ORAL HISTORY OF IRVIN B. NATHAN

This interview was conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewer is Sheldon Krantz and the interviewee is Irv Nathan. The interview took place at the D.C. office of DLA Piper on July 20, 2016. This is the third interview.

MR. KRANTZ: The first interview which took place on January 9 and covered Irv's roots, the stage of his life prior to becoming a lawyer, the time period he spent at Columbia Law School and his initial clerkship with Judge Simon Sobeloff. His second interview covered the time period at Arnold & Porter, his first stint at the Dept. of Justice, and his return to Arnold & Porter. Today what we plan to cover are questions relating to his return to the Department of Justice and the Deputy's office, his return again to Arnold & Porter, and then, if we have time the period when you served as the General Counsel in the House of Representatives and later as the D.C. Attorney General. So with that background, Irv let's turn back to you and you just had finished talking about your time period at Arnold & Porter and we were then going to focus on what happened thereafter. So why don't we start there.

MR. NATHAN: Well, before I get to my return to the Department of Justice, there was a very important professional experience that I had in 1991. At that time Arnold & Porter had a sabbatical program and I had deferred and therefore was eligible for a nine month sabbatical. Sheldon, you helped very substantially to arrange that for me because what I did on the sabbatical was to go to San Diego and both teach at the University of San Diego Law School and to work with the Federal Defender's Office, headed by Judy Clark. I appreciate your help in

that regard. As to the teaching, the dean of the law school at that time was Christine Strachan, and she urged me to teach a course that she called Washington Scandals. It dealt with a number of the matters that had gone on during the time of my practice. One was Watergate, and her husband actually was a defendant in the Watergate case. He had worked at Nixon White House. It also dealt with ABSCAM, which I described last time, and the Keating Five congressional hearing and other matters like that. The Keating Five were five senators who were called up on the charges before the Senate Ethics Committee for dealing with the banker Charles Keating. It was really instructive to study those matters, to read up on them and to teach lessons that I could derive from them. The thing I found most interesting about teaching in 1991 about Watergate was that the students had never heard of Watergate and in fact they didn't even believe me when I had told them what had happened. They hadn't heard of it because it happened either before they were born or when they were infants. And it had happened too recently – in the early 1970's – to be in their history books, so it was something that hadn't been covered for them in high school or in college lessons. And they were astounded at what had happened. It tells you how passing these things are and how people don't know about relatively recent history. When I realized that they didn't know anything about Watergate, it said to me that I didn't know much about Teapot Dome which also happened about 30 years or so before I was in college and law school.

MR. KRANTZ: I just want to make the observation that because I recommended or helped make the arrangement for you to go to San Diego you will be happy to hear that that recommendation has not come back to haunt me. Not yet, anyway!

MR. NATHAN: And the second part of that sabbatical was working at the Federal Defender's Office which was a great experience. That office at that time was run by Judy Clark who is an outstanding criminal defense lawyer. She was an expert on the sentencing guidelines and on major capital cases. She ran a tough office insisting that her lawyers dress appropriately and act appropriately with indigent clients the same that commercial lawyers would do with their clients. In that office I tried a number of cases, defended criminal cases that mainly involved Mexican nationals who had come over the border either with other people or with guns or with some inappropriate matter such as drugs. It was a great experience. It was difficult because the court there was pretty conservative and often ruled against the office in matters like search and seizures where I thought on the evidence they should prevail. The other thing I learned was that the defendants, the Mexican nationals, were not fully trusting of their lawyers because they thought that since they were being paid for by the government they couldn't really be trusted. That was an unfortunate situation the lawyers had to overcome. It was a great experience to see what these young lawyers were doing to defend individuals and the way the court operated. I had a number of interesting cases and I really appreciated that experience. When I came back after the sabbatical, I continued the practice at Arnold & Porter, and that is when I handled a case that I described last time,

the Ken Treadwell case involving the lawyer that had been given immunity and was then indicted. Then when Phil Heymann was named the Deputy Attorney General in 1993 at the beginning of the Clinton administration, I returned to the Department as his principal assistant. The job was called PADAG, Principal Associate Deputy Attorney General. And in another personal aside, Sheldon, Phil Heymann put together a great office, with very talented people, one of them you may know, a woman named Laurie Robinson – your wife – which ultimately led to her getting the appointment to be the head of OJP where she did a great job. And there were others, like Rod Rosenstein who became the U.S. Attorney in Maryland, the longest serving U.S. Attorney I think in Maryland history, and David Margolis, a great lawyer and a shrewd bureaucrat who sadly recently passed away. It was a great office. Unfortunately, this stint did not last that long. Phil and Attorney General Janet Reno came to a parting of ways in about a year so I was only there for about a year. It was a tremendous learning experience because the Deputy's office supervises a number of components of the Department of Justice – the FBI, DEA, the Bureau of Prisons the Criminal Division and criminal components of other divisions such as tax and civil rights. So it was an excellent learning experience with a great opportunity to see a broad array of what was going on at the Department of Justice and around the country.

MR. KRANTZ: And what were your impressions of the Attorney General at that time?

MR. NATHAN: Well Janet Reno was an experienced prosecutor because she had been the District Attorney in Miami. She was a very serious and certainly wanted to do

the right thing. She was very conscientious. I attended her staff meetings once a week and I know how dedicated she was to doing the right thing and not having politics intrude. On the other hand, it turned out this stint at the DOJ was, for a variety of reasons, much less satisfactory than the first one because politics did play a much bigger role at the Department in that time. When Phil and I were in the Department in the Carter administration – that was immediately post-Watergate – there was quite an emphasis on having the White House have nothing to do with the DOJ and having it be totally independent and basically keeping out of the Department's business, The Department was completely independent and was going to do what the leaders there thought was the right thing to do. In the Clinton administration, the Carter administration was viewed as a failed administration because it was not re-elected, and the Reagan administration which had two terms was viewed as being a successful. One of the lessons the Clinton White House drew from this was to have the White House much more involved in policy matters at the DOJ, not in cases but in policy. So, as an example, this was a time when legislation was proposed by the administration that had a lot of mandatory minimums, a proposal for three strikes and you're out with a life sentence, and legislation that had a lot of offenses carrying potential death sentence. The death penalty was a punishment provided for many different offenses supported by the administration. This was ironic because Janet Reno was an opponent of capital punishment but she was the spokesperson for the administration to support such legislation. And it was a little frustrating

because we in the Deputy's office – particularly Phil Heymann – thought that a number of these legislative proposals, such as the mandatory minimums and the three strikes and you're out, were not very sensible provisions. We made that clear but they were politically popular and we didn't have much luck in staving off the politics. I think that the country has come to regret some of that in current times. To me, it underscores that we should be dealing with the merits of these kinds of proposals, and leave the political consideration aside, but that was not the case and is not likely to be in the future.

MR. KRANTZ: So then did you leave shortly after Phil Heymann left?

MR. NATHAN: Yes. I was there for a while after he left. I helped make the transition smooth. Jamie Gorelick came in as Deputy, and she wanted Merrick Garland to be her principal associate, which made a lot of sense. Merrick had been in the Criminal Division as a deputy, and he had long known Jamie and she justifiably had great confidence in him. While I was there, I focused on a number of policy issues. At the Deputy's level, we were not generally dealing with cases as we had done in the Criminal Division but some policies, and I didn't really succeed. I didn't think they were right but I could not convince the powers that be. For example, under Rule 16 of the Federal Criminal Rules, we had proposed that prosecutors be required to provide the names of the witnesses in advance of trial, unless there was a motion made to the court that said that the witness's life or health would be in danger or there could be some demonstrable adverse consequence from disclosure of that witness's identity. The truth is that not only did the defense lawyers want that but the federal

judges wanted to change that rule because they thought that if the government provided the names of witnesses that would lead to pleas based on how strong the government case was. But the prosecutors did not want to change that rule, and the official position of the Department was represented by the organization of U.S. attorneys in the executive office. They opposed that rule change and threatened that they would take it to Congress if the judicial panel on federal criminal rules proposed that rule change. Another rule that I tried to modify was dealing with contacts with represented parties. I thought that the FBI, when they knew that a person was represented by a lawyer, should not make contact directly, that the agent would go through the person's lawyer. Again with certain exceptions such as if they were an undercover operation. Again I wasn't successful in that. The one thing that I did very helpfully during that period, this was the period of the Whitewater allegations that were raised, was to assist in naming the initial special counsel. At this time, the Independent Counsel statute had lapsed, there was a sunset provision in it, so this was a time where there was a hiatus and no operative law on the books so we had to appoint a special counsel. This was not done under the statute, but the Department could directly appoint a special counsel, and my suggestion was to appoint Bob Fiske for that position. He was a really responsible and experienced former prosecutor in the Southern District and a Republican with no political ambitions. I had worked with him in private practice and admired him greatly. He was appointed by Janet Reno and he began the investigation. He was doing a great job and then the statute was reenacted and that required

the court to make an appointment. We at the Department proposed that, since Bob Fiske had done a lot of good work on this, he be appointed by the court to be the Independent Counsel. But the three-judge court saw it differently. They thought Fiske was tainted because he had been appointed by Reno and they appointed Ken Starr to be the Independent Counsel. I was on record on television the very first day and argued that Starr was not the appropriate person because he did not have prosecutorial experience and because he had other higher office ambitions. He had been rumored to be considering a run for the Senate from Virginia and he was also a potential Supreme Court justice. Frankly, I think that Starr and also later Judge Walsh, in connection with the Iran contra investigation, misused the independent counsel statute and as a consequence it was terminated by the Congress.

There is another matter that I continue to think I was right on, but that turned out to be a low point for the Department while I was there. There was a case called *U.S. v. Knox*, which involved a graduate student at Penn State who had been convicted of possessing child pornography and had been sentenced to five years' imprisonment. That conviction was affirmed and he was petitioning for cert to the Supreme Court and it came to our office because a Deputy in the Solicitor General's office thought this was a miscarriage of justice. According to the brief, the material that this student possessed did not involve any sex or any nudity. It involved an actress who was about 18 years old playing a cheerleader in her gym clothes and the camera allegedly lingered too long on her fully clothed private parts and the lower courts concluded that

was pornography and he, who possessed but did not direct, produce or distribute the film, was going to serve five years. So we filed something with the Supreme Court – it wasn't quite a confession of error – but it was a suggestion that the matter be remanded to the Circuit Court for further consideration. It was remanded by the Supreme Court in about an hour after we filed our papers, but shortly thereafter we got a written demand from the Senate Judiciary Committee that said, it came over late morning, give us your explanation for being soft on pornography by 5:00 this afternoon. We were drafting a letter to get in by 5:00 but at about 4:00 we received notice that the Senate had voted 100 to 0 censuring the DOJ for being soft on pornography. That did not make Janet Reno a very happy camper, but I continue to believe that we did the right thing in an effort to negotiate a sensible resolution for Mr. Knox.

MR. KRANTZ: Which clearly establishes, Irv, that you can do the right thing and still lose.

MR. NATHAN: Exactly and be criticized for it [laughter]. So a short time after Phil Heymann left, I did return to A&P for another substantial stint.

MR. KRANTZ: And what were the years?

MR. NATHAN: I think it was from June, 1994 to 2007 that I was at A&P. For the third time.

MR. KRANTZ: So that was actually quite a long period of time.

MR. NATHAN: It was a long period of time and I had again a number of interesting matters. Several of them that developed from serving in the government. I represented some senators and their staffers in either internal investigations in the Senate or grand jury investigations. A fair number of my matters were RICO cases,

including civil RICO suits. I represented a major tobacco company which was sued under civil RICO by foreign governments. One was by the European Union and its member countries and another was brought by the states of Colombia. The claims in these matters were that international cigarette companies were not paying foreign taxes and import duties for cigarettes manufactured in the U.S. and sold abroad. We had lengthy hearings and motions. We won those cases under a doctrine called the Revenue Rule which provides that foreign countries cannot sue in the U.S. courts under their tax laws. Even though this was styled a civil RICO, case it was really a tax collection case. We also argued that the RICO statute while it incorporates some laws that involve offenses overseas, the injuries have to be sustained in the U.S. under the treble damage provision. We argued this in the late 90s and only recently the Supreme Court ruled in that fashion, agreeing with our interpretation of the law. One case that I particularly remember that we handled in a grand jury involved a large company. We had to come up with a novel defense for it because another company in the same industry had already pled guilty to exactly the same charge, and we were then faced with the same investigation by the same office. I developed an argument that demonstrated that the government's theory was not a proper interpretation of the mail fraud and wire fraud statutes. We had a good recent Supreme Court case on point and I wrote a long letter essentially saying that if the government charges our client, we are going to raise this defense and that will undermine the prior conviction that you have. So after the letter was sent, I went with an assistant

general counsel of the company to the U.S. Attorney's office and the US attorney and his assistants took us into the Grand Jury room and he laid out all the evidence against the company and said we could indict the company and we would win, but it would be just too much of an effort and we don't have the resources and so we are not going to prosecute. I then proceeded to start to refute all the evidence that they had shown us in the buildup of this presentation. The inside counsel said "You can't take yes for an answer and let's get out of here! " So we did depart and the company was not charged. Amusingly, the lawyer for the company that had plead guilty I think believes to this day that somehow we did something improper with the U.S. attorney to have our client not charged. But in truth we only relied on a good legal argument that we had developed.

Another major matter that I handled at that time, related to an independent counsel investigation, a preliminary investigation that was conducted against the client Andrew Cuomo who at the time was the secretary of HUD. I was retained by him and his father--Mario. Mario told me that it would be the mutilation of Andrew's political career if an independent counsel were appointed. Basically, we had 90 days to disapprove the allegations and to satisfy the Department that there was no point and no justice in appointing an independent counsel. But we succeeded and the matter was properly closed without the appointment of an independent counsel. Mr. Cuomo is now the Governor of New York having been re-elected. I very much enjoyed that

representation, particularly strategizing with Mario Cuomo who was a brilliant lawyer and a devoted father.

One other matter I should mention is my defense of the CFO of WorldCom, Scott Sullivan. This was a very difficult representation because it was a high profile matter, where he faced very serious consequences in both criminal and civil matters, where he had a very sick wife and a young child and where his relatives, who had brought us into the matter, were convinced he had done no wrong. After very contentious proceedings with the U.S. Attorney's office in the Southern District of New York and the SEC, we were able to work a deal, whereby in return for his testimony against others, he received a relatively lenient sentence. We also negotiated an excellent agreement with the SEC, which allowed him to keep most of his assets for his wife and child. Scott is now on the speaker's circuit as a born again Christian, and I am pleased that we were able to get him past his problems and move on with his life.

So there were a number of matters that came up like that in that period at Arnold & Porter.

MR. KRANTZ: There are a number of people who have the view that once you have served in government positions like you have served feel like public service is a better career than being in private practice. It seems to me that you may be an exception in that regard particularly since you had such exciting opportunities while in private practice, is that right?

MR. NATHAN: Well, I realize I have been very lucky in my career. I have been very pleased and fortunate that I was able to be both in private practice and in government service. I have always wanted to serve in government. That is one of the main reasons why I came to Washington to practice, but I also think that the service in the government helps to enhance your career in private practice, and I got some matters that stem from that. I'm not a proponent of the notion that the revolving door is a bad thing. I think it is a very good thing. I think is it helpful to private clients when the lawyer has been in the government. As a former government lawyer, you have a good idea of what the government is interested in and can explain that to your client—which, in my opinion, is generally doing the right thing and having diligent people or trying to serve the public interest. That is my experience with career prosecutors and career government lawyers. So with that knowledge, you can explain to your private clients what is the government's goal and how to navigate the shoals of a government investigation or charges. Conversely, having been in private practice and understanding how corporations work and how the private industry works, you can explain to your government colleagues if you are in the government, how certain things operate in the other sectors of society. In one example I can recall, when I was in the government after having been in private practice there was an investigation of a Senator, and the prosecutor thought that the Senator was clearly corrupt because when a bill was introduced affecting an industry in his state, he took jurisdiction in his committee over that bill. I was able to explain to it was quite usual for a

committee chairman to take jurisdiction over a bill that affected the industry his committee was supposed to oversee and, it doesn't suggest corruption that a bill goes to the committee with the right jurisdiction over it and you can't jump to any conclusions based on that alone. There were similar situations where private people in industry made judgments about the goals of prosecutors which I didn't think were warranted and could explain where I thought the prosecutor were coming from. So I think as long as you have your eye on the ball and you know whom you represent and what the interest is that you are representing, you can inform that representation by knowledge both of private industry and government service and you are helping your client whoever your client is at that time.

MR. KRANTZ: Now, unlike a lot of other people who have not had the same extensive government experience, you had a fairly diverse series of positions. What led up to your leaving Arnold & Porter and becoming general counsel of the House of Representatives?

MR. NATHAN: Well, let me say I was not seeking that position. I think it's actually an amusing story. I'll tell you how this came about. I made no secret of the fact that I like government service and I was looking to do government service. I thought honestly after the last stint in Justice that was probably the last time I would be in government service and I would be expected to retire from private practice. But because people knew I was interested in it, one day while I was sitting at my desk at Arnold & Porter, I guess in 2007 I got a call from a friend who had joined the staff of the Speaker of the House, Nancy Pelosi, and he

said would you be interested in being considered for the position of General Counsel of the House? And I said well what is that job? And he said you don't need to know because you're not going to get the job. I just want to know if you can be a part of the group who are going to be considered for the job. He made clear that the Speaker was likely to choose a woman for the position. So I said well you know Nancy Pelosi was the daughter of the mayor of Baltimore while I was growing up; we did not run in the same circles, and I had always wanted to meet her, so I would be happy to be considered if I could get an interview with Nancy Pelosi. But it turned out when she read my resume, she saw I had clerked for Judge Sobeloff and Judge Sobeloff was a very prominent figure in Baltimore, in fact he had been a city solicitor in Baltimore. At the time he was a Republican and he was a city solicitor for the Republican mayor that preceded her father but I learned later that he also stayed over and worked as city solicitor for her father. So she knew him and had a high regard for him but mostly she was fascinated by the fact that if I clerked for Judge Sobeloff I must be very old and decrepit. She conflated my age with his – he was 75 when I clerked for him and I was 24 – and she wanted to see if I could walk in on my own without literally being carried in or without an oxygen tent. So when I came in, not quite that old and when we shared stories about Judge Sobeloff we hit it off and she offered me the position basically saying if you were good enough for Sobeloff you're obviously good enough for this job. So as a result I did have that opportunity and I was delighted to take it, and it turned out to be a really good experience.

MR. KRANTZ: You had indicated that prior to taking the position you were not fully aware of the kinds of things that a general counsel in the House of Representatives does, I guess you learned very quickly. What were some of your tasks and what were some of the most interesting experiences you had?

MR. NATHAN: The general counsel of the House represents the institution, the members and staff in matters that relate to their official duties. So a fair bit of it was to deal with the Speech or Debate doctrine, the privilege in the Constitution that protects the members or their staff in anything involving legislative matters from being subpoenaed or sued or otherwise called to account anywhere other than in a legislative forum. As a result, at that time, it was a heavy litigation load of representing members who were being subpoenaed or sued. One of the first matters that I handled was the aftermath of the search in Congressman Jefferson's office where for the very first time in our history the executive branch had executed a search warrant on the premises of the House and had taken the records of Congressman Jefferson who was suspected of and later proven to be involved in corrupt activities. They had searched his home, that was where they had found the cash in his freezer, but they also searched his office and took away lots of records. That happened before I was there, and motions had been filed before I was there by the person who was my deputy who is an excellent lawyer, Kerry Kircher, but thereafter there were a lot of proceedings relating to protecting those privileged documents. So we had litigation over those documents that had been taken. Another matter during my tenure was an impeachment of a federal judge, Thomas Porteous. He was a

Louisiana federal judge. His basic argument was that yes he had taken money from parties in litigation before him, but he had taken money from both sides and that hadn't influenced his decision. He and his lawyer apparently thought that was a great defense. He was represented by Jonathan Turley. We didn't think that was much of a defense. The issue was whether the House was going to impeach him. He brought a lawsuit claiming that testimony that he had given before a judicial disciplinary panel could not be used against him in the impeachment process in the House. We moved to dismiss that on the ground that what happened in the House could not be challenged in another place, and we won that law suit, that was dismissed. We advised the committee dealing with his impeachment. He was impeached, I believe unanimously. It was a pretty difficult thing to get unanimity on anything in the deeply divided House of Representatives at that time. He was convicted by the Senate and removed from office.

Those were the kinds of matters that we handled, but the most significant one during the time that I was general counsel of the House related to the firings of a number of U.S. attorneys in the second Bush administration. George W. Bush had appointed U.S. attorneys. At the beginning of his second term, he fired a number of them in a very peculiar way, without notice or explanation. A number of those attorneys were very highly regarded. Actually, before I become the general counsel of the House, I had already taken on the responsibility of being a senior legal adviser on the House Judiciary Committee that was looking into the question of these firings. Then later I

was asked to become the general counsel. During that investigation when I was the general counsel of the House, subpoenas were issued by the House to the former White House counsel--Harriet Miers—and by the Senate to Karl Rove. At the advice of the White House counsel, they both refused to appear. They not only refused to testify they even refused to appear and honor the subpoenas, claiming that they were immune because they were (or had been) high White House officials. We thought there was no merit to that proposition. And the question was how to resolve it. Harriet Miers was held in contempt of the House, and a reference was made to the DOJ for criminal prosecution. Obviously that was not going to happen. It was the Republican administration which had recommended that they assert this immunity, and the Attorney General wrote a letter to the Speaker advising that they were declining to prosecute.

The second traditional way that this could be handled was to have the House Sergeant of Arms go out and arrest the person who was held in contempt. They could be tried in the House and imprisoned in the House for the session of the House where this contempt had taken place. That procedure was followed in the 19th century and approved by the courts. It hadn't been followed after the 1920's, and what used to be the prison in the House is now a snack bar, and I think everyone thought it would be cruel and unusual punishment to keep someone in the House snack bar for the term of Congress. The trial in the House did not seem like a politically viable way, and I suggested that we could bring a civil suit. It would be the first time that a civil

suit was brought to compel the testimony of the executive branch, of officials who were refusing to testify. There was a lot of debate on the issue and after a suit was approved by resolution of the House, I went to the minority leader who was at that time John Boehner, and I said this is an institutional matter and Republicans should join in this lawsuit. I said it doesn't take a lot of imagination – this was in 2008 – to think there will come a time when there will be a Democrat in the White House and Republicans will control the House of Representatives, and you'll want to have this authority. Mr. Boehner refused, saying this was a partisan matter, which I did not think it was. Not only did they oppose the suit, and they even filed a brief against us, claiming that the case was not ripe. The case was heard by Judge John Bates in the District Court in the ceremonial courtroom, with the White House counsel, Fred Fielding, at defense table, and Judiciary Committee Chairman John Conyers at our table. After the three hour argument, we did not know how the decision would go, but we did know that both sides had presented all their best arguments and that the court understood them. Less than a month later Judge Bates wrote a superb decision rejecting all of the arguments that the DOJ presented. He rejected their procedural grounds to avoid the merits and then on the merits, concluded that there is no immunity for White House officials from a Congressional subpoena. He ruled that executive officials, like everyone else, have to abide by the subpoenas and, if they wish, raise a privilege objection on a question by question basis, but they couldn't just ignore the subpoena. After that ruling, the Obama administration came in and

we basically worked out a resolution of the matter. But that precedent stands. It is an important precedent for the House. Ironically, a year or so later when President Obama was elected into office in 2009 and a fight broke out between the House which was then under control of the Republicans after the 2010 elections, in the fight with Eric Holder over the so called Fast and Furious investigation, it was that precedent that the Republicans used to go to court. They sued Attorney General Holder and get some relief from the Department of Justice. So that precedent stands as an important precedent for the House. There were a number of other very interesting matters and it was a great opportunity and a thoroughly enjoyable and instructive professional experience. But then when the Republicans took control of the House, I didn't think the new majority wanted my services anymore, and that's when I moved on.

MR. KRANTZ: Okay, you certainly raised the realities of the political process within Congress. Could you talk just a little bit more about that overlay and how it affects your job when you are general counsel hired by the majority party and you have a minority party that is trying to resist your efforts? On a day to day basis does that make the job extremely difficult to do?

MR. NATHAN: No. And we did not represent the majority party. I viewed the job as a non-partisan job. I viewed it that we were representing the House as an institution and then we represented individuals who were subpoenaed. So if it was a Republican congressman that was subpoenaed, we represented him or her without regard to the politics. We assisted them with respect to the assertion of

whatever privileges they had based largely on the Speech or Debate clause or whether they had any other issues. There were other more mundane matters that we dealt with for representatives. For example, each of the representatives has an office in their home district and sometimes they rent space and they have issues with the lease there. We would provide representation and advice with respect to that. There were issues about taxation because they were immune from certain local taxes and we would deal with that. And on all those matters we would deal equally, whether it was a Republican or a Democrat and we would maintain their communications in confidence.

MR. KRANTZ: When you focus on your point which is that your client the House of Representatives and either Republican or Democrat but if you are trying to deal with the client, when you have two different parties, what is the process of doing that?

MR. NATHAN: Sometimes, as for an example, in the lawsuit involving the enforcement of the subpoenas, we had to get approval and in that case it was such a high profile and an important matter that actually did go to a vote of the entire House, so that we had a resolution that would pass by majority and the Democrats were the majority so their view prevailed. In other situations, they have at the House what they call the Bipartisan Legal Advisory Group which is a group of five members of Congress who are usually represented by their staffs. It's made up of the Speaker, the Majority Leader and the Majority Whip and then the Minority Leader and a Minority Whip. Decisions are made by that five person organization and obviously if the issue divides them politically, the

majority -- the three who are in control of the House-- gets the decisive vote. So there were cases where we filed amicus briefs in cases that were pending and where we wanted the courts to know the interest of the House as an institution. Sometimes in those cases there was a partisan divide. When we filed the briefs, we would note that the authorizations for filing it was based on a three to two vote by this group, which was called BLAG. So that's how those decisions were made.

MR. KRANTZ: Okay, well we only have five more minutes for the purpose of this particular interview, and what I would like to use it for is to set the stage for how you happened to have another position in government, this time with the District of Columbia when you became the Attorney General for the District of Columbia.

MR. NATHAN: Right. I should mention that another set of cases that I dealt with in the House had to do with times when there were misrepresentations made to the House by witnesses and there were going to be criminal prosecution referrals. A lot of people in the House, both Members and staff did not want to testify in those kinds of matters out of concerns about waiving privileges and so forth. One of those matters was the case about Roger Clemons, the major league baseball pitcher who had testified about steroids and was accused by the Committee of perjury. The Committee referred the case to the D.C. United States Attorney and the U.S. Attorney's office did bring the criminal case. We had to prepare the witnesses and encourage them to testify, even though they were reluctant to do it. We recognized that unless we did cooperate we would not have a mechanism to get truthful testimony. This is another example that without

regard to politics, it's just a question of serving the institution to get the right answer. But again the decision as to who is the general counsel of the House rests with the Speaker and the Majority party .It's no secret that I didn't have a great rapport with the Republican leadership and the Republican staffers on BLAG, so in November of 2010, when the vote was that the Republicans would take over the House, I submitted my resignation and said I would leave at the end of that term.

I was fully expecting to either retire or go back to law practice or to teach, when out of the blue I received a call from the Mayor- elect of D.C., Vincent Gray, who had just been elected. I had not known him or campaigned for him. He called me, I did not initiate this, and he said that he had been checking around with a number of lawyers and that my name had come up as a person who might be considered for D.C. Attorney General. At that time in the District, the Attorney General position was an appointed position, although prior to his calling me the City Council had changed the law to be effective sometime in the future, at the end of that Mayor's term, so that as of 2015 the position was going to be an elected position. In the interim under that legislation the Attorney General would be appointed by the Mayor and confirmed by the City Council and could only be fired for cause. So the new AG did not serve at the pleasure of the Mayor but could only be fired for good reason. So Vince Gray called me and I went to interview with him, and we developed an instant rapport. I thought (and continue to believe) he was very intelligent and a decent person and had a good understanding of the issues and

the relationship between the Mayor and the Attorney General. He was concerned that--and again this goes to who the client is-- that the prior attorney general had viewed his job as representing the Mayor. But Mayor-elect Gray and I thought the job was to represent the city and to represent the Corporation which is the City of the District of Columbia. Before the position was called Attorney General, it was called the Corporation Counsel. Our conversation focused on who would be the client and what you would do under certain circumstances and we both agreed the Attorney General was not representing the Mayor personally unless it was a lawsuit in which the Mayor had been challenged on something that had been done in his governmental capacity the same as it had been in the House. We represented the House as an institution and then members if they were sued in their official capacities or for things that had happened in government service. I thought the same thing applied to the city and city agencies, and we weren't there to deal with the politics of the situation but to deal with the law and he had a similar approach. He offered me that position and I took it quite happily. It turned out to be a lot more complicated than I expected. A city is a very complicated institution with lots of different agencies and different situations. I was confirmed unanimously by the City Council, and it turned out to be a really interesting and excellent professional experience.

MR. KRANTZ: Because your prior governmental experience had been the federal level did you have some hesitancy or concerns about suddenly being in a position that dealt with a different set of laws and cultures?

MR. NATHAN: Well I did have some concerns, but I loved the challenge. It was an interesting challenge, and, of course, the city of Washington, the District of Columbia, is really a unique institution. Obviously it's a major metropolitan center. It's a city. But for many purposes, it operates as a state vis-a-vis dealing with Federal agencies, for example. And then in other circumstances it's a constitutional entity reporting to and controlled by the Congress. There is a very interesting dynamic and relationship between the Congress and the city so in some ways it's like a territory. So it is a unique institution – as a city, state, territory and a federal enclave with lots of issues. That is one of the things that made the job extremely interesting not only dealing with the city agencies and dealing with the federal executive branch, and the Congress but also dealing with surrounding jurisdictions, Maryland and Virginia, such as with the Metro Board. So it was a terrific opportunity, challenge and a great learning experience.

MR. KRANTZ: Well I think this appropriately sets the stage for what will be our last interview which will cover the time period when you were the Attorney General of the District of Columbia. Also what you have been doing since that time and your observations about what would flow from the rich experience and career that you have had. So this draws our third interview to a conclusion.