed damages were something in the neighborhood of $3,000. The jury's verdict was $1,800.

And then we went to the—you know the defenses were pretty tough. In South Carolina and North Carolina, there is a common-law tort called "breach of loyalty," which is a "no-man-can-serve-two-masters" sort of a thing. If you're working for somebody, you have a duty not to be serving the interest of somebody else. And I always thought that applied pretty well to this thing. But our defense was, look, these people did a great job; as a matter of fact they got rave reviews for how well they did their jobs. So their work for ABC did not impair their work as a deli clerk and as worker in the meat department. But the jury didn't agree with that.

And then we went to punitive damages. After a long deliberation, the jury awarded I think $5 million total in punitive damages. None against the producers—they liked the "girls" as they called them. But they awarded $5 million in punitive damages. The judge then under the recent Supreme Court decision in *Honda Motors* about punitive damages, reduced that to $300,000. [*Food Lion, Inc., v. Capital Cities/ABC, Inc*., 984 F. Supp. 923 (M.D.N.C. 1997)]

ABC appealed. And we won on appeal. [*Food Lion, Inc. v. Captial Cities/ABC, Inc.,* 194 F.3d 505 (4th Cir. 1999)] They threw out the fraud count, said resume fraud is not fraud—that was the count on which punitive damages had been awarded. They did uphold the trespass and breach of loyalty counts, but the verdict on those was one dollar each. I always thought ABC should have paid with a Food Lion coupon, but they decided against that. That was a very interesting case.

We just had two months ago, I guess January, a program down in Florida at the media law conference on the 15th anniversary of the Food Lion case. David Westin, who was then general counsel of ABC, and the lawyer on the other side, and one of the producers who I hadn't seen in ten years, were there. Very, very interesting program.

PROF. CAMPBELL: How much was the First Amendment and the press' right to gather information to report to the public an issue in the case?

MR. JEFFRESS: Very much. Certainly an issue in all the motions. At trial, the judge allowed the parties in the punitive damages phase to talk about the social benefits of hidden camera reporting. Because they did make it look mighty sneaky and underhanded and subject to abuse. So I was able to call Diane Sawyer. She testified. Both the producers testified and talked about hidden camera programs that they had done that really caused tremendous social benefits, reforms. Some of the companies that were subject to these hidden camera investigations had actually seen the shows and immediately responded, "Look, this is not acceptable and this is wrong. This is not the way we do business; we're going to correct this." And they did reforms and they came out fine.

But Food Lion refused to do that. They felt they were victims—victims of the union and victims of the media and so forth. So their stock, which had gone down eighty percent as a result of this program, never did recover. They kept the show in the news for five years. (Jeffress chuckles) And of course, nobody could ever read about the case without being reminded of the rat-gnawed cheese and the chicken, when it passed its sell-by date, they would pour a little barbeque sauce on it and put it back out. I mean, it was bad stuff, revolting stuff. So that was the Food Lion case.

PROF. CAMPBELL: How was Diane Sawyer as a witness?

MR. JEFFRESS: Well, my partner handled her. Frankly, I thought we went on way too long about her credentials and background. She talked about her time at the White House and her awards and everything. I kind of felt like it was our fault, not her fault. She was a wonderful witness. But I guess we tried to paint her as some kind of hero or something and that was not the right thing to do. But she really did make a very good witness. She is a very good reporter, had an amazing career.

PROF. CAMPBELL: So did you try this with someone from Miller, Cassidy?

MR. JEFFRESS: Yeah, Randy Turk and I tried it with along with some other lawyers. We had local counsel, but he didn't try any part of the case.

And then, another aspect I wanted to talk about was the independent counsel cases. Coming back to Washington, we had an extraordinary time between Watergate and the end of the independent counsel statute supposedly in 2004. [Ed. note: Ethics in Government Act of 1978, Title VI, P.L. 95-521, 92 Stat. 1824] Lots and lots of cases that, had it not been for the independent counsel law would have been nothing but political scandals, became court cases, criminal cases. I thought the independent counsel statute—while I can understand the reasons and motives why it was put into place—was a terrible statute and criminalized an awful lot of activity that shouldn't have been criminalized.

We represented lots of people. Starting with the Watergate special prosecutor and—he didn't just have Watergate—he had all these other things that emanated from Watergate, from illegal political contributions to—. We represented Attorney General Kleindienst. They investigated whether he had sought a postponement in the Supreme Court in a case involving IBM because of political influence by Nixon. They claimed he lied to Congress about that. We then represented Attorney General Meese later on, when he became investigated by the

independent counsel. We represented Mike Deaver, the deputy White House chief of staff, in his perjury case.

I represented and actually tried a case for Tyson Food's director of government affairs, who was charged under something called the Meat Inspection Act, with giving gratuities to Agriculture Secretary Mike Espy. The gratuities were things like inviting Espy to attend Don Tyson's birthday party, taking him to a football game and a basketball game, asking him and he agreed to sit at their table at an inaugural ball. This was the kind of crap that was made into a criminal case.

PROF. CAMPBELL: And that was the Clinton inaugural ball?

MR. JEFFRESS: Yeah, yeah. And the independent counsel there was one of the most notorious, Don Schmaltz, who if he ever accomplished anything good, it was getting the independent counsel law repealed, in my opinion. But he had tried Espy, and Espy was acquitted. My client was acquitted on all but one Meat Inspection Act count, which was then set aside by Judge Robertson on a motion for new trial. The court of appeals reinstated it. Judge Robertson then set it aside again for a different reason. The government's appeal was pending on that ruling at the time Clinton pardoned both Schaffer and all other people prosecuted by Don Schmaltz. Those were among the pardons he granted at the end of his term in 2000.

I tried that case before Judge Jim Robertson. I think the world of him as a trial judge. Some trial judges you appear before are just very comfortable and never have any problems with counsel because counsel understands that this is a judge who expects excellence and you want to do it, you know. Somebody says something improper, he gives them the eye. He doesn't scream at them or excuse the jury and threaten to hold them in contempt. He just knows how to run a courtroom, and it was a real pleasure to try a case in front of him.

And then there was the Scooter Libby case. Even after the independent counsel law was repealed, they essentially did the same thing by appointing Pat Fitzgerald as Special Counsel. The difference is, he wasn't a private lawyer; he was a government lawyer. But they gave him full powers and discretion without review by anybody, to do whatever he wanted in this leak investigation. We challenged that on constitutional grounds under the Appointments Clause and lost before Judge Walton on that.

Tried the case. That surely must be the case where more journalists testified than any other case in history. I think Fitzgerald called three journalists, and I called eight. And there were a lot of First Amendment issues—the *New York Times* fighting over this and NBC fighting over that. Didn't want to give us any information. That made that case particularly interesting.

The Classified Information Procedures Act ("CIPA") [18 U.S.C.A. App. 3], which I had never encountered before, was very much involved in the case. We spent an awful lot of time trying to pry classified information out of the government and then litigating before Judge Walton on what we could use and what we couldn't. [Ed. Note: *See, e.g*., *United States v. Libby,* 429 F.Supp.2d 18 (D.D.C.2006), *amended by,* 429 F.Supp.2d 46 (D.D.C. 2006) (discussing Section 4 of the CIPA); *United States v. Libby*, 453 F.Supp.2d 35 (D.D.C. 2006) (discussing Section 6(a) of the CIPA); *United States v. Libby*, 467 F.Supp.2d 1 (D.D.C. 2006) (ruling on whether certain classified documents could be admitted)] Under that Act, to my surprise, the government can tell you that you cannot use certain information but you can use "substitute information" which doesn't have the same national security dangers. [*United States v. Libby*, 467 F.Supp.2d 20 (D.D.C. 2006)] It winds up with a judge. Had Libby testified, which he didn't, but had he testified, there were certain subjects on which he could say nothing other

than a script that had been approved by the judge, written by the prosecutor. Which just wasn't the whole truth. I mean, how do you try a case like that? (Jeffress chuckles)

But anyway, he was convicted. Tim Russert was their star witness. The two other journalists did not make much of an impression on the jury. The jury actually acquitted on those counts involving Judy Miller and Matt Cooper. But Russert was a pretty good witness. He had somewhat of a tough time on cross-examination, but he had a pretty simple story, and the jury credited him.

PROF. CAMPBELL: I remember from the time reading a lot about Judith Miller. Was it because they felt that she didn't act in a professional manner? Or what was it that made her less convincing?

MR. JEFFRESS: No, I don't think it was that. It's just her memory was horrible. I mean for example, she sits in jail for sixty days because she doesn't want to testify, she's claiming the reporter's privilege. Finally, they work out a deal. They contact, for the first time, Libby's counsel, who says "What are you talking about? She's not there because of Libby." Libby consented a long time ago. He's got no objection to her testifying.

So she gets out and she testifies. All she testifies to is some notes that she had of a meeting. She says that was the only meeting she ever had with Scooter on this subject. A day later, she goes back to New York to her office for the first time and finds another notebook, and it reflects another long meeting she had totally forgotten. She didn't know a thing other than what was in the notes, and she misinterpreted the notes in my opinion. But in any event, she had all kinds of notes in her notebook about Valerie Plame and Valerie Wilson, blah, blah, blah. None of which came from Scooter, but she couldn't name me one other person who had given

her that information. So, it wasn't her lack of professionalism, it was her lack of memory. And pretended a memory she did not have.

And Matt Cooper, his testimony wasn't very damaging anyway. But what he said was totally different from what—not totally different—it was slightly, but materially, different from what Scooter said he had told Cooper. Of course, this was all a perjury trial, and none of it had anything to do with leaking. I remember I got—*Time* magazine was a little more cooperative than NBC and the *New York Times*—so I got his notes that he had typed on his computer while he was talking to Scooter [on the telephone]. They are just as you would suspect when you try to type a conversation—they are full of half sentences and misspelled words and fat finger stuff. But we spent a lot of time figuring it out, and you could figure it out. Cooper didn't figure it out until he got on the stand that there was a passage in his notes that was very significant—Scooter had told him, "Look, I've heard that, but I don't even know if it's true." That's what Scooter said he told him. And there was a passage in Cooper's notes that said "heard but don't ever." That's all it said, "heard but don't ever." Clearly he had typed an "r" when he meant an "n" and then he didn't finish the sentence. We showed all that to the jury, and it was the end of that. They acquitted on Matt Cooper. That was the closest thing to a "Perry Mason" moment I've ever had. (laughter)

PROF. CAMPBELL: Was that something where you had a handwriting expert or some expert or did you just figure it out by yourself?

MR. JEFFRESS: No, we just figured it out. This is absolutely consistent with Scooter's testimony. It's inconsistent with Cooper's testimony. And I could see when he was on the stand, when the light went on in his mind, when he realized what those typewritten notes really said. He was not a happy camper when he left the stand.

That was a fascinating case, both because of the independent counsel aspects of it, and I thought that was a very important issue we had, on whether the government could give total power to a single unappointed, unconfirmed individual to handle a criminal case on behalf of the United States. I don't think it's right.

But after Bush granted the commutation, commuted the prison sentence—didn't pardon him, but commuted the prison sentence—we decided, look, we can go up on appeal, get it reversed, get a new trial. But then the commutation is not going to apply. Probably be a new president. So we made the decision not to appeal.

PROF. CAMPBELL: Do you feel that he got a fair trial? I guess I have two questions and whether I sort of have a vague recollection of this, but—(phone ringing, recording paused). I asked about the fairness of the trial.

MR. JEFFRESS: Well look, I've got a lot of respect for Judge Walton, and I think he tried his best to be evenhanded. I have a real problem with any case that—you know, Scooter's basic defense was a memory defense. His position is: "They say I should have remembered every time anybody mentioned Valerie Plame as being Joe Wilson's wife or any time I ever talked to a reporter about this subject." It was necessary to show what this guy was doing every day, what were the issues he was—and it was all classified, starting from six o'clock in the morning with a briefing by his national security aide to meetings with National Security Council and vice president and president all day long. And dealing with incredibly scary issues, I guess—nuclear proliferation, terrorism and all kinds of other things. But he basically could not talk freely about that. We wound up spending gosh knows how many thousands of hours trying to negotiate what could be said and couldn't be said about the classified information. Reviewing

classified information in a windowless room, you know a SCIF [Secure Compartmentalized Information Facility] at the courthouse. I thought that aspect of it was unfair.

PROF. CAMPBELL: And were you allowed access to all the material as his counsel?

MR. JEFFRESS: Yes, as his counsel. I got a security clearance. So what else was unfair about it, I don't know whether you say it's unfair or not. I mean, look, we had to take what we were given. And we had to try the case in the District of Columbia where Vice President Cheney's popularity was running about three percent, if that. And I remember selecting the jury. I had this very honest woman who the judge asked, "Some high officials of the Bush administration may testify in this case. Could you give their testimony the same weight you would give to anybody else?" She just smiled and said, "I wouldn't believe a word they say." (laughter) [A review of the court transcript reveals that the juror actually said "Nothing they could say or do would make me think well of them."] And you know, she was an honest one. So, I think we had an uphill climb under the best of circumstances.

PROF. CAMPBELL: Wasn't there some sense that he was sort of taking the fall for something that was done higher up?

MR. JEFFRESS: There was a lot written about that, a lot said about that. But if you knew anything about the case, you could see it was totally false. I mean, Fitzgerald, even though he knew—before Libby ever even testified at the grand jury—he knew who had leaked Valerie Plame's identity to what's the columnist's name?

PROF. CAMPBELL: Safire?

MR. JEFFRESS: No, not Safire. You know, the big heavyset guy – he died a couple of years ago. Robert Novak. But anyway, that was the leak, in July. It was Novak's column that did it. And that leak was by Richard Armitage. He's admitted it. And it was totally innocent.

Armitage didn't know, nobody knew, at the White House anyway, that this woman was covert, if she was covert. I don't think she had been covert in twelve years. But he didn't know, and he's a gossip. Richard Armitage is a gossip. He was over at the State Department, and he didn't even like the White House.

But yet, even after he solved the mystery, Fitzgerald kept the case going for a year and a half trying to get somebody on perjury. He got Scooter, and he almost got Karl Rove. Rove testified five times before the grand jury. You know that's just an aspect of this independent counsel position. That case would have been shut down more than a year earlier without indictments if it had been the Justice Department, if it had been a professional prosecutor without any special role or charge.

In that sense, I thought the whole thing was unfair. You know, they didn't prosecute anybody for violating anything in connection with the leak. Didn't prosecute Scooter for leaking; prosecuted him only for testifying falsely about a conversation with Tim Russert in which Scooter remembered Russert telling him that Wilson's wife worked for the CIA. And Russert said I couldn't have said that because I didn't know it. And they believed Russert and didn't believe Scooter, and that is all the case was about. And a friend of mine told me, you know, the Libby case is the "Seinfeld" of criminal prosecution; it's about absolutely nothing. (laughter)

But it was thrilling to try that case. A lot of important, interesting, and novel issues involved. I got to like Scooter very much and his family, which you tend to do in criminal cases. That's a difference between criminal cases and civil cases. There is a lot more at stake for the individual, and you feel more responsibility, really. So the highs are higher and the lows are lower.

PROF. CAMPBELL: Interesting. What other special prosecutor cases?

MR. JEFFRESS: Those are the only ones that actually went to trial. But my golly, I must have had—I mentioned some of the people—Meese and Deaver, and all these people. Either those cases didn't go to trial, or I didn't try them. But there was hardly ever a time that we didn't have some client. We did not have anybody that anybody's heard of in the Monica Lewinsky case, although we had two or three minor characters. Had somebody in Whitewater, a couple of aspects of Whitewater. It was an amazing time. Provided a lot of business to white collar criminal defense lawyers in Washington, D.C., I'll say that.

PROF. CAMPBELL: So how does that work when there are lots of different defendants coming out of the same set of events? How much coordination is there among different counsel?

MR. JEFFRESS: There's a lot, there's a lot. And it is not always cooperative. Many times the problem is, you are going to trial with seven defendants and you just know, two of them are going to cut a deal on the eve of trial and testify against your client. So, what you want to do is make sure that all the lawyers in the case are friends of yours and can be trusted. Most of the time, that's the case, but not always. Edward Bennett Williams once told me, we were talking about the subject and he said, "You see these scars on my back? Those aren't from prosecutors. They're from co-counsel." (laughter)

PROF. CAMPBELL: That's great. Do you want to talk about the Clark Clifford and Robert Altman case?

MR. JEFFRESS: Yeah. I did not handle the criminal case. Jamie Gorelick was hired by Clifford and Altman to handle the litigation involving First American Bank and their claim on First American for indemnification of legal fees. And then Jamie left to go first to the Defense Department and the Justice Department, and I took over the case. Fascinating case. The charges

against Clifford and Altman—really I think were a product of a loose cannon in Morgenthau's office in New York. The idea that Clifford and Altman were complicit in BCCI's [Bank of Credit and Commerce International] fraud just gathered a lot of steam, and by the time they started getting the true evidence, they just couldn't back off, you know. It was like they heard what they wanted to hear. The case against both Clifford and Altman, I always thought was extremely weak. Neither Clifford nor Altman would make any kind of a deal, never took the Fifth, always testified, cooperated, just insisted that they were innocent.

The case went to trial in '93 in New York. And it was just ridiculous. One of the witnesses testified that he was in a meeting where Clark Clifford said something incriminating. The very next witness, as the prosecutor well knew, was going to contradict that. The defense counsel goes up on cross and drew on the board where the table was, where the witness was sitting, and where Clark Clifford was sitting, and where everybody else was sitting. Made a demonstrative [exhibit].

The very next witness called by the prosecution was at the same meeting. So on cross, the defense says:

"Have you ever met Mr. Clifford?"

"No, I never met him."

"You ever been in his presence?"

"Never been in his presence."

"Well, did you attend a meeting up at BCCI offices in New York?"

"I did."

"Well, let me show [you this demonstrative exhibit]. Do you recognize that table?"

"Well I'm not sure I do, but yeah, I was in that meeting."

"Well, where were you sitting?"

"Well let's see. I was sitting on this end of the table.

"Was Mr. Clifford here?"

"No. I've never seen Mr. Clifford."

(laughter)

Anyway, they didn't even put on a defense. The jury acquitted Bob in no time at all and really severely criticized the prosecutors. So then, the civil cases started. You know, got hot. I think it was about three years. We took testimony in London two or three times, in Germany, and the Middle East. Again, Bob and Mr. Clifford were always adamant.

But Mr. Clifford's health was failing very badly. The last few times I saw him, he was being fed through a tube in his stomach. Finally, he agreed to settle the case. We paid a fairly minimal amount to settle the case. We settled it, signed a settlement agreement, and Mr. Clifford died three days later. I think he really held on because he wanted to put an end to it. And that was the final chapter of the BCCI saga.

Bob became a very good friend. Still is. Ski together every year. And runs a video game company in which I'm an investor, and that's a lot of fun.

PROF. CAMPBELL: I read about that in press, you still do that?

MR. JEFFRESS: Yeah, yeah, I still do that. We had the game of the year this year.

PROF. CAMPBELL: Wow, which was that?

MR. JEFFRESS: Skyrim. Had $650 million in retail sales in six weeks. I had no idea video games were that big. It's amazing, oh, it's incredible.

Joyce Green had that case.

PROF. CAMPBELL: So the plaintiffs in that case were?

MR. JEFFRESS: First American Bank. They were claiming that Clifford and Altman had violated their fiduciary duty. We were counterclaiming that they owed us indemnification for legal fees. And the settlement wasn't a walk away. Mr. Clifford paid some amount, but it was not a very large amount.

PROF. CAMPBELL: Okay. Another case that I would think that people would be interested in hearing about was the *Paralyzed Veterans of America* case. [*Paralyzed Veterans of America v. D.C. Arena, L.P.*, 117 F.3d 579 (D.C. Cir. 1997)]

MR. JEFFRESS: That was a fascinating case. To my embarrassment really, I have to go back to 1974, and tell you that when Abe Pollin built the Capital Centre out in Largo, Maryland, I sued him on behalf of Ringling Brothers Barnum & Bailey Circus because he had violated an agreement with the circus. We got a preliminary injunction, and it was all very complicated. But anyway it was a law suit.

So, then he goes to build the MCI Center, some twenty-five years later. I sued him again. (laughter) The funny thing is I always liked Abe Pollin; I always thought he was a good guy. But he just was adamant. The law said that you had to provide wheelchair seating for a certain number of seats in an arena, and they had to be spread throughout the arena with different sight lines and different prices and so forth. In order to do that properly, he would have had to lose at least one sky box. The sky boxes are the way in which you finance an arena. So he decided he wasn't going to do it. The Paralyzed Veterans hired us and we sued him. And the case went to trial before Judge Hogan in 1996. No jury. The judge denied the preliminary injunction on the grounds that Williams & Connolly consented that they would try the case on the merits in a very short period of time and that they would make no claim that the delay made it impossible to comply.

So, we tried the case. It was a fun trial, it really was. Judge Hogan is a great judge. The issues were interesting. Brendan Sullivan was on the other side. And I remember, the problem is, that the wheelchair seating does not have a line-of-sight over standing spectators unless it's in special spots in the arena. We contended it had to have a line-of-sight over standing spectators.

So, Pollin called his construction supervisor, and this guy was like—he was 6'8", 6'10"—a huge guy. (laughter) It came out that he went to Villanova. I said to myself, this guy has to be a basketball fan. Just the year before, Georgetown had played Villanova in a triple overtime game that was one of the most exciting college basketball games ever played in Washington.

And so I just took a chance. I said, "So you're from Villanova. Are you a basketball fan?"

"You bet."

"Did you go to the Georgetown-Villanova game over in the Capital Centre?"

"Of course I went."

"And do you remember that at the buzzer in the final minute Georgetown and—I forget the name of the guy, Sleepy Floyd or somebody—scored a basket and put that thing in overtime and there were three overtimes and it went back and forth?" I said, "Were you standing the whole time?"

And he said, "You bet."

"Was everybody else standing?"

"Oh, you bet."

Boy, he was really into it. And I said, "So, the people in wheelchairs, what could they see?"

And he says, "They could look at the Jumbotron." (laughter)

It was a fun case. We won on the merits. The judge did not grant as much relief as we requested, but I thought it came out in a very fair manner. But Abe Pollin must have felt I had something against him. (laughter)

PROF. CAMPBELL: Do you prefer cases before a judge or before a jury?

MR. JEFFRESS: A jury.

PROF. CAMPBELL: And why is that?

MR. JEFFRESS: It's just the way I was brought up. I think a judge decides how he feels about a case very early in the case, you know, if he's involved in it at all. And by the time you get to trial, it's just not—. A jury comes to it fresh. The first day of trial is the first thing they know about the case. So, you get to try your case to the jury without the baggage of whatever went on during discovery and motions stage. That is the primary reason. I also think jurors tend to decide cases much more on credibility of witnesses. Jurors may not know much about "reverse re-purchase agreements" or something, but they sure know a lot about who is lying and who is telling the truth. And that's always important in a criminal case. So, that's what I do.

But on the other hand, there are cases when I've waived the jury. My son just waived a jury before Jeb Boasberg in a case where the FBI set up a sting for a guy soliciting under-aged kids for sex. Jonathan had investigated the case and concluded the guy literally was innocent, and waived a jury. The government didn't know what was going on. They thought they had this guy dead to rights, but they hadn't investigated the case. Jonathan, who is in the Federal Public Defender's Office, waived a jury, tried the case before Judge Boasberg. He said he didn't challenge the credibility of a single witness, even the FBI agents. Boasberg found that

government hasn't proven this case by preponderance of the evidence, much less beyond a reasonable doubt, and acquitted.

So, there are some cases obviously, and that is one of them. A jury would not have liked this guy. He was gay and was constantly trolling for drugs and meth and so forth and dates, and they would not have liked this guy. But Judge Boasberg had no trouble with it.

PROF. CAMPBELL: So are you a big sports fan yourself?

MR. JEFFRESS: Yeah, pretty much, I am. That's about all I watch on TV—hockey, baseball.

PROF. CAMPBELL: Well, we talked about a lot of cases. Are there any others that you would like to talk about? Do you want to take a look at your list? (sound of papers rustling)

MR. JEFFRESS: Funny about trying a case and having a jury trial. There is a case on here, *United States v. Melvyn Stein.* [CRIM. A. 93-375, 1994 WL 285020 (E.D. La. June 23, 1994).] He is an Orthodox Jewish lawyer in London. He was indicted in New Orleans because he had represented the owner of a Louisiana insurance company, who had looted the company. A lot of the money that he looted went through my client's client account in London, thence on to Switzerland and other places.

The government's witness was Mel's former client, who was a totally, really bad guy. My client had set up a re-insurance company for Carlos Miro, was the guy's name. He had looked all over Europe for where to set this up and found in Ireland they had these incentives, tax incentives and other regulatory advantages. So, he decided to establish a re-insurance company in Ireland. And this re-insurance company is what wound up being one of the vehicles by which Carlos Miro stole the money. It wasn't really an operating company at all; it didn't have any assets.

So, the government had a document, which was a letter from my client to Carlos Miro, in which he discussed all the advantages of this Irish re-insurance company. And down at the bottom in his handwriting was, "P.S. Perhaps we could call it *Sham*rock Insurance Company," underlining sham three times. (laughter) The prosecutor thought I didn't have a chance. But Mel testified. I asked him, "So, is that your handwriting?"

"It is."

I said, "Well, what did you mean?"

And he kind of looks, he says, "Well, it was a joke." He says, (in a British accent) "I must say, it rather pales in retrospect." (laughter)

The jury loved it, the jury loved it. He was very credible. And then I put on a witness—this guy, an Irish author who wrote the screenplay for a couple of James Bond movies. He was a good friend of Mel's, and his sole testimony was about Mel's sense of humor—he cannot resist making puns, he is incorrigible. And it's all true. Mel just drives you nuts with his puns. So, the jury acquitted in no time at all. But that was a very interesting case. In New Orleans, that's where I tried that.

PROF. CAMPBELL: One thing that struck me looking over your cases was that some of them seem to be so complicated like in terms of financial transactions or antitrust laws. How do you manage to both get on top of the different laws and then communicate effectively to a jury?

MR. JEFFRESS: That's a real problem. I wouldn't say, though, that all that large a number of my cases have been that complicated. There have been some, and it's just, I don't enjoy those cases. One of them, the Marvin Warner case, you really had to understand how this broker had ripped off the bank through these incredibly complicated transactions called "reverse re-purchase agreements" in government securities. I'm not sure I ever understood it. How do

you explain that to a jury? You've got to figure out some way. The jury is never going to understand it. So you've got to figure, what essential part of it is necessary that they do understand, because they are not going to understand very much of it.

I had a few more, but the antitrust cases are not that—price fixing is pretty easy. And securities cases. I just tried a three-month case in Detroit last year for the former CEO of an auto parts company who was sued by SEC. [*U.S. Securities and Exchange Comm. v. J.T. Battenberg, III*, No. 06-14891, 2011 WL 3472619 (E.D. Mich. Aug. 9, 2011)] There were some complicated accounting issues in that case, but the way the case tried to the jury— who's lying and who's telling the truth. That's what they want to know. So it's a challenge, it's a challenge in some cases, but not all.

PROF. CAMPBELL: One thing I don't think we talked about and it's up to you whether you want to talk about it, is when your firm became part of Baker Botts. Did you want to talk about that?

MR. JEFFRESS: Sure.

PROF. CAMPBELL: Okay.

MR. JEFFRESS: Yeah, Miller Cassidy, gosh, it was a terrific firm. But like many other boutiques I'll call them—and I can name you quite a few—and as a matter of fact you probably heard that Janis, Schuelke & Wechsler was the latest to close its doors and they all went off to other places. But we just had a great run. I was the sixth lawyer in the firm. We grew to thirty-some, thirty-two to thirty-three. But the senior partners, the founding partners Jack Miller, John Cassidy, Ray Larroca, Nat Lewin, had all gotten to their seventies. It was clear that running the firm was going to fall to me and Stan Mortenson or Randy Turk and others. We concluded that

we needed to either get bigger fast or smaller fast, to make it work. And merging with Baker Botts was the way to get bigger fast. Getting smaller, I think, would have been very, very painful.

It was a situation where Jim Doty had been a year ahead of me in law school and had a very distinguished career here, general counsel of the SEC and everything. I liked him very much. He was at the time, the co-head of the Washington office of Baker Botts.

So, he approached Jack Miller and me. We started talking. The one condition that we made was that, look, we're not interested in you cherry-picking our firm. We are willing to talk about a complete acquisition of the firm, where you take everybody here as partners or associates, as the case may be. But, you've got to take everybody. And I had a partner who had Parkinson's disease. I had partners who, for one reason or another, were not performing all that well. Every other firm we talked to, well, they wanted to analyze lawyer by lawyer, which ones we want and which ones we don't. We weren't willing to do that. But Baker Botts was willing to say, we want you to be the trial department of our Washington office. So that's what we became. And it worked great. I've got to say, it just worked great.

Most law firm mergers, I think, don't work very well. But this was one where they needed us and we needed them. And when we became their trial department, all of a sudden, Baker Botts, which never had anybody that could try a criminal case, had plenty of people. So when their clients, like Reliant Energy—was one of my first cases at Baker Botts—got into a criminal investigation, normally they would have gone to some other firm. But they stayed with us because now we had people who knew how to handle the case. So, it's really worked well. It's been eleven years.

PROF. CAMPBELL: That's great. That's unusual. I'm going to pause. [**END RECORDING]**