THE HONORABLE EARL J. SILBERT

Oral History Project
The Historical Society of the District of Columbia Circuit
The Honorable Earl J. Silbert

Interviews conducted by:
William F. Causey, Esquire

February 29 and March 7, 1992
TABLE OF CONTENTS

Preface ................................................................. i

Oral History Agreements
    Earl J. Silbert, Esq. .............................................. ii
    William F. Causey, Esq. .......................................... iv

Biographical Sketches
    Earl J. Silbert, Esq. ............................................. vi
    William F. Causey, Esq. ......................................... viii

Oral History Transcript of Interviews on February 29 and March 7, 1992 ........... 1

Index ................................................................. A1
NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the U.S. Courts of the District of Columbia Circuit, and judges’ spouses, lawyers and court staff who played important roles in the history of the Circuit. The Project began in 1991. Most interviews were conducted by volunteers who are members of the Bar of the District of Columbia.

Copies of the transcripts of these interviews, a copy of the transcript on 3.5" diskette (in WordPerfect format), and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges’ Library in the United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcript and diskette are available at other locations.

Such original audio tapes of the interviews as exist as well as the original 3.5" diskettes of the transcripts are in the custody of the Circuit Executive of the U. S. Courts for the District of Columbia Circuit.
Historical Society of the District of Columbia Circuit

Agreement

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., its employees and agents (hereinafter "the Society") I, Earl Silbert, do hereby grant and convey to the Society, its successors and assigns, the ownership of the tape recordings and transcripts of interviews of me as described in Schedule A hereto, except as otherwise provided herein. I also grant and convey to the Society all right, title, and interest I might have in such tapes, transcripts and their content, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions.

2. I have not previously conveyed, assigned, encumbered or impaired my rights and interest in the tapes, transcripts and their content referred to above, except as may appear in prior works of mine.

3. It is agreed that access to the aforementioned tape recordings and transcripts shall be preserved and made available in accordance with the direction and control of the Society and subject to terms to be set by the Society. I authorize the Society, subject to the above and to any exceptions contained herein, to duplicate, edit, publish, or permit the use of said tape recordings and transcripts in any manner that the Society considers appropriate, and I waive my claim to any royalties from such use.

4. I reserve the right to use the tapes and transcripts and their content as a resource for any book, pamphlet, article or other writing of which I am an author or co-author.

Date: Nov. 5, 1983

Earl Silbert

Date: June 23, 1995

President

Historical Society of the District of Columbia Circuit

District of Columbia, ss.

On this 4th day of February, 1994, before me, Gayl Ziegler, the undersigned officer, personally appeared Earl J. Silbert, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

Gayl Ziegler
NOTARY PUBLIC, DISTRICT OF COLUMBIA

My Commission Expires July 31, 1998
Schedule A

Tape recording(s) and transcript resulting from \^2\_ interviews conducted by William F. Causey

on the following dates: February 29 and March 7, 1992
Historical Society of the District of Columbia Circuit

Agreement

1. In consideration of the recording and preservation of the oral history memoir, prepared by Earl J. Silbert and me, by the Historical Society of the District of Columbia Circuit, Washington, D.C., its employees and agents (hereinafter "the Society") I, William F. Causey, do hereby grant and convey to the Society, its successors and assigns, the ownership of the tape recordings and transcripts of interviews as described in Schedule A hereto. I also grant and convey to the Society all right, title, and interest I might have in such tapes, transcripts and their content, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions.

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Date: 2/10/94

William F. Causey

DISTRICT OF COLUMBIA ) ss.:

Acknowledged before me this 10th day of February, 1994.

Alma H. Davies
Notary Public

Date: 3/23/95

President
Historical Society of the District of Columbia Circuit
Schedule A

Tape recording(s) and transcript resulting from 2 interviews of Earl Silbert conducted by William F. Causey on the following dates: February 29, 1992 and March 7, 1992.
EARL J. SILBERT

Vita

Born: March 8, 1936, Boston, Massachusetts

Education: Harvard College, B.A., 1957
Harvard Law School, L.L.B., 1960

Employment:

Department of Justice and U.S. Attorney’s Office, D.C. 1960-1974

United States Attorney, D.C. 1974-1979

Principal, Law Firm of Schwalb, Donnenfeld, Bray & Silbert,
A Professional Corporation July, 1979-Present
RESUME

EARL J. SILBERT
4807 Essex Avenue
Chevy Chase, Maryland 20815

Married with two daughters

Education

Harvard College - 1957
Awards: Phi Beta Kappa, Magna Cum Laude

Harvard Law School - 1960
Awards: Cum Laude

Admitted to Bar

Massachusetts - November 1, 1960
District of Columbia - July 17, 1963
United States Supreme Court - May 12, 1975
United States Court of Appeals for the Federal Circuit, D.C. - May 6, 1985

Legal Experience

July 1, 1979-
Principal - Schwalb, Donnenfeld, Bray & Silbert, A Professional Corporation.
Present

1974- June 29, 1979
United States Attorney for the District of Columbia.

1972-1973
Principal Assistant United States Attorney, Office of the United States Attorney.

1970-1972
Executive Assistant, United States Attorney, Office of the United States Attorney.

1969-1970
Attorney Advisor, Office of Criminal Justice, Office of the Deputy Attorney General.

1964-1969
Assistant United States Attorney for the District of Columbia, working in Court of General Sessions; Special Proceedings; Deputy Chief, General Sessions; Grand Jury Section & Criminal Trial Section.

1960-1964
Lawyer, Department of Justice, Tax Division.

This is William F. Causey. This is February 29, 1992 and this is Part I of the Oral History Interview with Earl Silbert. We are conducting this interview in Mr. Silbert's home in Chevy Chase, Maryland. We are alone by ourselves with the tape running and I am not going to be taking notes.

Q. Good morning.
A. Good morning.

Q. How are you doing?
A. Fine.

Q. Earl, let me just start with some questions about your background.

Where were you born?

A. Boston.

Q. What year?
A. 1936.

Q. Are your parents still alive?
A. My mother is.

Q. Does she still live in Boston?
A. She does.

Q. Tell me something about your ancestry.
A. The grandparents of both of my parents came from Lithuania around the turn of the 20th century. My grandfather on my mother's side was a rag
merchant. Really a peddler. He used to go from farm to farm and location to location with rags on his back. Eventually he became a very successful businessman. My mother was one of five children who grew up in Boston and went to Wellesley College. My father grew up in a family of two brothers and one sister. It was a very closeknit family. My grandfather was a doctor. He died when my father was 15. My grandmother was a very strong-willed woman who peddled coal and did everything she could to make certain that each of the children got a first rate education. And, they did. My father went to both Harvard College and Harvard Law School. He was always a very loyal alumnus of Harvard. It meant a lot to him. The family continued to live in and around Boston, although neither my father nor any of his siblings are now living.

Q. What section in particular of Boston?

A. They lived in many places. They lived in what is now the North End. They lived in Roxbury when they grew up. They lived at one time in the West End. All of these various locations are within the city of Boston itself. I was born in Boston. When I was five, we moved to Brookline which is a stone's throw away from Boston and contiguous to it. That is actually where we grew up. My father's other siblings spent most of their adult lives in Newton, which is another suburb of Boston. One of his brothers, though, lived in New York and Cincinnati.

Q. Now, what year did your father pass away?

A. 1980. He was 87.

Q. Did he serve in World War II?
A. No, he would have been much too old for that. In World War II, being born in 1892 – and we entered in 1941 – so he would have been 49 years old.

Q. Did he see World War I?
A. I'm trying to think. You know I'm not sure I ever asked him that question. He would have been twenty-five at that time. I just don't know why not. He was, a little later – for two terms – a legislator. A local Massachusetts legislator. He was in the House of Representatives.

Q. What was his political party?
A. He was a Republican. He was a staunch Republican.

Q. Did that, was that an influence on you as a young person?
A. Not really. Although I favored the Democrats, there was never any ideological dispute within the family. He was attuned to the Republican ideology. I mean Republicanism, not so much on an ideological basis.

Q. Do you remember what years he served in the legislature?
A. I think it was 1921 and 1922.

Q. How many brothers and sisters do you have?
A. I have two sisters. One older and one younger.

Q. Tell me something about them.
A. The older sister went to Wellesley College. She is 3-1/2 years older than I. She married a physicist and has remained in Boston, actually living in Belmont. She has two daughters – one in the late 20's and one in the early 30's now.
She is very much interested in nature, birds, and gardening. She also is very much a grandmother now. The younger sister lives in Baltimore and has been there for quite awhile now – probably around 30 years. She even roots for the Baltimore Orioles. Much to my disappointment. She's a real Baltimore Orioles fan.

Q. So you're a Red Sox fan?
A. I still root for all the Boston sports teams that I grew up with: Red Sox, Bruins, Celtics.

Q. Well, maybe the Red Sox will win a World Series next century.
A. I'd like to see one while I'm still around.

Q. Where exactly in Baltimore does your sister live? I'm from Baltimore.
A. She lives right in the city in the Mt. Washington area. She has three children. She, herself, went into the Baltimore school system. She taught there and worked for an educational foundation. She then left education, went back and got a Masters in business and has been working with one of the Maryland banks. I think it's Maryland National Bank, as an investment advisor, particularly in the area of stocks and investments. This is very interesting since my father had a great interest in the stock market himself. You know I think there's something there actually, whether it's conscious or subconscious.

Q. So your early school years were in Boston?
A. Yes. I went to elementary school in Brookline. We moved to Brookline when I was 5 so I spent my elementary years in Brookline.

Q. What kind of student were you in say grammar school, the early years?

A. Well, I did my homework and did all right academically. I loved grammar school. We had about sixty kids in our class. I'm friendly with some of them to this day.

Q. What was the name of the school?

A. Lawrence. Lawrence Public School.

Q. Tell me the one teacher, if there is one, that had the most influence on you in grammar school. Can you think of one?

A. Well, there were a couple. There was one teacher I had whose name I am having a little trouble with right now. She was the teacher in the third and the fifth grades. I kind of remember one incident when I referred to her as "mother." That stands out in my mind. Then I had a great sixth grade teacher, a great seventh grade teacher in math; and a great eighth grade teacher in history. The school had real good teachers. It was an excellent school. Our daughters have gone to private school in which I think they have received an excellent education, but I must say I think I got as good an education in the public school to which I went.

Q. Did you have a favorite subject?
A. Not at that time. Not really. They had very good instruction in English, history, math and the like.

Q. What kind of things did you read when you were in grammar school?

A. I was spoiled because my father used to go to the library and get books for me to read. I read like a demon. I read, not science fiction, but all kinds of novels and historical stories. A lot of books by, as I recall, Arthur Conan Doyle. Not only Sherlock Holmes but some of his other works. Sir Walter Scott. A whole variety. He must have emptied out that public library. We didn't have a car in the early years so he used to walk up there to the library and bring back a stack of books.

Q. Did your family travel at all when you were younger?

A. Almost none. I was never on an airplane until I graduated from law school which for some in this day and age is almost unthinkable. Now we may take flying for granted and not think about it. But I never was in an airplane until I graduated from law school. We didn't have a car until I was about ten years old. We did sometimes go to New York City over New Years for about three or four days at a time. I had a bachelor uncle who worked at the Federated Department Stores. He was an economic analyst and apparently a very astute one. He was, I think, a member of some government council on labor-business relations. He used to come to Washington fairly frequently. He is actually the one that paid for my education. We
had a summer place up in New Hampshire, a little cottage 50 years old, and he paid for that too. He was very generous.

Q. Now where did you go to, did they call it Junior High School?
A. No, actually the elementary schools in Brookline went through the 8th grade.

Q. And then you went into High School?
A. Into High School. Although I didn't go to High School in Brookline. My father wanted to make sure I had the best chance to go to college. I was really a young kid at the time. I went off to Boarding School – Phillips Exeter Academy in New Hampshire.

Q. Now how about your sisters? Did they also have that kind of?
A. No, they both went to public high school. Brookline High School, which was an excellent high school. And, as I said, one got into Wellesley College and the other went to Radcliffe. I'm not sure there was any need to go to Exeter. I never thought about it at the time. I was a young 13 and much less sophisticated, for example; than our own children. It wasn't even a question of wanting to go. Of course it was hard to get in. And, if you're lucky enough to get in, you'll go. So, that's what happened.

Q. So you got in. So I take it you were a very good student.
A. I did reasonably well in school.

Q. That's in New Hampshire?
A. Yes.

Q. So you spent 4 years there?

A. Yes.

Q. Tell me about those years. Did you have a memorable teacher?

A. My favorite was one of the hockey coaches. I played ice hockey there. Both coaches were history teachers. The assistant coach was a teacher by the name of Mr. Bragdon, now deceased. I became friendly with his son, who was also a hockey player. He taught American History. He was a wonderful teacher. I was lucky enough to have him my last year there. He had such enthusiasm for his subject. He enjoyed talking, communicating about historical events and what went on. It was infectious. At least to me it was.

Q. So history was your favorite subject?

A. I don't know that I'd really say that. I liked other courses as well. I at one time, thought I'd focus actually in math and science. But I concluded that while I did well academically in the subjects, I was not creative enough to be someone who might be able to make a contribution and do the work other than one does if one works and tries to apply yourself. But in terms of having that extra something special, I didn't either have the interest or the drive or the talent, or a combination of all three. But I enjoyed it. Exeter provided one with an outstanding education. The teachers varied. Some had less enthusiasm. I remember one who was very obviously disappointed or bored with being a teacher. I remember he talked about having torn
up and thrown his PhD dissertation into a river. The overall instruction or teaching at Exeter was outstanding.

Q. What years did you go there?
A. From 9th through 12th grades.

Q. What years?
A. 1949 to 1953.

Q. You played hockey?
A. Yes.

Q. Did you play any other sports?
A. Well, I played sports all the time but only, varsity hockey. I played both soccer and baseball as well.

Q. Then you went on to college?
A. Yes.

Q. Where did you go to college?
A. Harvard.

Q. You started in 1954?
A. The Fall of 1953.

Q. Did you enjoy Harvard?
A. Yes.

Q. Do you think you enjoyed it as much as your father did?
A. Probably. It was hard work and Harvard is a difficult institution in some respects. I was lucky because I knew a whole lot of people there. I knew people from the Boston area.

Q. You grew up there?

A. That was like a school at home. Then I knew a lot of people from Exeter. The year I went to Harvard there were 75 graduates of Exeter that went to Harvard. So that made it easier in a sense as opposed to some students that might come from a midwestern town and did not know a solitary soul. So I was very fortunate.

Q. Tell me something about your years at Harvard. Your experiences, favorite teachers, memorable events.

A. I didn't have a favorite teacher at Harvard. Harvard is a difficult place. I have a daughter there now and she's having some different experiences because she has worked closely with a number of her professors and teachers. I never did. The classes that I took tended, on the whole, to be large, more of lecture courses, although there were some smaller sessions that met once a week. I do remember a humanities course in which we studied St. Augustine, some of the Greek plays, Rousseau, Tolstoy, Dostoyevsky, and a variety of other great, wonderful authors. I had one teacher, actually two teachers in that course. One each semester. One was the Head of the Expository Writing that all freshman are required to take. He was a very good teacher. Very solid. He was considerate enough my third year in law school to hire me to teach
a section of the Freshman English expository writing course. The teacher I had the second semester, Professor Alfred, was a little reminiscent of the teacher that I had, Mr. Bragdon, at Exeter. While not as effervescent, you could tell from the way he reacted to the literature we were studying that he had a tremendous love and respect for it. He communicated that love and respect to me, in class.

Q. Did you read a lot of Shakespeare?
A. That's hard for me to remember. It does not stand out as one of the works we read in that particular course. Of course, it's hard for me to think of a humanities course without reading Shakespeare, but as we sit here right now, although I read a fair amount of Shakespeare at college in other courses, I'm having a little trouble remembering whether I read one in that humanities course.

Q. Did you play any sports at Harvard?
A. I played freshman hockey, and some JV hockey. I played a lot of intramural sports, as well.

Q. No baseball?
A. Oh, baseball. Soccer.

Q. What position in baseball did you play?
A. Outfield. Fielded left handed.

Q. So you're left handed?
A. Yes. Left handed in sports. Eat and write right handed.

Q. So you batted and threw left handed?
A. Yes.

Q. And, were you a good player?

A. I had trouble throwing. As a kid I dislocated my left elbow and eventually had to have an operation on it. And even still later it caused me to be turned down from the Army. In fact, I remember after the operation the doctor saying – I used to pitch when I was in grammar school – “You’re not going to pitch again.” As a kid that was a tremendous disappointment when I heard those words. I never really had very strong arm. I like to bat. Still bat.

Q. Have a good batting average?

A. I don’t know whether it was good or not.

Q. Now, did you try and join the Service after you graduated from Harvard?

A. No. Let me think. I’m trying to recall when I got turned down. When I graduated from Harvard, I went out West with two friends. We went to California and worked there for about seven weeks. We travelled around. When we came back, I was planning to go in the Army then. I had been admitted to law school although I had no intention of going at all. And, in my senior year at college, I was undecided what I was going to do.

Q. You at least had to apply.

A. I did that only because my father asked me as a favor to do it.

Q. Okay.
A. I applied to Harvard Law School. There was very little you had to do in terms of filling out an application. You only had to take the Law School aptitudes and send them a transcript. That's what I did. In those days it was easier to get in than it is now and I was fortunate enough to get in, but had no intention of going.

Q. So you did not go the year you were accepted?

A. I wound up going because when I came back from California, I had become interested in teaching. I had done some social service work at Harvard with underprivileged kids and I really enjoyed that. I was also inspired by Mr. Bragdon and thought I'd like to be a high school teacher. That's what I thought I wanted to do. But, as I said, I had gone out West and came back, probably very early September, or late August, thinking of going in the Army. And, then I decided not to do that. That was when Sputnik came out in 1957 and things were escalating a little and uncertain. And I wasn't sure. While everybody had to do their service, I wasn't sure that was the most opportune time. I decided to get a teaching job. It was rather late. I did talk to a couple of private schools because I didn't have the required certificate of education for public school teaching. I was too late and nothing worked out. It came to the middle of September and I didn't have a job and I had decided to put off going into the Army at that time. Since I didn't have anything to do, I guess I'll just go to law school. And, that's how I wound up in law school.

Q. So you started in Harvard in what, the Fall of 1957?

A. Yes.
Q. You say that previous summer you had gone out to the West Coast and travelled around?

A. And worked for about 7 or 8 weeks.

Q. Do you still keep in touch with any friends you had back in those days?

A. From Harvard?

Q. Yes.

A. Oh, sure. I was lucky enough to have, as I say, friends in a variety of areas. You know there were different kinds of students that went to Harvard. There were the local group, say from around Boston, and I'm still friendly with a number of them. There were some jock types that I knew and was friendly with. A few from prep school. Some from the Mid-West – a number of engineers. I don't see as much of them now, except at reunions. A number of students came from New York and I still maintain a friendship with them. So, yes. I go to my college reunions. I've missed only one and that was because of a real problem scheduling.

Q. Do you have any friends from those days who practice law in Washington now?

A. Let me see. Some, yes. There are not as many, for some reason, in Washington as elsewhere, such as Boston or New York.

Q. Which one of your friends from either your high school or college or even law school days has turned out to be, for the lack of an expression, most successful?
A. Oh, that’s hard to say. You talking about law school too?

Q. We'll include law school.

A. The law school class that I was in had some real stars. Mike Dukakis was in our class. We're from the same hometown. I had not known Mike prior to going to law school. He was a couple of years older than I. But, we became good friends in law school. We used to play tennis together and have lunch in Boston Common when we both had summer jobs our second year at law school. We used to brown bag it and have lunch in the Common with several others. Bill Ruckelshaus was certainly extraordinarily successful. He has had an outstanding career. So, of course, has Senator Paul Sarbanes.

Q. Anybody become a judge?

A. Yes. Dick Arnold. I had gone to high school with him and then we were in law school together. I think he went to Yale College. He was a brilliant student. He was for awhile, a short term, a District Court judge and is now on the Eighth Circuit Court of Appeals. Paul Plunkett also became a federal judge in Chicago. I have a couple of my good friends who are professors at Harvard Law School. Phil Heymann, who was at one time Assistant Attorney General in charge of the Criminal Division. He's been a professor at Harvard for a long time as has Frank Michaelman. Also Gary Bellow, who made a tremendous contribution here in Washington to the predecessor of the Public Defender Service, the Legal Aid Agency. He really, more than anyone, was responsible for developing or turning what was kind of a sleepy
agency, into an outstanding Public Defender Service. He set the tone really for what has been maintained to this day. He is now back at Harvard teaching primarily clinical courses in the poorer neighborhoods. He's a truly devoted lawyer who has made immeasurable contributions to public interest law.

Q. Now, you did not have a strong desire to go to law school?
A. That's probably overstating it. No desire.

Q. Okay. No desire to go to law school, but you went?
A. I went.

Q. And, I assume you did well?
A. Reasonably. Surprisingly to myself I did reasonably well.

Q. Did you become more interested in law while at law school?
A. Well, yes and no.

Q. Or was it a struggle to stay enrolled?
A. Yes and no. I thought the classes, some of the classes were terrific. Not because the subject matter intrigued me that much. But there were some great teachers, particularly in using the so-called Socratic method of question and answer.

Our sections had about 125 students in a class. In each of those sections there were probably half a dozen to a dozen very bright students, quick-thinking, who were able to keep up with the professor. I had to struggle to follow the exchanges and try to understand them. But it was really exciting, almost as an observer, certainly not as a participant, but as an observer, to follow the repartee.
This is a continuation of the Oral History Interview with Earl Silbert, February 29, 1992, Part II. Okay, Mr. Silbert.

A. I had one professor who taught civil procedure. Now that's hardly an exciting subject. I don't mean any disrespect to any of the teachers of that subject. We all continue to wrestle with it, at least those of us that practice in the area of federal litigation. I laughed in his classroom from the moment I went in to the moment the class ended. I was never sure I understood a single thing that was going on, but he was terrific. In fact, I used to follow him around from course to course. It didn't matter what the course was. If he taught it, I would take it.

Q. So did that become your favorite subject in law school?

A. What, civil procedure?

Q. Yes.

A. Oh, no. I took a whole variety of courses with him. Administrative Law, Equitable Remedies, and I think state and local government. He later became Dean of the Law School. That was Albert Sachs. He passed away this last year, which was very sad to hear. He was a terrific teacher, extraordinarily bright, and a wonderful human being.

Q. Didn't he write that famous book on legal process with Hart?
A. Yes, I think it was Hart and Sachs.

Q. Yes. Hart and Sachs.

A. I never actually read that book. Dean Sachs, Professor Sachs, was a gifted teacher. He had back troubles later on that kept him in a lot of pain.

Q. What made him such a good teacher?

A. One, he was a brilliant man. He also had an extraordinary sense of humor. It's hard to say what makes one person funny. But in talking about intellectual subjects and keeping up with a bunch of law students, he had a unique facility for doing that. And as part of the repartee that was going back and forth, he would make comments that were extremely funny.

Q. So, did you have a favorite subject in law school?

A. No.

Q. During law school, did it ever, did you ever think or dream about becoming a public servant such as United States Attorney or a judge? What were your goals and ambitions as a law student?

A. I barely stayed in law school. I had no intention of practicing. Just as I had no intention of going to law school, I had no intention of really practicing law when I left.

Q. What were you going to do when you got out of law school? Did you know?
A. While I was going through law school I really didn't know. There was the Army. At some point I became 4-F. It may have been before I went to law school. Because I know I went down for my physical and they took one look at my elbow and said we don't want you in the Army. So I knew I was not going to go in the Army at that point. I think I knew that while I was in law school. I was thinking of going into teaching. I was going to go through law school and then teach.

Q. But not legal education?
A. No. Not legal education. In the lower level. I continued to have that thought for a number of years even after law school.

Q. Did you live at home while you were going to Harvard?
A. No. At college I lived in the dormitories or houses that they have. In law school, the first year I lived in the Graduate Center. That was a very difficult place to live. People were very edgy about how they were going to do in law school. The competition was intense for a great majority of the students, and there was this fellow that really didn't want to be there and was having a little trouble concentrating. The walls were paper thin. You could hear someone typing in the room next to you. My mind was on some other things. I worked hard because I really had trouble understanding what was happening. It was hard. Law school was difficult.

Q. What year did you graduate?
A. 1960.

Q. 1960. Now up to this point in time did you have any interest in politics?
A. None. Well, that depends on what you mean. I used to follow current events.

Q. Did you work for any candidates?

A. I was a member of the “Young Democrats.” Not a very active member, but I did some campaigning. I think the year Foster Furcolo ran for Governor I once went out and pushed some doorbells for the Lieutenant Governor that was on his ticket. Or maybe for both Furcolo and the Lieutenant Governor. But I wasn't real active.

Q. Were you a registered Democrat?

A. Yes. One of the reasons I kept my registration in Massachusetts when I came to Washington, was that Mike Dukakis was going to be going into politics. Even at the local Brookline level I wanted to be able to vote for him, and kept my registration in Massachusetts until 1972.

Q. Did you keep in touch with him after law school?

A. Oh, yes.

Q. Are you still friends today?

A. Yes.

Q. Did you work at all during law school?

A. I did. I think I mentioned earlier, the summer of our second year of law school, I obtained a job in what was then a small Boston law firm by the name of Hemenway and Barnes. I'm trying to think of the size. I'm sure it was under 15. It was
probably about a dozen lawyers. I worked there with a classmate of mine, Roy
Hammer. There were a number of us who used to meet in the Boston Commons to
have lunch.

Q. Tell me about your experiences after law school? What was your first
job after law school?

A. My first job was in the Tax Division of the Department of Justice. I had
very much enjoyed working, enjoyed the people at Hemenway and Barnes when I
worked there the summer of my second year but that kind of work wasn't for me at that
time. I knew that. I had decided that the only kind of work that I could do, without
really knowing what it was, was working for the government. My father had worked for
the government for many years. He worked in the SEC for probably 25 years. The
only job that I applied for was with the Department of Justice. I was very fortunate to
be accepted. I am not sure what I would have done had I not been.

Q. Well, what happened to this teacher that got trapped into law school?

A. My last two years I had lived in a college freshman dormitory – I might
not have made it through law school had I not moved out of the Graduate Center. I
moved into a college freshman dormitory to serve as, what they used to call, a
Proctor/Advisor which I really enjoyed. And then my third year, in addition to doing
that, I taught a half-course of expository writing to freshmen at the college. I loved it.
It was very challenging work. And very time consuming.

Q. But you made it to the Tax Division of the Department of Justice?
A. I made it to the Tax Division. I thought I should live in another city for awhile. And, again, it was a very unsophisticated choice. I did not want to go to New York. In thinking what's next down, moving south from Boston, because you can't very well go north, it was Washington. The government was there and I applied to work at the Tax Division.

Q. So, your first year out of Harvard Law School you were working in the Tax Division at Main Justice here in Washington? And you were in the Justice Department building?

A. Yes. Main Justice. At that time almost everybody who worked at Justice, with one exception of people working in what used to be called the "Star" Building, was located in Main Justice. And, that's were I was.

Q. You started there in 1960?

A. The Fall of 1960, just before the 1960 election.

Q. How long were you at the Tax Division?

A. 3-1/2 years.

Q. So you were in the Tax Division of Justice during the Kennedy Administration?

A. I was.

Q. So, Robert Kennedy was your boss?

A. He became the boss shortly after. I went to work there in September and he, of course, came in January 1961.
Q. So you started there, was Brownell still Attorney General?

A. I believe Secretary Rogers.

Q. Rogers. Tell me about your experiences in the Tax Division at Justice?

A. I was a really very uninformed law school graduate. I thought I'd like to be in the Trial Section. I didn't know too much about what trials were. I don't think I'd ever really seen one before. They didn't have much in the way of clinical education. I had been in the Legal Aid Bureau at law school so I had been in court a couple of times. But I was not put in the Trial Section. I was put in the Appellate Section. Actually, the Appellate Section of the Tax Division had a group of very talented young lawyers out of law school with whom it was a privilege to work and get to know. I'm friendly with a number of them to this day. They had some longer term employees who were putting in their time, some. But they also had a group of reviewers, who were more experienced senior people. They had been in the government for many years and were very impressive, first-rate lawyers. I learned a lot from them.

Q. Who was Head of the Tax Division?

A. Judge Oberdorfer. He was the Assistant Attorney General while I was there.

Q. Did you get to know him well?

A. No. I was at the lowest level there was and he was the Assistant Attorney General. I did get to know his Deputy, John Jones from Covington who is a
very fine lawyer and a very fine person. I got to know him somewhat. I was primarily in the Appellate Section but I had been assigned to the Criminal Division for about six months to do the most junior of work.

Q. Well, what were you doing? Were you writing briefs?

A. I was writing briefs on appeal and then arguing the cases. I did get a chance to go around. I argued in every circuit court in the country but D.C. and the Tenth Circuit. That was a great experience.

Q. Do you have a memorable case?

A. No, I don't think so. I can't say that there was any precedent shattering matter that I handled. I was not really a tax lawyer. I had taken the basic tax course at law school. But I was fortunate because in those days offices were crowded. In our office at Justice we had three lawyers and one secretary in one room. It was hard to concentrate.

Q. I don't think it has changed much.

A. Probably not. But one of the lawyers, Dick Heiman, had gone through the NYU graduate program in tax. He knew tax. This was of a great benefit to me because I knew very little tax law. When a problem would come up, he was very helpful.

Q. Well now here you were a young Harvard Law School graduate in Washington, Democrat by persuasion. Did you get caught up by the Kennedy era in Washington? Did you get involved in the social set of the Kennedy life?
A. No. I can't say that I did. I watched it and observed it as did so many others. I was not in those circles. I was a bachelor lawyer.

Q. But you had all the entry cards, Harvard, Boston?

A. But I wasn't very political.

Q. What would you do during your spare time? The spare time that you had?

A. Trying to get to know the city. I was a bachelor. I was dating and making friends. I also became very involved in working with underprivileged children.

Q. Where were you living?

A. Georgetown.

Q. There's another ingredient, and you missed it, huh?

A. That's right. Actually, I had a great time. I lived in 2 or 3 houses during my bachelor years in Washington, in Georgetown, and had some good times. I also had a sense of accomplishment from tutoring, sports, and other work in the inner city.

Q. So what did you do when you left Justice?

A. Well, I had been in the Appellate Section of the Tax Division. Before I left the Appellate Section, I had begun to think about teaching again. I took some courses at George Washington University of the kind that you would need to get a teacher's certificate. And, I went at least for a year. I know I took courses at least two semesters, and it may have been three.

Q. And, this is while you were at Justice?
A. Yes. One of my courses required me to go sit in a classroom and observe. I think I went to Coolidge High School. But I didn't complete it. I'm not sure exactly why. About nine months before I left Justice, it was at least nine months maybe a year, I had been in the Appellate Section and I had other friends who were in the Trial Section. I can't say I had a great desire to be a trial lawyer but I thought I ought to learn something about trying a case. Now the lawyers in the Trial Section in the Tax Division at Justice traveled all the time. They would have to go out to the districts where they would have their cases and they would be gone for long periods. For your Appellate arguments, they were short trips. I had thought about transferring to, seeing if I could transfer to the Trial Section of the Department but I wasn't enthusiastic about that. I had a friend down in the U.S. Attorney's Office, Dick Coleman, a classmate of mine and a friend. He said, why don't you come over and try some cases at the U.S. Attorney's Office? I didn't even know what a U.S. Attorney's Office was. I probably had heard the name before but in terms of knowing what it was or what it did, I didn't have the foggiest notion. I certainly had never thought of being a prosecutor. That was not a thought that had ever crossed my mind. I had an uncle who was a defense attorney, a good one. But I thought I'd go over there and apply.

Q. When was this, now?

A. I went over there in 1963, because I joined the Office in March of 1964. I had to wait about nine months. After they told me they would take me, I had to wait nine months for a vacancy.
Q. So you stayed at Justice and when the opening came up in the U.S. Attorney's Office you went to the U.S. Attorney's Office?

A. Right.

Q. Where were they located at that time? In the Courthouse?

A. The U.S. Attorney's Office? Yes. The main office was in the Courthouse. The person I had interviewed with was Charles Duncan who was the first or principal assistant. He was as he is now, a real gentleman. I have always been very grateful to him because of the fact that he was really the one that offered me the position.

Q. Now who was the U.S. Attorney at that time?

A. Dave Acheson.

Q. But Charlie Duncan was the person who interviewed you?

A. Yes.

Q. Basically got you in the office?

A. Yes.

Q. So you went in the office sometime in 1964?

A. Yes. March.

Q. You left Justice behind?

A. Yes.

Q. And you became a prosecutor?

A. I did.
Q. Now, how did the young man who didn't want to go to law school and almost flunked out and
A. I didn't quite flunk out, but I was hardly enthusiastic about being there.
Q. How did this person become a prosecutor? Did you enjoy it right away? Did you finally decide that this is what I want to do?
A. I had absolutely no knowledge of what prosecutors did in any realistic sense. I didn't consider myself as being a prosecutor, whatever that means. I was assigned to what was then called General Sessions. Tim Murphy was the Chief. Bill Pryor was the Deputy Chief. There were about ten people in the Section. We had one secretary for all ten lawyers. She was actually Tim Murphy's secretary but she would help out for everybody else. Most of us would sit in what they used to call the bull pen. About seven or eight of us shared a room. Those more senior were lucky enough to have a desk. And, there was a counter. This was in what is now Building A in Judiciary Square on the corner of Fifth and E Streets. The next nine months were the greatest experience one can ever have. And maybe the best I ever did have.
Q. Why is that?
A. It's hard to describe. It was a very human, people oriented experience. We sat behind a counter that separated us from all those who came to the office. A high counter, probably 3-1/2 feet - no more - 4 feet. Police officers, victims of crime, people who might be accused of crime, even defendants were on the other side. There was the extraordinary human experience of sitting behind the counter and listening to
citizens' complaints, people coming in and wanting to have somebody arrested. A lot of them were husband and wife or boyfriend and girlfriend. They were sad but they were also fascinating to hear. Many involved terrible family situations for which there appeared to be no solution. Other citizens' complaints involved landlord/tenant problems, and petty thefts, and the like. Meeting police officers was a new experience. I'd never known any police officers. Some were good, some were average, and some were not so good. There was a great group of prosecutors to work with. By persuasion, the clear majority had a liberal Democratic philosophy. Yet prosecutors were often thought of as being conservative folk. But that was not the basic philosophical orientation of our group.

Q. Well here you had spent a number of years representing the United States in all the various federal circuits and now you're looking over this counter at landlord/tenant problems, and husband/wife problems. Was it a let down for you? Did you have problems adjusting to that?

A. Nothing like that. When I was in college I had done work in settlement houses in some of the underprivileged areas in Boston. And I had done a lot of that work when I first came to Washington. There was a small group of us, about five, who formed an organization called "The Metropolitan Athletic Association" and then it became "The Metropolitan Athletic and Educational and Cultural Association," to try and help underprivileged kids in D.C. We ran organized basketball leagues and softball leagues. We once had 28 teams in our basketball leagues. We would try to get
kids that were not otherwise playing on teams to get them off the streets, get them
doing something constructive. One of our group, I don't know how he ever did it,
obtained a grant, some funds for a summer camp for these kids. Somewhere in
Spotsylvania, I believe. It took a lot of work. You asked me how I spent my time. My
first few winters in Washington, I used to spend every Saturday in the gym. From 9:00
or 10:00 in the morning until 5:00 in the afternoon, because I was running our
organization's basketball leagues. I even wound up having to referee some of those
games – that was a challenge. It was all volunteers. I used to get friends of mine to
coach some of the teams. It was hard getting referees. I had played playground
basketball, but very little formal. These kids were good basketball players. Sometimes
it got a little touchy out there, making calls or failing to make calls. When I was in the
U.S. Attorney's Office, I saw a few kids come through that I had seen play basketball in
our leagues. I actually was able to help out some. While I was here, in addition to
running these basketball leagues, I had participated in a group that did
social/recreational work at the Richardson Housing Project on East Capitol. Then I
tutored for five years, all in that same area. Working in General Sessions was
tremendously exciting from a human point of view. I took to it very readily. I loved it.

Q. So you basically worked out of Building A?
A. Yes.

Q. Now, do you remember your first trial?
A. I remember my first non-jury trial. It was a petty larceny case. I haven't thought about this now in 25 years. It was before Judge Kronheim. There was nothing unusual that I recall about that particular trial. Someone stealing a machine tool out of a garage. I probably had written out every question that I was going to ask. Oh, no, I couldn't have written out every question because you never had time to do that. I feared I would be unable to ask one question after the next. I could ask, "What is your name?" But beyond that, I wasn't sure what the question was or how to formulate or phrase the words.
This is a continuation of the Oral History Interview with Earl Silbert on

February 29, 1992. Earl, I believe my question when we broke was:

Q. Did you obtain a conviction in your first trial?
A. I think I did. I haven't thought about that first trial in a long time. That's
why I hesitated. I certainly remember the first case I lost. What I tend to recall more
than the cases I won are the cases I lost.

Q. Tell me about the first case you lost?
A. It was a case before Judge Kelly. As I recall it was a theft from an
automobile. I did think about it a lot at the time. I thought I had proved an air tight
case in the sense that I had a witness, a neutral observer who saw the defendant prior
to taking or removing the item, or breaking in or damaging the car, whatever the
charge was, either theft or damage to the car, during the offense, and after the offense
until the time the person was arrested. How could you lose a case like that? The
defense attorney, who was a regular practitioner in the courts, Charlie Schafer, asked
the witness whether she could remember whether the defendant had a hat on or not.
She couldn't remember one way or another. He just kept pounding away at the fact
that she couldn't remember whether the defendant had a hat on. And, low and behold
to my surprise, Judge Kelly found the defendant not guilty. I was taken aback by that.
Q. What lesson did you learn from that case?

A. I learned that sometimes in the defense of a case, defense counsel, if they really focus or harp on some particular fact before a judge or a jury may, with enough vigor and expression of belief in their cause, produce a result that at least seemed to me to be not called for by the facts. That lesson, amplified and modified in various forms, is something I noticed as a prosecutor throughout the years. I’ve also seen it as a defense attorney.

Q. Now, let me focus my next line of questioning. Let me focus on those first years as a prosecutor. I want to ask you to talk about your recollections about events and people during that time period. Let’s start with people. Tell me about some of the judges you were in front of. Memorable trials or experiences. The judges that you thought were tough. The judges you thought were good. The judges you thought were not so good. What were some of your recollections of judges?

A. It was hard on any one day, and I don’t mean this in the negative, not to come out with some experience worth retelling, some unusual event. Sometimes that might be when you were not in court but the trials or the courtroom experiences were simply unforgettable. Some of it was attributable to the defense attorneys, a number of whom were characters. Some of it was attributable to the witnesses, the victims, or the defendants. And not an insignificant portion was attributable to the judges because at least the judges who sat more on Criminal, tended to be a varied, highly individualistic group that had their own personalities that were very pronounced in the way they
conducted themselves on the bench. A lot of times you never knew what was going to happen. It was a tremendous learning experience but it was also a great living experience, having been in their courtrooms.

Q. You would go in front of pretty much the same judges all the time?
A. I can't remember the exact number of judges who were in General Sessions at the time. There might have been 15 to 20, something of that number. But there were usually 4 or 5 that sat more in Criminal. There were others that came through but there were 4 or 5 who were there more often than others.

Q. Were there some judges who got to like you? Or, to the contrary, did you sense there were some judges who weren't very happy about seeing you walk in with a handload of files in their courtroom?
A. I wasn't aware that there were any of the latter, that is the judges that didn't like me. I hope not. At least, I never had run-ins with the judges. As many another assistant, I had some maybe embarrassing moments in front of judges because I obviously was a young trial lawyer and we all make mistakes, even to the present time. But I probably made, not probably, I made a lot more mistakes in those days. A couple of the judges, and one in particular, were not hesitant to point that out. You took your licks. I took my share of licks.

Q. How long were you prosecuting cases in General Sessions?
A. My first term there was 9 months. That was the highlight in a way. I then later came back and was a Supervisor, the Deputy Chief of that Section for about
a year. I was not in court as often during that particular year as I was the first 9 months when I was in court all the time.

Q. How about some of the defense lawyers you were up against? Do you have any memorable moments with defense lawyers?

A. I'm trying to think. They were, in their own ways, as very much characters in some respects as some of the judges were. Bill Bachrach, Charlie Schafer, Bill Tinney, may he rest in peace, Millard Marshall, Mr. Meeks, and Mr. Pekins. I remember Bill Pryor, Judge Pryor, when I was going to negotiate my first case at the counter with a defense counsel, said, "Well, there's Mr. Pekins," who was a kind of easy going and not very aggressive, "You ought to be able to handle this kind of negotiation." The attorneys were well known. Some were good and of course the legal interns and the Public Defenders or Legal Aid Agency were very good.

Q. All these cases that you were handling were in the mid-60's and, as we know, Miranda came down in 1966 and many of the criminal procedure cases in the so-called "Warren Revolution" didn't come down until the late 60's, do you think that the manner of dispensing justice back in those days was better or worse than what you saw later as a prosecutor in the U.S. Attorney's Office? There was a different kind of justice in those days. I think we can agree. How do you think it compares to today?

A. In some respects, there was a rougher kind of justice then. The judges in Superior Court today, have greater responsibility in the sense that they are not trying only misdemeanors and small civil cases, which is the only jurisdiction that the judges
had in General Sessions in those days. The fact that Superior Court is a court of general jurisdiction, is designed to attract lawyers with more extensive experience who will be challenged by the variety of the cases they hear. That was one of the purposes of the Court Reform Act of 1970. I had the opportunity to participate in the drafting of that legislation. I think it has worked well. The variety from Superior Court being a court of general jurisdiction, the improvement in the process for selecting judges, and the longer tenure of the judges, have resulted in a good bench. So in that respect there has been some change. Not that there were not good judges in the Court of General Sessions. Austin Finkle was a judge before whom I tried a lot of cases. I thought he was great. He later was promoted to the D.C. Court of Appeals. There were, of course, other good judges in General Sessions. The idiosyncrasies of some of their colleagues did make for memorable courtroom experiences.

Q. There is a growing school of thought that within the last several years the judges who have been appointed to Superior Court are just too young and inexperienced. And then, it may a function of the economy, or way that we go about selecting judges today, but we're putting judges on the Superior Court who have hardly tried cases.

A. That is a mistake. I believe the problem is not as much that appointees have not tried cases, but it is the kinds of cases they had tried. I think the greatest weakness, in the selection process through the nominating commission, has been the failure to attract experienced, leading lawyers from the private bar. While most of the
appointments have been good, there have been too many that have come from
government service or with either no experience or insufficient experience in
representing, in handling more complex cases, whether it be in the tort area, contract
area, business area or the like. Nor do they have a large number of fellow judges who
have had the lawyering experience. Some of the initial appointments, Judge Bill
Stewart is one and also some others, did have that experience. If you have a motion for
a temporary restraining order on a business matter, there is some comfort if the
presiding judge knows the language or has had experience as a practitioner or judge
with the area of law so that he or she has a background against which to evaluate the
case. Some of the judges don't. You have to have a balanced court. A court of
general jurisdiction handles a wide variety of matters. Judges should have a broad
variety of backgrounds. In terms of age, I'm vacillate about that. At one time I was not
very much in favor of appointing judges that were too young. I thought that a judge
ought to be at least in his or her mid-50's. I've changed my mind on that. I am worried
about appointing judges for courts of general jurisdiction or for that matter what judges
on the district courts and the federal courts of appeals in their mid-thirties. That's too
young to really have the maturity, not the intellectual ability, but the maturity and the
judgment that I think judges ought to have. But I do not believe that all judges have to
be in the mid-fifties. The reason for my change of view, favoring some appointments of
judges in their early or middle forties? All judging can be hard work. But the judging
in the Superior Court is particularly hard because the volume is so great and the cases
keep coming to judges in Superior Court in almost a relentless fashion. I think it's very tiring. The idea of kind of retiring from private practice to the Superior Court, or to any court, but certainly to the Superior Court, is not good. The demands, in terms of the numbers alone, are too great.

Q. Let me go back to when you were prosecuting in the mid-60's. How did you react to the criminal procedure revolution that the Warren Court brought about in the mid-60's? You were right in the middle of the fire?

A. We were. It was not only the Warren Court but it was the U.S. Court of Appeals which was very controversial in those days. All cases from the Federal District Court were appealed directly to the U.S. Court of Appeals — and at that time in the 60's before court reform, all felonies were tried in the United States District Court. There was no jurisdiction in the Court of General Sessions to try felonies. For misdemeanors, the jurisdiction went to the local Court of Appeals and then by writ of certiorari in a sense to the U.S. Court of Appeals which for D.C. was really the court of last resort. The Chief Judge during that time was David Bazelon. Judge Skelly Wright was also on the Court with some other judges with a similar philosophical outlook. There was a tremendous ideological split on that court, even sharper than it was on the Supreme Court under Chief Justice Warren. Many of the Assistant U.S. Attorneys hired in the early and mid-1960s had a more liberal philosophy. But Assistant U.S. Attorneys became very victim oriented. I don't think there was hardly a one of us that was not concerned that some of the decisions coming out of both the Warren Court
and the U.S. Court of Appeals did not reflect an accurate balance in the interests of
the defendants and the victims. In fact the pendulum at that time had swung too far in
favor of the accused. I certainly felt that way and so did most, if not all, of my
colleagues.

Q. Were there any particular decisions from the Warren Court that you can
think of that would make you say that?

A. It was probably more the application as opposed to the principles. I
know Miranda was a hotly disputed issue at the time.

Q. How about the "search and seizure?"

A. Search and seizure was a very troublesome area because of the fact that
there you were suppressing evidence that usually indicated guilt beyond question and,
therefore, a guilty person was going free. From the prosecutor's perspective with a
victim in mind, seeing that happen was very upsetting, particularly if it was a murder or
a robbery or a rape, and the defendant might then be placed out in the community at
large with a fear that he would commit another crime. So the search and seizure area
was probably the most controversial. As to Miranda, a number of us in the U.S.
Attorney's Office weren't altogether confident with procedures used in the states or by
certain police to extract confessions. In D.C. from what we could observe, we had a
fairly up to date police department and the U.S. Attorney's Office was pretty vigilant in
screening cases. So we did not see that as a major problem for D.C. and therefore
worried about Miranda because we thought that perhaps some good confessions would
be thrown out and, as a result, a dangerous person set free again. That was very troubling to a great number of us who worked in the office, and I certainly shared in that concern.

Q. You were doing simply trials, trial work at this time? You weren't doing any appellate work?

A. No, I didn't do any appellate work at all. People were supposed to rotate through the Section but I had already spent 3 years doing appellate work in the Tax Division.

Q. Tell me your elevation through the U.S. Attorney's Office. The various positions you moved to and the years that you did that.

A. I joined the office in March of 1964 and I stayed in General Sessions for about 9 months to the beginning of 1965. I then went over to the District Court to work for Oscar Altshuler in what was called the Special Proceedings Section of the Office. It was a small Section headed by a wonderful person – very quiet, very unassuming, very knowledgeable person. The Section handled unusual proceedings: extraditions, mental health hearings, collateral attacks on convictions. I was there for close to a year. I learned a lot of law in the insanity area from the mental health hearings and motions for release of those committed to Saint Elizabeth's Hospital after insanity acquittals. I also learned some law on collateral attacks on convictions. I also had the chance to appear before a number of the judges.

Q. In the District Court?
A. In the Federal District Court. I then returned to General Sessions in early 1966 to work as the Deputy Chief to Tim Murphy. There were a wonderful group of Assistant U.S. Attorneys there and working for Tim was a special privilege. I stayed in that position for about a year. That's when I first came into contact with Harold Greene, who was a trial judge and then Chief Judge. Some of the other judges who came on during that period of time became controversial – Charles Halleck and a former Principal Assistant U.S. Attorney, Harry T. Alexander. And a number of the other judges as well.

Q. What made them controversial?

A. I suspect not only the rulings that they handed down but the manner in which they conducted themselves on the bench.

Q. Did those of you in the Prosecutor's Office formally or informally complain about that behavior? And if so, to whom?

A. No. I don't think there was any formal complaint. As Deputy Chief, I would hear a lot of complaints from Assistants who appeared before the judges. Now, you always have to take into consideration the fact that any advocates, particularly if they lose, may be frustrated. That was certainly true of Assistant U.S. Attorneys, and I would include myself among them as well as any other advocate. So you always had to discount certain aspects. But to me judicial temperament is very important for a judge. The vast majority of lawyers in my experience from all walks of the bar take their responsibility seriously in advocating a cause. Some may have less skill than others,
some have greater skill, some may not be advocating a cause that appears to the judge to be the right cause, but it's usually in good faith. Treating advocates with respect, just the way that advocates treat the court with respect, is an important responsibility. I consider that an extremely important part of judging.

Q. How long were you Tim Murphy's Deputy?
A. Tim became a judge in General Sessions in the latter part of that year.

And then Joel Blackwell, who was one terrific trial lawyer in the District Court and had been for many years, came over to serve as his successor, as Chief.

Q. You continued to serve in the capacity of Deputy?
A. Yes.

Q. How long did you do that?
A. A few more months until I then went over to the District Court Grand Jury Section. When I say District Court, there was only one grand jury section and that was in District Court because, as I said before, the Court of General Sessions didn't have felony jurisdiction.

Q. When did you move over to the District Court Grand Jury?
A. The early part of 1967.

Q. Who was the Chief? Was the Chief Judge still in charge of Grand Jury proceedings?
A. Yes.

Q. At that time?
A. Yes.

Q. Who was the Chief Judge?
A. Matt McGuire.

Q. So you appeared quite a bit before Judge McGuire?
A. No. The Chief of the Section was Don Smith who later became a Superior Court Judge. A very accomplished trial attorney. So I really did not have a whole contact with either Chief Judge McGuire or his successor, Chief Judge Curran. I had some but not a whole lot.

Q. How long did you stay in Grand Jury?
A. Probably six months and then I went to the Trial Section.

Q. In the District Court?
A. Yes.

Q. Do you remember your first trial in the District Court?
A. I'm not sure I remember the very first case. I remember two cases. One

I was assigned at the last minute. Under the master calendar system you could be assigned a case at the last minute. In General Sessions you almost never prepared a case. You tried them off the cuff and it was an extraordinary experience. But I got a case in the District Court. It had been tried once, ten to 2 for conviction with a hung jury. The prosecutor, Bill Davis, had a schedule conflict and I was asked to try this case. It was before Judge Keech, before whom I appeared a number of times. He was a very fine trial judge. It was a very serious assault. Somebody had shot four people,
two seriously. The lawyer for the defendant was a retained lawyer but a tax lawyer who was not experienced at trying cases. He asked some very dangerous questions on cross-examination in that case and he got hurt very badly. I was worried about that case because I wasn't sure the defendant had done it. The Government had good evidence but there was something about it that bothered me. I remember calling the defense attorney at midnight one night to bring something to his attention that may have been of benefit to the defense. This was rather unusual for opposing counsel to do but I was worried. The jury had no trouble convicting. If the defendant did it, he should go to jail and receive a substantial sentence. He had no prior record, never been arrested before. I asked the police department to authorize the detective in the case to go out of town to conduct a further investigation to see if there had been something that was missed. He was a good detective. He said he couldn't find anything. I must have mentioned it to Judge Keech because I remember Judge Keech calling me up and asking if we found anything? I said no, we did not. I had asked, and it was very unusual to get the police department to agree for any police officer to travel anywhere. I think the defendant got 20 months to 5 years. For the crime this was not unmerited. It was a fair sentence. It was not a harsh sentence, because the person shot four people, two seriously. I still think about that case. I've thought about that case throughout the years because of my reservations about it.

Q. Who were some of the other judges you appeared before in those days in District Court?
A. I tried a lot of cases before Oliver Gasch. A lot.

Q. Now he was a former U.S. Attorney?

A. Yes. I thought Judge Gasch was a terrific trial judge. You felt very professional in his courtroom. He himself loved to try cases. He conducted a very professional courtroom and the lawyers, as a consequence, acted in a professional way. That was the right kind of tone to have. I lost cases in front of him and I won some cases. He ruled as he thought appropriate, and he was an experienced jurist. I very much liked trying cases before him.

Q. Who were some of the other judges you remember?

A. Let me think. I appeared before Judge Youngdahl, Judge Spottswood Robinson, Judge Matthews, Judge Bryant, Judge Aubrey Robinson. I tried a fraud case with phony checks and all.

Q. What type of judge was he on the bench?

A. He was in charge of the courtroom. He also knew what trying a case was about, how to conduct a trial. It was very professional and very serious, as it should be in the courtroom. A good trial judge.

Q. Did you prefer to have a trial judge that took control of the courtroom? Or would you rather be in control?

A. Well, I've seen both. I probably fall in the middle. As a prosecutor, I preferred to have the judge in control because I thought that there was more that a defense attorney might be able to get away with, doing something that trial lawyers
know you shouldn't do in front of a jury. Prosecutors face the risk of reversal but the prosecution can't appeal so I thought it was more important for a judge to maintain control. I have seen a couple of veteran prosecutors, phenomenal trial lawyers, who dominated the courtroom. Vic Caputy was one. When he was in the courtroom, there were very few judges who could prevent him from dominating what went on. And Joe Lowther was another. They had a presence, a personality, a voice – all contributing to domination. When they were in the courtroom, they were the principle figure in that courtroom. They were great prosecutors.

Q. How about some of the more memorable defense attorneys during the late 60's when you were in District Court? Let me throw some names out. Edward Bennett Williams, did you ever have cases with him?

A. I never tried a case directly with him. I had a number of dealings with him and he, of course, was a very tremendous advocate. I had the initial stages of a case with him that didn't go to trial. It was a highly publicized celebrated case at the time.

Q. What case was it?

A. Ed Williams represented Heidi Fletcher, who was the daughter of the former Deputy Mayor. She had been arrested with two others for two bank robberies in one of which a police officer was killed. It received extensive publicity for two reasons. One because she was involved, with no prior record of any kind and because both her boyfriend and the second male were considered hippies. They were robbing
banks in Northwest. The case caught the fancy of the press, and certainly The
Washington Post. I tried that case against the two males, which had some fascinating
insanity aspects to it. Ed Williams represented Heidi Fletcher, who eventually pled
guilty before Judge June Green. He was very able. He could get more conferences
before a judge by having an important matter to address. The next thing I knew I
would find myself in chambers before the judge and some matter was being discussed.
That rarely happens in other cases. But he was able to accomplish that. Bill
McDaniels, from the same firm, worked with him. Bill's a very outstanding lawyer
himself. It was a very difficult case for all: the U.S. Attorney's Office, the defense, and
the Judge.

Q. How about Jake Stein?
A. I never had a case against him while I was in the U.S. Attorney's Office.

Of course, he is one of the best in the profession.

Q. How about Bill Bittman?
A. I first met him in the Watergate case.

Q. So you didn't have anything with him before Watergate?
A. Not before Watergate. He's a formidable adversary.

Q. How has the District Court changed over the years from the late '60's
when you were prosecuting cases there?
A. The biggest change in the court has been its jurisdiction. In the late '60's,
when I was there, it served as the court of general jurisdiction for the District of
Columbia, handling the major civil litigation, the probate litigation, and all the criminal felony litigation. In the late '60's Washington was going through a period when it was then considered the crime capitol of the country. It was the focus of a tremendous amount of tension. There were murder and rape cases that received tremendous publicity and interest, that were regularly being tried in that court. So it's a very different court in terms of the kinds of cases that they had then from what they have now. It's night and day.

Q. You said you participated in the Court Reform? And that was in 1971?
A. I did. I left the U.S. Attorney's Office in the spring of 1969 and went to the Department of Justice and that's when the work was being done on that legislation until it was enacted in 1970.

Q. Who got you involved in that?
A. Don Santarelli.

Q. What exactly did you do?
A. Don Santarelli was an Associate Deputy Attorney General and there were several of us, most former Assistants, who worked with him in drafting that legislation. It was enormous effort because it not only provided for the court reform, which was a huge undertaking in and of itself, but also contained numerable provisions relating to criminal procedure.

Q. Who else did you work with on that project?
A. Don Santarelli was in charge. Mary Lawton, who was not a former Assistant but had been in the Department for years, is a genius. She probably did more of the actual drafting of the court reform than anyone. She was in the Office of Legal Counsel. Judge Sylvia Bacon was part of the team. Judy Rogers, who is now Chief Judge of the D.C. Court of Appeals, was part of the team. Tom Lombard and then Carl Rauh, who became first Principal and then U.S. Attorney, were also members.

Q. Were there any results from that project that you either strongly supported, encouraged to be enacted or that you disagreed with?

A. The Court Reform Bill providing for the changing of the jurisdiction of the courts was a monumental change in the District of Columbia. I'm not sure that it received the attention from either the Bench or the Bar or the legislature that it should have. The reason it didn't was the criminal procedure provisions that accompanied it. They received most of the publicity. Pre-trial detention, no knock, and wire-tapping were the three major issues. The first two received the lion's share of the attention. The Court Reform, which was far more comprehensive, and was plainly going to have a far more profound, long-range effect in the District of Columbia sailed through the Congress. This showed how major issues can be sidetracked in light of something else that seems to catch the popular fancy at the time. Pre-trial detention was vigorously opposed.

Q. How did you feel about it?
A. I favored it. I favored the Bill as written because we had put in significant due process and other protections and made the statute very difficult to utilize, recognizing the opposition. It could be used only for certain categories of defendants with strong proof and established prior records of dangerousness. The irony was that, when I left the Department shortly thereafter at Judge Flannery's request to come back to the Office and help implement the provisions, I set out very stringent rules for implementing pre-trial detention. I had to authorize every case. And since constitutionality was going to be an issue, I planned to participate in every case in which the issue might arise. Both then and when I became U.S. Attorney, the Office used the provision pursuant to these stringent rules, sensitive to the opposition to its enactment. The irony is that when I became U.S. Attorney, the mood — the public mood and the press mood — changed dramatically.
The shift was very much in favor of the victims of crime and not so sympathetic toward the defendants to the point where the Office, and me personally, were being criticized for not using pre-trial detention enough. That was a 180, a total reversal of the prior opposition alleging that pre-trial detention was repressive. This was a lesson to be learned of how popular moods and the press can have an enormous influence on what public servants do and what they should do.

Q. How about the no-knock provision? What was your position on that?

A. That was a little more worrisome. The no-knock provisions, which the Justice Department had recommended were only codifying what was the case law at the time. But the no-knock was an emotional issue. The public perception had an enormous influence because no-knock meant to many police barging through peoples' doors in the privacy of their homes. This is understandably a frightening concept. The no-knock provision was supported as a procedure which courts had authorized for extraordinary circumstances. I joined in that support. What surprised me was the extent to which it was blown up as a provision that would create a police state when what it did was to put into a statute the exceptions the cases had allowed to the rule that ordinarily the police had to knock and announce. Moreover, at least in my experience as a prosecutor, there would be very few instances the Government in
Court would rely on these exceptions. In fact, that proved to be the case and no-knock
never became a controversial issue after the legislation was passed, because there were
very few instances where there were no knocks. But again, it could be blown up and
was blown up as a scary proposition and did cause people to fight and oppose the
legislation at the time.

Q. I imagine it was difficult to be a prosecutor in Washington right after the
 assassination of Martin Luther King with the riots. What are your recollections of
those days?

A. I remember them very well because the former U.S. Attorney, Dave
Bress, asked Harry Sullivan, who was one of the greatest Assistant U.S. Attorneys, but
who died a premature death in the Office, to head up a unit to coordinate with the
police and I was asked to be part of that unit. We worked with the police during the
riots. It was when I first met Jerry Wilson, I believe.
Q. Who was Chief of Police?

A. No, he was Deputy Chief. He was not Chief at that time. He became Chief within a year but he was not then Chief. John Layton was still Chief. Under Dave Bress' direction, the charges against those who were caught stealing were very stiff. I think it was part of a policy that was formulated to deter rioting and stealing. Cases that might otherwise have been charged as misdemeanors were prosecuted as felonies. I tried some of those cases and lost some. The problem was that by the time the police got out into the streets and with sufficient force, a number of the persons that were arrested were those who had come along late. They were not the instigators, the leaders. They were people who were followers. A number of them did not have prior criminal records. They were not people that you would say "were criminals," whatever that term may mean, if you're basing it on people having a long record of arrests and convictions. Many of these people had no prior arrests and convictions. It was tough trying those cases. I remember I tried one of these cases before Judge Bryant, who was to become Chief Judge. Judge Bryant was another judge before whom I tried a lot of cases. He was a wonderful man. Extraordinary. He was bothered by those cases. He used to take an active part in trials as a trial judge when I appeared before him. We had a number of battles in the courtroom. He didn't say anything in those trials, but I knew he was disturbed by them.
Q. What was the mood in the Prosecutor's Office after the '68, during the 1968 riots? There was a great deal of confusion in a lot of circles about what was really going on and why it was happening. There was the surface reason, of course, the killing itself but obviously what happened brought out a lot of long standing tensions and frustrations and problems. Did it make people in the Prosecutor's Office sort of rethink what you were doing and how you should go about doing it?

A. I don't think that would be generally true. Other than the prosecutions arising out of the riots themselves, I think the Assistants were sufficiently busy with their individual cases, trials of robberies, rapes and murders and the like that generally speaking they continued to perform their responsibilities. I don't think it had an effect other than in one respect – it increased the community distrust of the police. And that would have an effect on your cases as a prosecutor because police officers are often, in many cases, critical witnesses and if the juries don't believe or accept what the police officers say or credit their testimony, then your case can be in substantial jeopardy.

Q. Did you notice a change with the jurors?

A. I did. It was the attitude to police. It was unfortunate because some of it broke down along racial lines. There was an increased tendency of black jurors to question the credibility of the testimony of white police officers. That was not healthy for anyone. The testimony of police officers should not always be accepted because they are police officers, but their testimony should not be credited or discredited because of color any more than the testimony of any witness should be credited or
discredited. But you could sense that there was that line being drawn that was not healthy from the point of view of police officers being able to do their jobs, prosecutors being able to do their jobs, and also for the community.

Q. What about the prosecution of drug cases in the late 1960's? There was certainly more emphasis I think is placed on them today than 20 years ago, or even 5 years ago.

A. That is true because it's hard to believe that there could be greater emphasis than today. But back in the late '60's, in 1969 and 1970, the crime problem at that time was considered to be at an all time high, the perception was that Washington was the crime capital of the country and we were experiencing then what was, in my view, accurately termed by Dr. Robert DuPont as a heroin epidemic. Heroin was the drug at that time. There were an enormous number of crimes being committed by heroin addicts. How to handle addiction and the enormous crime it caused was a major problem. The volume wasn't anything like it is today. We thought at that time that the volume was horrendous, but it pales in comparison to what it is today. At that time, however, the drug cases were straining the resources of the Office and the police. Of course the police and the DEA did not work well together, which aggravated the problem even further.

Q. Why was that?

A. It was a historical problem that was exacerbated in the late '60's and early '70's in Washington because of personalities I think in the police department and
the DEA – they didn't get along. The problem was that law enforcement agencies in
general did not work well together. That had its adverse effect. That was one of the
principle problems I tried to address when I was U.S. Attorney but it has always been a
problem. Although I'm not as intimately involved today, I suspect it continues to be a
problem.

Q. Were you getting convictions in your drug cases?
A. If you mean in the late '60's, yes.
Q. Because several District Court judges mentioned to me, that one of the
reasons there are a lot of acquittals in drug cases today in the federal courts, is the
juries' distrust of the police and a real reluctance to accept much of what the police say.
Did you see much of that when you were trying these drug cases in the late '60's?

A. I can't tie it specifically to drug cases. The problem that I mentioned
earlier about the lack of credit by some jurors with respect to police testimony certainly
existed, especially after the 1968 riot. I remember some rapes and robbery cases in
which it also applied as well as drug cases so I don't tie it only to drug cases. Of course
in drug cases the principal witnesses are usually and solely police officers. Especially if
it's a smaller drug case, like a buy/bust or something of that kind as opposed to an
extensive conspiracy where you may have some insiders testifying. Although I had a lot
of trials, I don't think I tried a whole slew of drug cases. They were not dominant as
they are today. While there was a heroin epidemic and many drug prosecutions, there
were a lot of cases in which an addict was caught housebreaking or committing a robbery. I think I tried more of those than the straight drug cases.

Q. I believe you said you went back to Justice around 1969?
A. I did.

Q. What did you do when you went back to Justice?
A. I worked in what was called the Office of Criminal Justice which was part of the Deputy Attorney General's Office for a year and a half. The principle task was the Court Reform and Criminal Procedure Act for the District of Columbia.

Q. The Deputy was Richard Kleindienst?
A. Yes.

Q. Who was your immediate supervisor?
A. Don Santarelli.

Q. And you were there from 1969 to when? 1971?
A. No, the end of 1970.

Q. Did you go back to Main Justice?
A. Yes.

Q. You went back to Main Justice and worked there for about a year?
A. Year and a half.

Q. And then what? You came back to the U.S. Attorney's Office?
A. Yes. I came back as the Executive Assistant U.S. Attorney. I was asked by Tom Flannery, who was then the U.S. Attorney, to come back and help work with the implementation of the Court Reform and Criminal Procedure Act.

Q. How much of a difference was there really between the Clark Justice Department and the Mitchell Justice Department?

A. To a line Assistant U.S. Attorney or to a line attorney in the Department of Justice probably very little, if any, difference. I think in overall policy and certainly as an advocate before the Supreme Court, there was a difference. The Mitchell Justice Department was more vigorous in asserting the law enforcement position, however one defines that term, and I realize it's a vague term. Under Ramsey Clark, the Department was less of an advocate than almost a friend of the court. This difference may well have impacted on the leadership in the Criminal Division and among some of the U.S. Attorneys, but not to line assistants.

Q. Did you work closely with Kleindienst at Justice?

A. Not really. Don Santarelli had a lot of contact with Mr. Kleindienst. I met him but in terms of working closely with him, no.

Q. So when you went back to the U.S. Attorney's Office what exactly was your responsibility?

A. It was to work on a number of issues. I think the specific reason why I was asked to come back by Judge Flannery was to help the Office implement the very great changes that were being brought about by the Court Reform and Criminal
Procedure Act from the court reform aspects of the legislation to implementation of some of these provisions like pre-trial detention and no-knock and to make sure that it was done in a very cautious, conservative way. I tried some cases and helped work on problems and overall policy in the Office. I worked very closely with the Judge, then Tom Flannery, U.S. Attorney. He was a very effective U.S. Attorney.

Q. Now, up to this point in time, and I guess you’ve talked about 1970, 1971, you had worked with a number of U.S. Attorneys. Take me through the ones that you worked with and

A. Well, there were only three. There was Dave Acheson, whom I hardly ever met. Dave Bress, whom I saw more often but didn't work with, I was only a line Assistant U.S. Attorney so I didn't have a whole lot of contact with him. And then Tom Flannery with whom I did have a lot of contact because of the position I had.

Q. So you worked closer with Judge Flannery than the other two?

A. By far.

Q. What was it like working with him?

A. He was low key. He had the advantage of being a very experienced trial lawyer. He had been a former prosecutor for about a dozen years. One of the best, but a very different style from Vic Caputy or Joe Lowther. He did not dominate a courtroom, as I understand it. It was said of him that he prayed defendants into jail. He had a great reputation among the judges. He wasn't very publicity oriented, but he commanded great respect from the judiciary and fellow members of the Bar. He had a
very great ability to focus on what was important, or what was significant and attend to that. He was a very good U.S. Attorney.

Q. You were also trying some cases at this time?

A. Yes. I tried the case involving Heidi Fletcher and the two alleged hippie defendants. Ms. Fletcher pled guilty and the two male defendants went to trial and raised the insanity defense. The case received a lot of publicity. I thought more than it should have.

Q. What got you so interested in the insanity defense issue?

A. I got started on it when I worked for Oscar Aischuler in the Special Proceedings Section and handled a lot of cases where people who had been acquitted by reason of insanity and then committed to St. Elizabeth's Hospital, were trying to get out. The question was should they be released on the grounds that they had recovered from whatever mental illness they had and were no longer dangerous? The insanity defense was a very controversial defense in D.C. Judge Bazelon had written an opinion in the Durham case which marked a great departure from prior insanity law. The opinion got a lot of people stirred up and concerned that dangerous robbers, or rapists or murderers would get acquitted on the grounds of insanity and go to St. Elizabeth's for a short time and then be turned back loose on the street. It was a very controversial area and from working on these cases, and those of the Mental Health Committee, I took an interest in the issues and gained some familiarity.

Q. Do you disagree with the Durham decision?
A. Its standard for the insanity defense was basically unworkable. I did not disagree with its concern that the old English test, called the McNaughton Rule, was outdated and too narrow. It was only through a process of years that the D.C. Circuit and other courts around the country came to a position that I agree with – a position between Durham and McNaughton tests.

Q. Of course all that then brought us to June 17, 1972. And, that's probably a good place to stop.

A. Okay.
This is Bill Causey. This is the continuation of the Oral History Interview with Earl Silbert. Today is March 7, 1992 and I am interviewing Mr. Silbert at his home.

Q. Let's pick up, if we can, where we left off at our last session and that is the subject of Watergate. What were you doing when Watergate happened? The break-in itself? Were you the acting U.S. Attorney at that time?

A. No, I was the Principal Assistant under Harold Titus, who was the U.S. Attorney.

Q. Alright. Now how long had you had that position when Watergate happened?

A. Six months.

Q. How big a staff did you have at that time?

A. You're talking about the U.S. Attorney's Office?

Q. Right. Do you remember?

A. It was probably 140 lawyers. It was 155 when I left in mid-1979 and I'm not sure how much it grew between 1972 and 1979. Maybe about 20 lawyers.

Q. Do you remember where you were when you first heard about the break-in?
A. Yes, very well.

Q. Can you tell me about that?

A. Yes. I was in bed. I received a call early in the morning of that Saturday from Chuck Work who was either Chief or Deputy Chief of the Superior Court Division of the U.S. Attorney's Office. He called up and his first words over the phone were, "I have a hot one or a strange one here," I believe at a police precinct. An arrest had been made and he had been called in. Then he called me.

Q. So that would have been the early morning of June 17th?

A. Yes.

Q. Because I think the break-in happened on a Friday night/Saturday morning?

A. Right. And the arrest was actually, as I recall, in the very early morning hours of Saturday the I think the 16th. It might have been the 17th. I'd have to check.

Q. Why was Chuck Work calling you?

A. I was the First Assistant and had worked closely with Chuck before on a number of matters. Why he called me as opposed to somebody else in the Office, I'm not really sure. The circumstances were obviously unusual: five people in suits arrested inside the Democratic National Committee Headquarters.

Q. What did you do after you got Chuck's phone call?

A. Got up. Chuck gave me some background facts about what had happened. They were gathering evidence. He mentioned that some question was
coming up about search warrants because I know I went right in to the U.S. Attorney's Office, over to Superior Court, and started with the application for search warrants for the hotel rooms of those who had been arrested in the Watergate and also a search warrant for a car that had been located and was parked nearby.

Q. When did it first occur to you that this was a very unusual situation, or did it occur to you that this was a very unusual situation?

A. Definitely – and for a number of reasons. First of all, five people arrested in the Democratic National Committee Headquarters for a break-in – that was unusual. Second, the five persons were in suits. Then it turned out that they either didn't have any identification on them or gave false names. Later that day, on Saturday, we learned that one of those arrested, James McCord, was the Security Chief – I'm not sure that that was his precise title of the Committee for the Reelection of the President for the Republicans. That obviously added an enormous new dimension to the matter.

Q. Do you remember how you learned that?

A. Those who had been arrested were about to be arraigned, and I believe it was before Judge Belson, and somehow the police obtained that information and they advised us. How the police got it I don't know.

Q. That would be Jim Belson who is currently on the D.C. Court of Appeals?
A. Yes, though he has retired. He was then a trial judge in the Superior Court. I had a very interesting argument before Judge Belson, which I've never forgotten. The Supreme Court had recently held, in United States v. Wade, that a line-up was a critical stage of an investigation and prosecution, and, therefore, there was a right to counsel at the line-up. Judge Belson expressed concern whether obtaining a search warrant for a premises, particularly after there had been arrests, might fall under the rationale of that Supreme Court decision. I remember that after Chuck and I had drafted the search warrants, which turned out to be critical because they produced very valuable evidence, we were called up to chambers and asked by Judge Belson whether or not we had to have counsel present. I had an argument right then and there, the first, it may be the only one of its kind, trying to satisfy a judge that the reasoning of the United States v. Wade did not apply to a search warrant. Chuck Work and I urged that by its very nature, a search warrant application had to be an ex parte proceeding to avoid notice to the potential persons whose premises would be searched and therefore give them an opportunity to destroy or remove incriminating evidence. Judge Bélson finally agreed. But he's a very thoughtful person, as I'm sure you know, and he was being cautious and wanted to explore it. He had a genuine concern.

Q. Now going back to that arraignment, was that the following morning?

A. No, no, that was Saturday afternoon.

Q. Okay. Who represented the five burglars?
A. That was very interesting. Joe Rafferty came in to represent them. He was with a lawyer by the name of Douglas Caddy. Mr. Caddy had appeared at the police precinct to which the five persons arrested had been taken about 5:00 o'clock in the morning. He wanted to meet and confer with those people. He claimed he was their lawyer. That, in turn, led us as potential investigators to raise the question, not so much as to Mr. Rafferty, because we thought Mr. Rafferty had been contacted by Mr. Caddy, but how did Mr. Caddy know to go to the police precinct 5:00 in the morning, when to the best of our knowledge, none of those arrested had made a phone call out. How did he know? That became a matter of prompt and subsequent grand jury investigation.

Q. Did you ever find out?

A. Yes, we did. It was a contested hearing and we kept the grand jury one night until 9:00 o'clock in the evening, I think, on a Friday. It was contested because we subpoenaed Mr. Caddy. He asserted the attorney-client privilege. Judge Sirica as Chief Judge on a motion to compel ordered him to comply and answer our questions, which we designed in such a way to avoid any intrusion on the attorney-client privilege. Mr. Caddy declined. He was held in contempt. The matter went up to the Court of Appeals. That took a lot of our time in the early stages of the investigation.

Q. Now we know of course that when the break-in occurred there was an accomplice across the street in the Howard Johnson's Hotel?

A. Yes, that was our first big break in the case.
Q. Tell me about that. When did you first learn that there was someone else involved across the street?

A. Very soon. Within a couple of days. I think the FBI or the police had gone across to the Howard Johnson Motel and retrieved records of someone leaving the Howard Johnson early that morning.

Q. You mean checking out of the hotel?

A. Yes, checking out of the Howard Johnson. And we were able to trace that. It turned out it was a fellow by the name of Al Baldwin, a former FBI agent. We traced him up to Connecticut. He obtained counsel. There were vigorous negotiations, as a result of which we decided to give Baldwin immunity and he gave us some very valuable evidence. He became a critical government witness.

Q. Now let me go back to McCord for a moment. You say you learned the morning of the arraignment about his security work with the Committee to Reelect the President, which we'll call CREEP, which I think was the acronym that everybody used at the time.

A. No question about it.

Q. When did you first learn that he was formally with the CIA?

A. Soon. It was very soon.

Q. That day? Or within a couple of days?

A. Certainly within a couple of days. I believe we learned it that very day
Q. Now did you learn that through the FBI investigation or did it come to you from some other source?

A. We didn't have any other sources so it would have either been through the Metropolitan Police Department or through the FBI.

Q. In their book, *All The President's Men*, Bob Woodward and Carl Bernstein indicate that their first lead after the break in was a reference in one of the pocket phone books of one of the burglars to an "H H and W H" and they tracked that down to be Howard Hunt at the White House. Do you recall when your staff first realized that this went beyond the five burglars and escalated to a level of Howard Hunt?

A. Very soon. We were ahead of the news media. The police did recover two address books in the search. In one of them was Howard Hunt. The FBI interviewed or attempted to interview Hunt, I think, either that Saturday or the following Monday. So they were right on top of that, very effectively. Remember, we felt quite confident that there had to be somebody else involved besides the first five right from the very start when Mr. Caddy showed up at that precinct. We didn't know who at the time, but eventually through the grand jury, through that process that we litigated before Judge Sirica, we learned that it was Hunt. And ultimately Liddy, as well.

Q. And in fact those were the seven defendants, if I'm not mistaken?

A. Yes.
Q. The five burglars, Hunt and Gordon Liddy?
A. Correct.

Q. Were you, and again let me focus on the very early stages of the investigation, by that I mean within the first three or four days. Were you satisfied with the work that the FBI was doing? Let me phrase it another way or in addition. Did you get any indication that there was a “political aspect” to this matter?

A. No. Initially, one of the first matters I had to resolve was who was going to have the principal responsibility for the investigation. That was between the FBI and the police. Because it was the police who made the arrests. They made the actual seizures with respect to the very valuable information found in the hotel rooms of the burglars and in the car. Those address books that you previously mentioned turned out to be very important pieces of evidence. In the investigation we promptly started to track out all the leads from those address books, among others. They had locations all over the country. The Metropolitan Police Department simply was not capable, because it’s a local police department, of conducting that kind of investigation. It became clear to me that if we had the two investigative agencies – police and FBI – trying to work jointly that would not work simply because there would be conflicts and lack of coordination and all. So we really had to make a decision, which was sensitive because the police had made the arrests. I had a number of negotiations and discussions with the police department and ultimately persuaded them that the FBI should have the lead in the investigation. The difficulty at the start was that the police
department had the evidence. All too often law enforcement agencies don't work well together. The FBI in this case had trouble getting a hold of that evidence so that they could follow out the leads. These are the kinds of things that people aren't aware of. As an Assistant U.S. Attorney I had to resolve and work out that problem. In hindsight, they are considered only minor problems, but at the time they were critical. So to answer your question, the FBI took over the investigation. I've testified to this before, I thought they did a great job. There was nothing that I ever asked for that they did not go out and try to obtain and to do so expeditiously. There were only, throughout the entire investigation, two times when I had a problem. The first was early in the investigation. We recovered some campaign checks in the bank account of one of the Cubans who had been arrested. We got bank accounts of the Cubans.

Q. These were the bank accounts in Florida?

A. In Florida. And we got those very rapidly. We noticed that there were a series of checks in the amount of $89,000 running through the account of Mr. Barker, one of the defendants arrested, and we wanted to track down the source of those funds. That process led us into Mexico. There was a period of one week in the latter part of June in which we were stalled. I kept asking the FBI, "What have you found out with respect to the source of those checks?" The FBI were slow and then explained that there had been a hold put on that because the CIA is looking in to see if there is any problem, a confidential source of some kind. After a week they came back and said, "The hold has been lifted," then traced those checks to their source. We found out
everything about it – how the money came in, the source of the funds, and all. So that was a hold for one week. At the time I didn't really think too much of that. It was only a week. The fact that there might be some CIA interest didn't occur to me as being that unusual. It was only a week or less and then there was full authority to go ahead without any limitation.

Q. Now did the FBI eventually trace those funds to campaign contributions?

A. Yes. And we put in the grand jury the person who contributed those funds. It was actually $100,000 but only $89,000 had been converted into checks.

Q. Was that David Cowberg the fellow from Minnesota?

A. No. I don't know, that name is totally unfamiliar. The source of another check that was found, what we used to refer to as the “Dahlberg” check.

Q. I meant Dahlberg. I'm sorry, I meant Kenneth Dahlberg. He was from Minnesota was he not?

A. Perhaps, but he was not the source of those funds. We traced that even further. We put that source in the grand jury. It turned out he had nothing to do with any illicit activity.

Q. Did you subsequently learn why there was a hold placed on the investigation by the CIA?

A. Oh, yes. That became a critical piece of evidence in the second phase of our investigation when we were into the cover-up. Not that we knew of any cover-up at the time, initial stages of the investigation, but we had long thought that the
investigation would take place in two stages. It turned out that the hold by the CIA
came out of the White House and was part of the evidence that led to the ultimate
resignation of President Nixon. Of course, we didn't know that at the time the FBI
investigation was slowed down for a week. We did find out about it in the cover-up
phase of our investigation. We discovered it through Dean when Dean started to meet
with us secretly as did Magruder and others.

Q. When did you first learn and from what source that there was some sort
of cover-up going on about the break-in?

A. In early April from John Dean's lawyer, Charles Schaffer. That's April

Q. So we went from June of 1972 to April of 1973 and do we want to call
that phase I, which would basically be the burglary investigation and the criminal
prosecution?

A. Burglary, wiretap investigation. Yes.

Q. We all know that principally The Washington Post reported a great deal
about the break-in. Now I assume that all of you in your office were reading those
stories. Were you always ahead of them, or were they sometimes ahead of you?

A. We were, to my knowledge, always ahead of them. Their investigation
was based on leaks as far as I could tell.

Q. Did it ever strike you, or did you ever wonder where they were getting
their information?
A. I knew on certain occasions. Until I read *All the President's Men* I obviously had no knowledge of "Deep Throat." But in terms of the information that *The Washington Post* was printing it seemed to me to be coming from law enforcement sources or witnesses whom we had already interviewed.

Q. Or witnesses that had already testified before the grand jury?

A. Well, who either testified or had been interviewed by either the FBI or by the prosecutors.
This is a continuation of the Oral History Interview with Earl Silbert.

I'm Bill Causey. It is March 7, 1992.

Q. When did you first realize that your investigation was going to take you into the Committee to Reelect the President?

A. Immediately.

Q. Right away?

A. Yes. As soon as we realized that James McCord was one of those that was arrested. I believe he had given another name when arrested or did not identify himself. It was one of the two. But as soon as we learned he was from the Committee for the Reelection of the President, we knew that it would take us there. And secondly, it was within a couple of weeks that the FBI, in following out the leads from the initial searches, approached G. Gordon Liddy. He declined to be interviewed. At that point we realized that we were very much into the Committee for the Reelection of the President. Even more so than with McCord. But McCord alone would have led us into the Committee for the Reelection of the President.

Q. Did it occur to you during your investigation at that early stage to go right to the top sources at CREEP and ask questions? Or, did you instruct the FBI to do that?
A. We did.

Q. And do you remember who they talked to?

A. Jeb Magruder and Herb Porter were interviewed by both the FBI and were before the grand jury. Magruder was before the grand jury at least three times. Of course the Head of the Committee for the Reelection of the President was the former Attorney General, John Mitchell. And he testified before the grand jury.

Q. Did it occur to you, when these people went before the grand jury, that they were being, that they were not being very candid and honest with the investigation?

A. We had concerns about the credibility of Magruder's testimony. But as we looked at it, if the involvement went above Liddy, it was hard for us to see that Magruder would not be involved. Magruder, of course, claimed that he was not. Porter, who appeared to be credible, supported and corroborated Magruder's testimony. At that time, we did not have any or didn't have sufficient evidence to demonstrate that the conspiracy included Magruder, and there were factors that indicated to us that it didn't. There were factors that indicated to us that it did. We were simply uncertain. That's what led us to advise each of the defendants through their counsel that, when I say the defendants, Hunt, through his lawyer, Bill Bittman, Liddy through his lawyer, Mr. Maroulis, and McCord through his lawyers, Jerry Alch and Al Johnson, that whatever happened with respect to this trial that was upcoming, we would, after it was over, immunize their clients. We would have them granted
immunity and compel them to testify about their knowledge of the involvement of others if that occurred. And that notice was given to them fairly early on in the investigation.

Q. Now refresh my recollection here. Did McCord start to talk before or after his trial?

A. He never talked until after the trial and after the day he was to be sentenced. He had sent a letter to Judge Sirica between the time the jury verdict finding him guilty, and his sentencing.

Q. Okay. Then let me go back and ask you a few more questions about the trial. When did you realize you were going to be the prosecutor, the chief prosecutor for that case?

A. Fairly early on. Within the first week.

Q. How did that make you feel? You knew that this case was starting to make the papers and that it had some very serious political overtones. Did you approach this case differently than other cases?

A. I know I mentioned to several people at the time that given the political aspects of the case, I did not think I would come out of that investigation whole. I thought I would be in the middle.

Q. Did you feel the heat at that time?

A. It depends on what you mean by heat. There certainly was heat from the press and externally. There was no heat internally. That is, there was no heat from
within the U.S. Attorney's Office. The United States Attorney, Harold Titus, for example, gave us total latitude to do what we thought best. Obviously we kept him advised of what we were doing. There was no heat, if you want to use that word, from the Department or from any other source in that sense. But there was heat from the press.

Q. Did you prepare this case differently from any other case or was this another file on your desk?

A. It wasn't another file on my desk. It was extraordinarily sensitive. But in terms of preparation and the kinds of things you do, I think that what we did in that case was what hopefully experienced prosecutors would do in any case. And certainly any significant case.

Q. Now, again focusing on the investigation period and the events leading up to trial, I'm sure you interviewed all of the burglars and you had conversations with their attorneys.

A. We did not interview the burglars because they would not be available to us.

Q. So you did not talk to them before trial at all?

A. Not to any of the five who were arrested. Liddy was in front of the grand jury about two or three times. Initially he was asserting the attorney-client privilege. Those assertions were not justified and he was compelled to testify and ultimately he then asserted his Fifth Amendment right against self-incrimination. Hunt never
appeared before the grand jury. He was interviewed, as I indicated, right after the break-in by the FBI and gave some, not very helpful or informative, responses at that time. At the time, the FBI didn't know very much to ask because it was, as I said, within two or three days of the break-in. I don't recall the Cubans ever being interviewed because they had counsel and you would normally have to go through counsel to talk to them. Mr. McCord we brought down to the grand jury several times because we wanted to get the equipment that had been used for the listening devices and through Baldwin we learned that McCord had it. We put tremendous pressure on McCord to turn over the equipment. We brought down his wife and his children to testify. I thought about that because there's a serious question of how far one goes in an investigation. It was ironic. At the time the defense thought we were being grossly overly aggressive. There were others that suggested we weren't being aggressive enough. That's what I meant by being in the middle. But we put tremendous pressure on McCord to turn over that equipment and eventually he did, under an agreement arrived at through counsel.

Q. Now, when did you first learn that Judge Sirica was going to be handling this case?

A. You mean the pre-indictment phases or the post-indictment phases?

Pre-indictment phases I knew from the start because he was the Chief Judge, one of whose responsibilities is to supervise the grand jury.

Q. And he was handling grand jury matters?
A. Yes. Grand jury matters go through the Chief Judge so I of course had a lot of dealings with Chief Judge Sirica during the pre-indictment stage.

Q. Did you know at that time that he would also be handling the trial?
A. No.

Q. When did you first learn that?
A. Probably after the indictment came down and he assigned the case. He assigned himself to try the case.

Q. There's been a lot of controversy about how he got that case. Some stories are that he assigned it to himself. Other stories are that other judges did not want the case and it sort of went to Sirica by default. Do you know anything about that? How he got the case?
A. I have always assumed that he assigned the case to himself. I never heard that other judges did not want the case or that it came to him by default.

Q. What was your relationship with Judge Sirica at that time?
A. Good.

Q. You had been before him quite a bit in grand jury?
A. We had a lot of pre-indictment proceedings. As I mentioned, we were before him on a motion to compel with respect to Douglas Caddy's assertion of the attorney-client privilege. We were before him when Gordon Liddy was asserting the attorney-client privilege and we filed a motion to compel on that. There was another hearing before the Judge, on news media material, when that had been subpoenaed,
but that was after the indictment. I had a number of visits with the Judge in terms of the investigation prior to the indictment, discussing several aspects of the investigation.

Q. There were many in Washington at the time who said that Judge Sirica was very much a prosecutor's judge. Were you pleased that he was assigned to the case, or that he assigned it to himself?

A. Yes, I was. He was, from the government's point of view, a good judge to try a case before. One had to be careful to protect the record as a prosecutor from potential error. As a prosecutor, you're concerned about error getting into the record unwittingly from either a prosecutor or the judge. I thought Judge Sirica's presence in the case would be particularly valuable or helpful to the investigation. Not that he was partial. He was not, but a person of great integrity. Judge Sirica was also a very tough sentencer. A part of our strategy that I explained to you before, we had told the defendants, "You either cooperate with us now or we're going to compel you to cooperate with us later on because we're going to try you and convict you." That was what we told the defense counsel, "and compel you to testify." I thought that the best way to obtain cooperation before the trial or even after the trial under a grant of immunity would be if the defendants either realized that they would receive a stiff sentence, or had received a stiff sentence. And Judge Sirica was one who did impose stiff sentences.

Q. In fact I think he was known by some in the courthouse as "Maximum John?"
A.  That's correct.

Q.  So you took advantage of that reputation to put pressure on the defendants to cooperate and to assist in the investigation?

A.  I don't recall ever saying to Bill Bittman or the other lawyers, using Judge Sirica by name and the threat of a heavy sentence. I certainly thought it. There's no question about it. We all thought it, among the prosecution. But in terms of saying that, that's not the kind of thing I would have said and I don't recall saying that. But they knew. I didn't have to say it. His reputation was well-known. Bill Bittman is from Washington, D.C. and a very savvy, experienced lawyer.

Q.  So you could assume that the defense lawyers knew Judge Sirica's reputation as well as those of you in the Prosecutor's Office, and that would work to your advantage?

A.  No question about it. Yes.

Q.  One of the things that has come out of the Watergate story is all of the discussion about the very interesting and unusual character of Gordon Liddy. Tell me about some of your observations and experiences with him and how his behavior affected the early stages of the investigation.

A.  It did. It had a significant effect. I mentioned to you that up through the time we began to talk with Dean and get firsthand evidence, we did not know whether the break-in and wiretapping conspiracy ended with Liddy or went above. There were indications both ways. One indication indicating that it may well have gone above
Liddy was the fact that they had access to a lot of money and how could they have obtained access to that money if it was not with the authority and knowledge of others. On the other hand, Liddy was such an unusual person. The FBI and we did a very thorough investigation about him and Hunt. They had traveled around the country under false names. To California and Florida and all over. We traced everything out and interviewed people all over the country. We had interviewed a woman with whom he had gone out on a double date. And in our view, he and Hunt considered themselves James Bond types, super sleuths and big macho-male types. Liddy and Hunt were having a double date at dinner and we talked to the woman who was with Mr. Hunt. She said that during the course of the dinner, she started to smell this terrible smell. She looked sideways to see what was the source of this smell and Liddy is holding his hand over a candle and it's burning, burning his hand. What he was doing was trying to impress his date with the power of mind over matter, and he suffered a third degree burn. We corroborated with other witnesses that he had a bandage on his hand from a very severe burn that he had self inflicted. There are a number of instances like that about this fellow. We thought that he and Hunt were politically ambitious and would like to be in the position of having access to information and making themselves more valuable to the higher echelon, political types. This would indicate that the break-in was something they were doing on their own. So as I said there were conflicting factors at that time, not with the benefit of
hindsight. There were different factors, different inferences that one could draw, different evidence pointing in different directions.

Q. I assume you learned at an early stage that Hunt was with the CIA?
A. Yes, definitely. Not only that, we knew he was with the CIA and that he was tied in with the Cuban connection. Also, we knew he was an author.

Q. He had written a spy novel, spy novels?
A. I looked at his novels.

Q. Did you read any of them?
A. Yes. I recall looking at them. Don Campbell, with whom I was working, looked at them. We were trying to trace out if there were any connections that one could glean from those spy novels to this Watergate activity. We knew that he was anti-Communist, that he had been involved in the Bay of Pigs. He was known as “Eduardo.” The Cubans held him in inordinately high esteem. We traced out all of that in the early stages of the investigation.

Q. Was this the only case that you were working on at the time?
A. As First Assistant I would not have had a block of cases to handle, so I'm sure that as far as a case was concerned as opposed to being involved in other policy matters in terms of running the office, yes that would have been my only case.

Q. So you were able to devote a good bit of time to this case?
A. It took a lot of time. Initially, only Don Campbell and I were working on it and then when some grand jury aspects began to get more complicated, especially
with the assertion of the attorney-client privilege and various other matters, I asked
Seymour Glanzer, who is a litigating genius, to join us and he did.

Q. During the investigation and the grand jury proceedings, virtually literal transcripts of the proceedings started to leak.

A. That's only in either late April or May of 1973. Not in the early stages.

Q. Okay. But before you knew the case got to the cover-up stage, transcripts of grand jury proceedings were starting to leak out to the press?

A. No, that's not right.

Q. Okay. So, the grand jury leaks occurred after April when you started to learn from Dean and others about the cover-up?

A. That's right.

Q. I think Jack Anderson was one of the reporters?

A. He was. He was printing actual verbatim transcripts. Or copies of grand jury transcripts.

Q. Did that result in a sub-investigation to find out how that material was getting out?

A. I believe it did. I did not handle that. That was assigned to someone else in the Office. I think they succeeded in finding out the source, as I recall.

Q. Do you remember what the source was?

A. Yes. It was, I think it was a reporter.

Q. Court Reporter?
A. Yes, I believe so.

Q. Now, let me go back to personalities. Again in phase I, you talked a little bit about Liddy. What about the lawyers involved in the case? If you can mention who they were again and whether you had had prior dealings with them and how?

A. I had no prior dealings with any of them. They were a diverse and very interesting group, actually. Bill Bittman assumed the lead for the defense. Of course I had heard of Bill when he tried the Bobby Baker case. He was a formidable adversary, experienced, and aggressive in leading the defense. Articulate, a forceful personality, and knowledgeable. We knew we were up against a first class lawyer. McCord's lawyer was Jerry Alch from Lee Bailey's law firm in Boston. I knew Lee Bailey, but had not met Jerry Alch before. He was a very effective trial lawyer. He had a very difficult case at trial because McCord was caught right inside and yet he came up with a good defense for his client. As good as it could be under the circumstances. A very experienced lawyer, he knew his way around the courtroom and investigations and was a very worthy adversary.

Q. Let me stop you right there with a quick question. What was the defense that he promoted on behalf of McCord? Do you remember?

A. I'm having a little trouble recalling. He focused on the issue of intent. Burglary requires an entry with intent to commit a crime. McCord obviously had entered the Democratic National Committee headquarters so there was no defense on that basis since he was arrested on the spot. Mr. Alch tried to focus on lack of criminal
intent and suggested to the jury McCord's security concerns or something of that kind. I remember in my closing argument making some reference to what was McCord looking for or concerned about, did he expect Rennie Davis to come down from the rafters or something like that. It was a tough case for him to try but he carried it off in a very professional, effective manner. Henry Rothblatt, the lawyer for the Cubans until they pled guilty – colorful, had worked with Lee Bailey on cases. He authored a book on white collar crime I believe, or a book in the area of criminal defense. He certainly was an experienced lawyer. His clients eventually let him go because he would not allow them to plead guilty. I couldn't tell how interested he was in the welfare of his clients. I didn't know where he was coming from. At an early stage of the trial, I was attempting to get his clients to plead and cooperate. I kept trying to do that. I remember talking with Rothblatt about that once. The Cubans were not high on the list of any conspiratorial ladder, but I thought they might have some helpful information. I remember him once saying to me, "No, we're not going to plead. Why don't we just have the trial? It will be high publicity, a lot of newspaper. So why don't we just enjoy it?" Don Campbell was there and I remember our looking at one another after Rothblatt left. It was a troublesome statement. I had some dealings with the Cubans afterwards when Rothblatt withdrew or was discharged, including some with the daughter of one of the Cubans who complained to me about Rothblatt. Liddy's lawyer was Peter Maroulis, from Poughkeepsie whom Liddy had known for many, many years. He was very technical, looking for fine legal points. He was knowledgeable in
that regard and he and Liddy seemed to get together very well. During the trial, they
seemed to be looking for a way to trap Chief Judge Sirica, into making error that would
be reversible.

Q. The trial was in early January, I believe, 1973?

A. Right.

Q. So this is about six months after the arrests?

A. Right.

Q. When you went to trial, before you gave your opening statement, did you
think that this was a much bigger case than what you were going to be permitted to
present? Or was it just another burglary case with some news to it?

A. No. It was a trial of seven defendants. Our focus was on the trial. When
you go to trial, your focus has to be on the trial because that's the immediate matter or
challenge confronting you. That is difficult enough, time consuming and a tremendous
strain. There was an additional strain in this case because of the high visibility and the
nature of the case. We had already told the defendants' counsel, as I previously told
you, of our plan to convict them, immunize them, and compel their testimony before a
grand jury. We had told them that whatever the result of the trial, that they were all
going to be immunized, which was a new procedure at the time. A Fifth Circuit case had
come down upholding that procedure. We were going to compel them to testify about
what they knew. We didn't know what they knew but we were going to ask them. We
had run out every other lead that we had that was available to us at the time. There
was also pressure at the trial. The pressure was on the prosecution in that case and I felt it. It was a case we had to win. I felt going into that trial, that if we lost that trial, I might as well get on a train and leave Washington. This was because of the heat of that case and the publicity, or the suggestions by some that the prosecution, the investigation wasn't doing everything that should be done. We had by that time amassed a very strong case. Even against Liddy. In December we had come across, out in Utah of all places, a person that turned out to be a very critical witness. This was by tracking down every single phone call. There were records of long distance telephone calls. Hundreds of phone calls that we tracked down all over the country that had been made from certain phones. Lo and behold one turned up, as they say, gold. It turned out to be a person who had acted as a spy in McGovern's headquarters and knew about the break-in in May into the Watergate that we had not been able to pin down with admissible evidence. The Cubans had come up in May. We thought there was a break-in but we never had any evidence of it. We finally got somebody who knew about that. That really strengthened our case because he could also identify Liddy. That was very helpful. It was one of those cases from a prosecutors' point of view, you have good evidence, you simply have to win it.

Q. Did you know before the trial that documents had been destroyed at the CREEP Headquarters?

A. No.

Q. That all came out afterwards?
A. Yes.

Q. When that kind of information surfaced after the trial did it make you question the thoroughness of the FBI investigation?

A. No. The FBI had no way of knowing about that. Of course, unbeknownst to the field agents, the Acting Director destroyed documents which we discovered.

Q. Who were the people within the Justice Department itself that you were working with?

A. Only one. Henry Peterson.

Q. That leads me to a popular question. We know that Bob Woodward at The Post was principally, maybe not principally, but in part was reporting his stories through this source that he identified as “Deep Throat.” There has been an enormous amount of speculation over the past twenty years as to who Deep Throat was. The speculation ranges from Alexander Haig to the theory that Deep Throat perhaps is not one individual but a composite of a number of individuals that Woodward was getting his sources from and to protect those people he put them under the generic title of one individual, Deep Throat. Do you have a popular candidate?

A. A popular candidate.

Q. One that you think makes sense?

A. Yes.

Q. Do you want to share it with us?
A. Well I really haven't done that. I have never seen his name mentioned as a possible candidate.

Q. Before you go further, let me ask you a few more preliminary questions. People who have studied this issue and have written books about Watergate strongly argue that the source had to be someone who was familiar with what was happening at the grand jury level and probably someone who was either in the U.S. Attorney's Office or in the Justice Department. That leads to a number of possibilities and one that has been mentioned, infrequently but with some degree of support, is Henry Peterson. If you read Woodward's book *All the President's Men* very carefully when he talks about Deep Throat he does seem to suggest that whoever he was talking to was in either FBI or Justice. Has it ever crossed you mind that perhaps it was Henry Peterson?

A. No. It never has, although as I recall, Woodward refers to Deep Throat as being a smoker, which Henry Peterson certainly was. And somebody who, I may be wrong on this, drank scotch or something. I don't know whether Henry did or not. I haven't read *All the President's Men* in more than fifteen years now and so my memory is a little vague. I don't recall, however, the impression that it was someone from the FBI or from the Justice Department. Deep Throat did not generally have a lot of specific information. He talked in terms of innuendo and hints and hearsay. But there were a couple of matters early in the investigation, when he had some specific information. It had to do with a couple of things that were going on inside the White House, as we eventually learned. To my knowledge at the time, and that's true to this
day, no one in the Justice Department or the FBI knew about that information. So my conclusion has always been that it was a disaffected person who had some access to the Nixon White House. But his information was mostly general and his significance exaggerated.

Q. On page 72 of All the President's Men we have a very big clue from Woodward. Somewhat contrary to the point I made earlier in my last question about people suggesting that the person had to be from the FBI or the Justice Department because of knowledge of what was taking place before the grand jury. Now, I think we have to assume that Woodward is not going to intentionally mislead us but on page 72 of the book in talking about Deep Throat he says, “The man's position in the Executive Branch was extremely sensitive.” Obviously that's a big clue. If we take that as correct it excludes Justice and the FBI. If we're going to call them the Judicial Branch.

A. No, I don't think so.

Q. You put them in the Executive Branch?

A. Oh yes. When I say I had not thought of the FBI or the Justice Department as a source of Deep Throat, the reason I didn't was not because of that sentence, because I would obviously include Justice and FBI as part of the Executive Branch.

Q. Two more sentences later, maybe this will help. He says, Woodward says, “It was he (meaning Deep Throat) who had advised Woodward on June 19 (this is two days after the break-in) that Howard Hunt was definitely involved in Watergate.”
So, again assuming that what Woodward is telling us here is correct, it's someone who knew within two days of the break-in about Howard Hunt. Now, does that help us narrow down who it might be?

A. Well it limits the universe. But in terms of narrowing it down, I doubt that on the 19th, Henry Peterson knew of Hunt's involvement in Watergate. The FBI had interviewed Hunt. His name had been found in the address book of one of the Cubans. But in terms of being able to say involvement, not on the 19th, although very shortly thereafter. That was one of the very few specific pieces of information that Deep Throat provided.

Q. Well then who do you think it could be?

A. As I indicated, somebody that I believe had been in the White House itself and had, I think was disaffected. I'm not sure how. At least the person I think it may have been would have known directly about Hunt. But I think he had to have access to information or people within the White House. I'm obviously not answering your question. I realize that, but I've been a little hesitant to do that.

Q. So we have a complete record of this. I mean I'll only accede to your wishes on this but you do know you have a right to put a restriction on this. Up to 20 years if you want. And there will only be three people who know what you say. You, me and the person who transcribes this tape.
A. I've reflected on your request and concluded that I should not identify the person I believe to be Deep Throat. My reason is that because I may be wrong, this would be unfair to that person and unjustifiably intrude on his privacy.

Q. What about General Haig?

A. I don't know what Haig would have known. To me General Haig was not in the picture at the time. I don't know how he would have had the specific information, little as it was, that Deep Throat had.

Q. He doesn't seem to be the sort of person who would want to violate the confidences of a superior, given his background and so forth? He was a smoker.

A. He was not Chief of Staff at the time, I don't believe. Haldeman was. As I understand, General Haig wasn't on the scene, not in a position to know at that time.

Q. You're right.

A. Mark Felt from the FBI, he's been the FBI source or Justice Department source most frequently mentioned. That piece of information about Hunt's involvement, and another piece of information about Hunt being told to leave town, no one in the investigation, to my knowledge, was aware of that at that time. That's why I think that piece of information had to come from someone in or with access to the White House. Felt would not have known that as far as I know.

Q. Let's go back to the trial. Let me start with this question, somewhat difficult question, but I want to hear your comments on it. Judge Sirica was critical of
you in his book about how the case was presented. Did you think that criticism was fair when you came back on it?

A. I read about two-thirds of Judge Sirica's book, which I thought was quite good. I don't recall that criticism, or whether it was in the part that I read. But setting that aside, he and I had a very different view of what this trial was all about. It became clear to Mr. Glanzer, Mr. Campbell, and me prior to the trial, that Judge Sirica was looking at the trial to provide a forum for disclosing who was involved in the Watergate break-in and burglary and all other aspects. I looked at the trial, in respectful disagreement with the propriety of his view, as a trial of the seven persons indicted by the grand jury to determine their guilt or innocence. I did not believe that the trial was a proper forum to explore who else may or may not have been involved. The trial was the guilt or innocence of the seven accused. In that respect we had a fundamental difference. That came out right at the beginning. I remember very vividly when Henry Rothblatt was making his opening statement on behalf of the four Cuban defendants. He was explaining how one of his clients had served in the Marine Corps or the Army or the Navy and was a loyal patriot. Judge Sirica interrupted him and said the jury doesn't want to hear about that, the jury wants to know what his clients were doing in the Watergate. He repeated that a number of times. I was stunned. I remember after the close of the proceedings that day going down and telling the United States Attorney that I thought the trial judge had committed reversible error, because no trial judge could try and compel in an opening statement, a defense lawyer to explain
something with respect to one of the elements of the crime one way or the other. That was representative of Judge Sirica's focus. In that respect we had a very different view of the purpose of that trial. Seymour Glanzer, Don Campbell and I wanted to have that trial go through, free without reversible error. Almost every trial has error, but not reversible error. We thought, based on the evidence, that the defendant should be convicted. Number two, part of our plan was to try and immunize them and compel them to testify about the role of others, if any, since as I said we didn't know. Their willingness to cooperate after conviction would, as I mentioned before, depend primarily on the threat of the imposition of a heavy sentence. If the defendants thought that they had reversible error in the trial, their motive to cooperate would be significantly reduced. So we wanted a trial that would go through without reversible error.

Q. As the prosecutor in this trial, did you present to the jury the theory of why the break-in occurred? And, if you did, what was it and has your view about that changed over the years?

A. At the time of the trial we did not know why the defendants broke into the Democratic National Headquarters. That is, for what specific information they were looking. We knew from Al Baldwin, the ex-FBI agent who the investigation uncovered very shortly after the break-in, that they wanted to tap the phone of Larry O'Brien, the Chairman. That was the phone they were most interested in and they wanted to bug his office and that's why they went in with a bug on June 17th. They had
been in May, but as far as we knew, the tap had been placed on the phone that turned out to be someone, Spencer Oliver, who was not a target of those who participated in the break-in. But we did not know what specific information they were looking for. So, no, we did not present that specific information to the jury. It remains unresolved today.

Q. After the break-in did the FBI sweep the offices?

A. Yes.

Q. They only discovered one tap and that was on Spencer Oliver's phone?

A. No. As a matter of fact, I remember at an earlier stage you asked me about the relationship with the FBI and I said there were only two problems I had with them, and I mentioned one. I never mentioned the second which relates to this last question asked. The FBI did not discover the device on Oliver's phone. Oliver was brought before the grand jury. He was a victim of the crime. He came in and testified before the return of the first indictment. It was at that time that we advised him that his phone had been tapped, which obviously was of great concern to him. As I recall, either he or his counsel went back and looked at his phone and they found a device on it. The FBI opened that case which it labelled Watergate II. They were investigating Oliver and suspicious that someone had planted that tap very recently. I told the case agent, Angelo Lano, who was very good and the principal liaison between our office and the FBI. "Angie, the FBI missed it on their sweep back in June. That is not a recently planted tap. The megahertz range and everything fit into the listening range
that Al Baldwin across the street was listening on. That's the tap, in my view. To treat it as a separate case is nonsense.” Angie simply kind of shrugged his shoulders. The FBI internally as an institution did not want to acknowledge that in the sweep it conducted in June, they had missed it. As far as I was concerned, that tap was there on Mr. Oliver's phone on June 16th.

Q. To what extent, if any, was your investigation in the trial itself affected by the civil proceedings that were filed and on-going at the time? I think the DNC filed a suit, and I think there were several other civil proceedings. Did your investigation in any way come into contact with those civil cases? Dovetailing?

A. We did. The Democratic National Committee sued CREEP and certain named individuals, a civil proceeding that paralleled our investigation. The government's interest normally is to have the civil proceedings stayed so that it will not interfere with its ability to conduct the grand jury investigation, retain its access to witnesses and prevent premature disclosure of potential evidence uncovered in the grand jury investigation. That's the normal procedure. I've had cases now even as a defense counsel when the government has intervened and filed a motion to stay discovery in a civil proceeding so as to prevent interference with an ongoing grand jury investigation. We didn't do that. That would have been too politically sensitive. Even though normally one would have done it, it was not something that was feasible. However, there was a status conference held by Judge Richey, who was the presiding judge. He called up and wanted the government to attend. Harold Titus said that we
would attend and not participate unless called upon. We would not volunteer. So I attended. As best I recall, at one point during that conference, the question did come up of discovery. I believe the Judge asked our views. I expressed the views that I've just articulated: that normally the Government would prefer to have the civil discovery not go forward. As I recall, that was the only time I spoke at that three hour session. Eventually, I think the net result was that both sides agreed to stay discovery for a certain period of time.

Q. Did you learn anything at all from the civil suit that you didn't learn in your investigation that was helpful to you?

A. No.

Q. Do you remember who was handling the civil suits for the DNC?

A. Yes. Williams & Connolly. Edward Bennett Williams and Joseph Califano, I think, were the principal attorneys.

Q. Going back to the trial, was there any point during the course of the trial that you were worried about a conviction? Did something come out that you weren't aware of? Did you learn something during the course of the trial and you said, "Oh my goodness, this is a problem for us" or did the trial on the other hand go about the way you expected?

A. Shortly before the trial was to begin, about a month, Howard Hunt's wife was killed in a plane crash. She had cash on her. We began to look into its source.

Q. That was the crash in Chicago?
A. Yes. Subsequent to that, Bittman came in to talk with us and said that
the death of his wife had crushed his client. He acknowledged that we had amassed a
very powerful case against his client, which we had. He came in to discuss a plea.
Eventually we did work out a plea to three counts for which he could have received a
sentence of 25 years. We had a gentleman's agreement on that. I remember Seymour
Glanzer calling me on a weekend and saying, "Given this Judge I don't think we should
accept that plea because it won't go down." I thought about it and I communicated
some reservations to Bittman about it, who was very upset because he thought he had
an agreement. I thought about it some more and I concluded that he did have an
agreement and that it was an appropriate plea, for someone who had never been in
trouble, pleading to three counts worth 25 years. Normally a prosecutor would take
one count and be happy with it. So I agreed to the plea. Eventually, Judge Sirica
refused the plea. Whether that could have stood up on appeal, I don't know. But Hunt
wound up pleading to all seven counts of the indictment.

Q. How long was the trial? Do you recall?

A. About three to four weeks.

Q. Tell me how that period affected you personally. Was that the most
difficult trial you handled? Was there a lot of stress on you?

A. I was fortunate to be working with a great team, Seymour Glanzer and
Don Campbell. Working with those two prosecutors was a pleasure and privilege.
They were terrific. We really worked together and very well. I felt a lot of pressure.
As I've indicated before, given the enormous publicity of the case, this was a case that we had to win. A prosecutor has to prove guilt beyond a reasonable doubt. You never know what a jury is going to do. A jury can go off in an aberrational way and there's always that risk. That increases the pressure. So I felt the strain. We did have an unusual proceeding. When we went to put in some of the evidence concerning the wiretap, counsel for Spencer Oliver interrupted the proceeding and objected to certain of the evidence coming in. We wound up in an emergency hearing before the Court of Appeals, all in the middle of the trial. Certainly, it was a very stressful period.

Q. During your investigation and up to the point of the trial did the thought ever cross your mind that this would go up to the President of the United States?

A. Not the President. No.

Q. But into the White House?

A. Yes, because Hunt was working out of the White House. But we really did not know. There were indications that it did. But they were speculative indications, no hard evidence. There were certainly indications that it didn't. In my prosecutive memorandum to Henry Peterson before the first indictment I referred to the ambivalent status of the evidence on this question.

Q. You indicated earlier that between the verdict and sentencing McCord had a change of heart and decided to talk. How did that come about?

A. I can't analyze McCord's inner thoughts. All I know is what happened. Before he was to be sentenced, shortly before and that was about six weeks or two
months after the trial, he wrote a letter to Chief Judge Sirica. The Judge called Harold Titus and me when he received the letter. He asked us if we wanted to be present when he opened it. I think I suggested that it was not appropriate for us to be present and that he should look at it himself. He did. He thanked us and we returned to our office. I heard the letter read the day of sentencing of the other defendants. That's the first time that I became aware of the contents. We had hoped that McCord would cooperate. I remember early on in the investigation we put a lot of pressure on him and his family to turn over the electronic equipment. He did. About one week before the 1972 presidential election, we made a very generous plea offer to him. I was troubled about the propriety of this, frankly. We had not been successful in finding out how far this went, if it went further than Hunt and Liddy and McCord. Liddy was impossible. It was clear that he wasn't going to say anything from day one, even though I contacted his lawyer, Peter Maroulis, and suggested that we were looking to him as the top man who could help himself and wanted his cooperation. Otherwise we would go through the immunity procedure. We had also conveyed that to Hunt and his lawyer. We thought McCord might be someone that might respond. I called up Henry Petersen and said, "We would like to make an effort to get McCord's cooperation and would like to offer him a plea to one count – conspiracy – to see if he will plea and cooperate. Do you have any problem with that?" He told me that he did not. So we asked his attorneys to come in. We were thinking about the election. People were saying, "We have a right to know." I don't think that's part of the criminal process. I
never did. But there was an argument in this extraordinary situation, that the public had a right to know so that it could make an informed choice. But to me, that is not what the criminal investigative process, grand juries, and trials are all about. You don't play politics with them. If you do in this instance, what is to stop it in another? I had reservations about it. Nevertheless, I ultimately concluded this was something we should do. So we called in Mr. McCord's lawyers and told them that we were going to make him this offer and were seeking his cooperation. The answer came back from the lawyers that McCord was not interested. Now, long after the events, after the trial and into the cover-up period I became aware that McCord was making some suggestions that when our offer came to light, he was never fully apprised by his lawyers of the offer that we were making. I have no idea whether that's true or not. We dealt with Jerry Alch and Al Johnson and to me they were very fine lawyers representing their client. So we, of course, assumed that whatever we transmitted to them, whatever we offered to them would be transmitted to their client. We have no reason to think that it wasn't.

Q. Do you recall what the sentences were?

A. I don't recall McCord's. Liddy I remember got six and two-thirds to twenty years in jail. That was an extraordinarily heavy sentence. Before the sentencing I remember talking with Henry Peterson and others at the Department of Justice. They were asking me, "What kind of sentence do you think Judge Sirica will give?" I said, "It's going to be heavy." Liddy and Maroulis were baiting Judge Sirica during the
trial, trying to trap him into error. They thought they had him in error during the
course of the trial. Chief Judge Sirica was fully aware what they were doing and, from
my perspective, did not appreciate it. Henry Peterson asked, “Do you think the
sentence could reach double figures?” I said, “Definitely.” One reason that I was
confident that it would is there was another case that Judge Sirica had tried in which he
had given out a sentence of six and two-thirds years to twenty years. It was a white
collar case, not a hardened burglar type. I remember thinking to myself that McCord
was going to get a sentence of about four to twelve years. He got a much lighter
sentence as a result of his cooperation. That was only appropriate. But as we sit here
today I can't remember what it was.

Q. What was it that you learned from McCord when he agreed to
cooperate?

A. Actually, he didn't cooperate with us initially. Remember now, he
claimed to be suspicious of the Justice Department and therefore the U.S. Attorneys or
Assistant U.S. Attorneys who worked for it. McCord's information, and he eventually
testified before the grand jury, was of some value but it was mostly hearsay. It was not
first hand evidence. The first hand evidence was from Dean and Magruder. They were
the ones who blew open the cover-up by coming in to meet with us secretly. But, it
was McCord's cooperation and the publicity surrounding it that helped persuade Dean
and Magruder that they should come in. It was important in that regard. Not so much
for what he did say, because he didn't have much first hand information, but for the
threat. We did something else. We called in Liddy before the grand jury. Liddy never said anything. But the press was covering the grand jury like a blanket. They were all sitting out in the hall and every time we brought in somebody to the grand jury they were all out there. So what we did was have him testify before the grand jury and he said nothing. Then we went into an adjoining room with him and his lawyer and sat down and talked for about an hour. Now actually he said nothing during that time about the case, but the press saw us in there talking with Liddy and his lawyer. We did that purposely, thinking that if the press reported it, and if there were some out there who were involved (we didn't know at this time), they might get nervous and decide to come in and cooperate. They did. During that session, Liddy told us some things that further indicated his unusual character. He had a bandage on his arm. We said, “What's wrong? How did you get that?” He unwrapped it. It was a blistering sore that looked awful. “How did you get that?” He said, “I knew I was going to be sentenced by Chief Judge Sirica and he was going to try to inflict a lot of pain on me by the sentence he was going to impose. I decided to prepare myself as best I could for whatever pain he might choose to inflict. I took out a lighter and I applied that lighter to various parts of my body.” One place was his wrist. That's what we were talking about when the news media reported that we were meeting with Liddy. We knew that it had some impact because when Dean came in and started talking with us, one of the things that he mentioned was our meeting with Liddy. Why did he start to cooperate? He thought that Liddy might be talking with us.
Q. Was it Magruder or Dean who first came to you?
A. They both came in the same week, but Dean a few days before.
Q. What did he do just call up and say, "I want to come in and talk."
A. Not at all. He went to now Judge Thomas Hogan who was then a practicing lawyer. Judge Hogan referred him to Charles Shaffer, a former Department of Justice lawyer, a very good lawyer. Mr. Shaffer called Seymour Glanzer, whom he had known from prior cases and asked to meet with him. He swore him to secrecy and then came in and suggested to him what he had to offer. Then Seymour came in and told me. We met with Charles Shaffer. I did not know Shaffer. When I met him, I got to like him right away, although we were adversaries. We had a number of dealings and very shortly thereafter, that week, we started to meet with Dean. And, then coincidentally, it had nothing to do with one another, Magruder's lawyers, Jim Bierbower and Jim Sharp, called up and wanted to meet with us relating to Magruder. We did.
Q. Now did you have the understanding that those were independent contacts or were Magruder and Dean aware that the other was talking?
A. I believe that they were independent.
Q. Let's start with Dean. What did you learn from Dean when he came in?
You'd never met him before, I take it?
A. Oh, I had met John Dean.
Q. You knew Dean?
A. I had met Dean when I worked in the Department of Justice. I was in the Deputy Attorney General's Office in one Section and he was in charge of the legislative part of that Office. I didn't know him well, but I had met him. I also had had contact with him during the course of the investigation when it came to getting materials from the White House. He was White House counsel and we were trying to get materials, for example, with respect to Hunt's safe and things like that. When we wanted to interview White House personnel, it would be coordinated, as was usual, through the White House counsel. I didn't know many people in the White House, but I knew some like John Dean and one or two others from my work in the Department of Justice. But I would not have any contact with them other than formal contacts during the investigation. Not that I would have anyhow because I was not that friendly with them. But I determined that once I was involved in this investigation, I would have no contact other than formal contacts for the investigation.

Q. So Dean comes in. What was it that you learned from Dean?

A. He's the one who first told us, with specifics, about the cover-up.

Payments being made. Perjured testimony being given to the grand jury by Magruder and others. John Mitchell's involvement. His own involvement. Magruder's involvement. Erlichman and Haldeman's involvement, but initially not the President.

Q. How were you able to assess Dean's credibility and sincerity when he brought this information to you?
A. The thrust of what he was saying was not something that one would make up. So in that sense we accepted it. That is the thrust of there being a cover-up, with monies being paid and perjured testimony. He was admitting his own participation and giving us the kind of information that was unlikely, highly unlikely someone would make up. There was a lot of vagueness in what he said in terms of specifics and details, particularly when he was talking about Erlichman and Haldeman. Other aspects, such as his involvement with Mr. Mitchell and the cover-up and payoffs, that information was corroborated within two or three days by Magruder who had information from a different vantage point but they overlapped in some key areas such as Magruder's perjured testimony before the grand jury, and Dean's role in helping to prepare him or that testimony. It was clearly credible, maybe not in every detail, but certainly the basic thrust of what we had come across was mind-boggling, but believable.

Q. When Dean came in to talk to you with his lawyer, were these sessions recorded in any way? Transcribed?

A. No. I started keeping a diary at some point. In fact initially, Dean's lawyer insisted no notes. So we didn't take notes.

Q. What have you done with your diary?

A. I have it and I gave it to the Special Prosecutor and it is in the Archives.
Q. I was going to ask you if you wanted to contribute it to the Oral History Project? Now you say you learned information from Magruder that helped corroborate what Dean was telling you.

A. Yes.

Q. Did you learn anything different from Magruder?

A. Yes. Dean told us that while he had attended two sessions in the Attorney General's Office with Liddy setting forth a plan for investigations and break-ins and use of prostitutes and the like as part of the 1972 campaign, that he – Dean – thought he had put a damper on it and that after the second meeting it came to an end. He thought that Mr. Mitchell's attitude was, who is this guy, but Mitchell was a quiet person who wouldn't stand up and throw someone out of his office. He'd kind of just wink and smile, smoke, puff on his pipe and that would be it. So he told us that he did not participate in or know in advance of the break-in in June. Once it happened he obviously realized what had occurred. Magruder, on the other hand, admitted to us that he had authorized the break-ins and knew of them. Then the next question was, that so far as the break-in was concerned, where above Magruder did it go? Magruder claimed that Mitchell knew and authorized the break-in. Mr. Mitchell denied it. Liddy remained silent.

Q. Can you describe Dean's demeanor when he came to talk to you? Was he scared?

A. No.
Q. Did he have notes?

A. No. He was vague. We kept pressing Dean for details. Dates and other details were not clear to us, particularly when he was talking about Erlichman and Haldeman and their knowledge. At one time we said, "Why don't you go back and read the newspaper articles? Put together your own reconstruction." We were eventually surprised when he testified before the Senate and submitted a 250 page statement, replete with details. That was a surprise to us because it was not consistent with the vagueness and the absence of specifics when we were holding our secret meetings. Of course the secret meetings were in the second and third weeks of April, 1973.

Q. Perhaps he took your suggestion to heart and did go back and reconstruct everything?

A. What he submitted to the Senate was an impressive piece of work.

Q. So Dean did not appear to be frightened or nervous?

A. Deadpan.

Q. Deadpan? Was that the Dean you knew from the Justice Department?

A. I didn't know him that well. I had never had any extensive contact with him. He was an Associate Deputy Attorney General and I was a line attorney. Dean is not a very expressive person, at least based on my limited contacts with him.

Q. He has, since his Senate testimony, revealed I believe, in his book and interviews that this was a very difficult time for him. That he started to drink quite a
bit. Did you sense that at all in these sessions that you had with Dean? That he was under a lot of pressure?

A. I didn't sense drinking on his part during the key weeks in April. There was pressure on him and his counsel, although it was being conveyed to us through his lawyer, Charlie Shaffer. He told us that the White House was putting out pronouncements about cooperating or not cooperating, immunity, or opposing immunity, or other subjects of that kind. That impacted on Dean because Dean somehow was trying to maintain relationships with the White House. This was while he was having secret meetings with us.

Q. Secret meetings with you?

A. Yes.

Q. He was still working at the White House?

A. He was still working at the White House and still part of the White House team, in a sense. When it surfaced that he was cooperating, the pressure did increase and he had the White House to worry about. Shaffer was trying to persuade us to give immunity for his client. That's really what his aim was: to make Dean so valuable to us that we would grant him immunity from prosecution. So sure, there were a lot of pressures on Dean at the time. But in terms of visible indications of that, such as drinking, no.

Q. Now Magruder's situation was different because he had testified before the grand jury. I take it his demeanor was somewhat different? He perhaps had more
pressures on him? He was coming in and basically telling you that he had committed perjury? Is that right?

A. Yes. But I'm not sure why the pressure should be different. Although he admitted that he had committed perjury, Dean was admitting, among other things, that he had participated in obstruction of justice, including subornation of perjury because he helped prepare Magruder for his perjured testimony by cross-examining him.

Q. After the trial in January and the convictions and the sentencing and before Dean and Magruder came in did that essentially end Watergate from the U.S. Attorney's Office point of view?

A. You mean after the trial?

Q. Right. Did you think it was going to be over?

A. No. Remember, we had always told the defendants, that is the seven persons that were indicted, through their lawyers, that once the trial was over, plea or trial verdict, and sentence was imposed, we were going to be immunizing them and compelling them to testify before the grand jury. So there was clearly going to be another phase of the investigation. The period between the jury verdict and the sentence was a little longer, not a whole lot longer, but a little longer, than usual. I remember Henry Peterson, because we had told him what our strategy was and he had approved it, calling and asking when the sentencing was going to be with the expectation that we would begin the second phase of the investigation.
Q. Why was there a phase 2? Did you all sense that there was a lot more to this trial than came out in the trial?

A. As I've said, we didn't know.

Q. So it was a phase 2 to see what you could find out?

A. Yes.

Q. You didn't have a particular goal or target or objective? It was let's keep it going and see what we learn?

A. Yes. We intended to follow-up and complete the investigation that had started back in June. We had, however, run into an obstacle: we had seven people and whether or not it ended with them or whether or not it included others was something that we had no firsthand evidence about and we wanted to explore. That was something we had determined to do back in the summer months of 1972. It was a question of going through the indictment, pre-trial proceedings, the trial itself and then the sentencing as a way of following up on that. We thought actually that, at least with some of the pleading defendants, they would have an inducement to cooperate with us.

Q. Did they? We've talked about McCord, but did the others cooperate?

A. Liddy never did; he never said anything. I'm not sure how much the Cubans really knew. We called Hunt before the grand jury I don't know how many times. He was not very helpful. But the fact that this was going on, that people were going to be called before the grand jury and that no one knew what one might or might not say, was significant. In our view that helped bring in Dean and Magruder because
they didn't know what was going on in our investigation. From their perspective, the not so secret meeting with Liddy, for example, and bringing others before the grand jury, had to make anyone nervous who was out there.

Q. And it worked?
A. And it worked.

Q. So Magruder and Dean coming forward were really the first big breaks you had in phase 2 of the case?
A. They were the first and were very important.

Q. I'm sure it crossed your mind that there might be reason to question what Magruder and Dean were telling you?
A. Yes. Any prosecutor, when someone is coming in trying to make a deal, or seek immunity or otherwise alleviate pressure on himself or herself, always has to view with caution what it is that they're saying. As I've indicated before, particularly when talking about the specifics of the cover-up - the perjured testimony of Magruder, arrangements being made for payoffs, the involvement of others in the cover-up, Dean and Magruder corroborated one another. That provided an air of credibility, particularly, when unbeknownst to each other as far as we knew, Magruder and Dean were coming in independently. In the areas in which their involvement overlapped, there was great consistency between the two of them. It was persuasive.

Q. What did you next do in your investigation?
A. One, we continued to hold secret meetings with both of them up until April 15th. That was a very difficult period because there were only the three of us, Seymour Glanzer, Don Campbell and I, that knew about this. I had not told Harold Titus, my boss. I had not told Mr. Peterson.

Q. About the meetings with Dean and Magruder?

A. That is correct.

Q. Why not?

A. Because we had agreed that they would be in secret.

Q. You agreed with counsel?

A. With counsel. By the time of the end of that week, April 15th, I think it was a Saturday, it was too much to hold on to.
This is the continuation of the Oral History Interview with Earl Silbert

This is March 7, 1992. We are conducting the interview now in the den of his home.

Q. Do you remember where you were? You were saying that you had concluded.

A. We had concluded that we could not continue to hold in secret this information because the significance was too enormous. I remember calling Harold Titus, who was out of town attending a meeting of United States Attorneys. I told him that there had been a critically important development. I can't remember now whether I actually discussed specifics with him on the telephone. I also contacted Henry Peterson. Seymour, Don and I went over and met with Peterson and Harold Titus and Henry probably had one or two of his top assistants. We met on Saturday night at the Justice Department. We told them what had happened.

Q. What was their reaction to that?

A. Henry got up and went over to somewhere and poured himself a drink. It was shock. Probably on a personal level it was more so for Henry because he had worked closely with John Mitchell, when he was Attorney General. John Mitchell was directly implicated in the cover-up, and Magruder claimed that he authorized the break-in. This is a little known, but human aspect. John Mitchell had a public
reputation as a cold, almost heartless type of person. When Dean came in to talk to us at the secret meetings, when he came to Mitchell he said, despite his not being a very expressive person, he said, "I have trouble talking about Mr. Mitchell." He didn't have trouble talking about anybody else. He had trouble talking about Mr. Mitchell because he said he was like a father to him. When Magruder came in, he made a similar statement. And when Fred LaRue came in to talk to us, a person who was also implicated, an older gentleman, he started to shed tears when he talked about Mr. Mitchell. It was really something that was really contrary to the public perception that I had of Mr. Mitchell. So that night Henry called Kleindienst, who was the Attorney General and gave him a brief summary over the phone. Harold Titus, Henry Peterson, and I went out to Mr. Kleindienst's home around midnight. I think he had been at the gridiron dinner or some dinner. When we arrived at his home, Kleindienst told us that he had been shedding some tears — I believe he said it was over John Mitchell. Mr. Mitchell's impact on others struck me, on the human side. It didn't override what he did; perjury which he had committed, not known to us at the time, when he testified before the grand jury before the first indictment. That a lawyer would lie is more serious. That a former Attorney General of the United States would lie is anathema.

Q. Now the time frame we're in is late April, 1973?
A. Before we met with Mr. Kleindienst but after we met with Peterson, we called Charlie Shaffer to tell him what we had done. I believe it was April 14th or 15th.

Q. What was Mr. Shaffer's reaction?

A. He was not happy that we had not abided by our agreement.

Q. I take it his concern was this may start to filter back to the White House that Dean was talking?

A. Yes.

Q. I think in fact that happened.

A. It had to. Once we disclosed to Peterson and Kleindienst, that was not the kind of information that the latter could sit on. He had his own reporting responsibilities.

Q. There's a book out now called Silent Coup, which I confess I have not read.

A. Nor have I.

Q. That has an interesting and unique theory that the Watergate break-in was largely an effort to cover up a call girl ring. And I think Dean's wife, Maureen Dean, has somewhat been implicated in that. Is the fact that Dean was one of the first, if not the first, to come forward after the trial in your opinion lend any credence to that theory and looking back on the events of those days is there anything that would suggest there's any merit to that theory?
A. I know of no evidence to support that at all.

Q. Do you recall at what point in time the Senate Watergate Committee was constituted? Their hearings were in June of 1973. Was it after Dean came to you?

A. No. It was before. They were in place the last week in March when the initial sentencing was and McCord's letter was read. The first persons to talk to McCord were the Senate staff and not the grand jury. So they were clearly up and in operation.

Q. So you now had a competitor?

A. We had different responsibilities. I remember we had a meeting in the chambers of Chief Judge Sirica. I met with Sam Dash who was the Chief Counsel. I can't remember whether Fred Thompson was there or not. I don't remember the substance but it was some effort to assure one another that we would work together and cooperate. We tried to as best we could.

Q. Was there good cooperation among everybody?

A. We each had our own responsibilities. Grand jury information disclosure is secret. We were not in a position to disclose it. I believe the Senate Committee considered its evidence to be its own. But we wanted to make sure we wouldn't interfere with each other. By no means was it a joint investigative effort. Each had its own executive branch and legislative branch functions to perform.

Q. What were the events that finally led you to understand and appreciate that this was really reaching the highest levels of the White House?
A. When we first met with Dean, that second week in April, he told us that he implicated Erlichman and Haldeman in the cover-up. He did not, at that time, implicate the President. The Sunday after our Saturday night disclosure, Seymour and I (I don't think Don was with us; he had some family obligation) went out to Charlie Shaffer's office in Rockville and had another meeting with Dean, where we were pressing for more details. Dean, as I said, had been somewhat vague when talking about Erlichman and Haldeman. Mr. Peterson requested more specifics. We met for a couple of hours. We were getting ready to leave and this I will never forget. We were standing in the doorway, — and Dean, on prompting of Mr. Shaffer, said that instructions to break into the office of the psychiatrist of Dan Ellsberg came right out of the Oval Office. We had already heard a lot of shocking disclosures. This was another — of major magnitude. Seymour and I left and drove over to Mr. Peterson's house to tell him.

Q. This disclosure by Dean and Shaffer was the first that you had heard about the Ellsberg break-in?

A. Absolutely.

Q. And, I don't think there had been anything in the press before about that?

A. Never.

Q. This was purely shocking and new information?
A. Everything that Dean and Magruder had told us was never previously in the press. Nor was the Ellsberg revelation. When we told Henry Peterson, he said to put it in a memo. I wrote it out that Sunday night and sent it over to the Department the next day. It eventually was disclosed in the Ellsberg trial that led to that trial being aborted, a mistrial. Ultimately, I think the prosecution was dismissed. But that disclosure turned out to be very significant to us and not only because of the potential impact on the Ellsberg prosecution. I had read about the case in the newspapers but I hadn't followed it particularly closely because we were so consumed with the investigation that we were conducting. As we reflected on Dean's disclosure and followed up on it, we realized that the Ellsberg break-in and its implications was a dominating, a critically important motivation for the Watergate cover-up. It was the same two people, Hunt and Liddy, who were involved in that break-in into the office of Ellsberg's psychiatrist. If they started to cooperate with us on the Watergate Office break-in, there had to be a very powerful concern on the part of the White House and others that they would disclose to us the Ellsberg break-in.

Q. So the Ellsberg revelation to you was the first indication to you that Watergate really went far beyond just the DNC break-in?

A. That's right. We had in the course of our initial investigation come across so-called dirty tricks of Donald Segretti and others. It was very demoralizing to hear that in this day and age back in 1972, people involved in politics were engaging in that kind of offensive conduct.
Q. But that was more like minor league pranks compared to criminal activity such as the burglary?

A. Yes.

Q. When your meetings with Dean and Magruder were concluded, what did you do with that information?

A. Well, they didn't conclude. They continued, as I said, even after we made the disclosure to Mr. Kleindienst, Mr. Petersen, and Mr. Titus. We continued to meet and negotiate. Eventually we negotiated a plea disposition with Magruder. He agreed to plead to charges that implicated him both with participating in the burglary and break-in, that is the pre-June 17 illegal activity and then in the cover-up, the post-June 17 illegal activity. In the meantime our negotiations with Dean's lawyer, Shaffer, continued and there was a lot of jockeying going on back and forth and some internal discussions among us as to what we should do with respect to Dean's lawyer's efforts to obtain immunity for Dean. In addition, a stream of witnesses were coming on a constant basis in and out of the grand jury or meeting with us on the and responding to our investigation.

Q. So what was the next event in the continuing story of phase 2?

A. I think by the month of May, we notified Dean's lawyer that we would not agree to immunity and that he would have to plead guilty. And, in the meantime, we were conducting our own investigation and making enormous progress in terms of putting together a case. We were tracing out the cover-up money, how the money got
delivered and who delivered it. The involvement of the President's personal lawyer, and the ex-police detective from New York City whom he contacted. They were among the many who came in and met with us. We were tracing that out and putting our case together.

Q. That was the detective who was somehow implicated in Chappaquiddick, as well, right?

A. He went up to observe. He told us that when we met with him, among other things. It may be questionable White House activity but not criminal. It was a very hectic time during that period. At the end of May, the Special Prosecutor, Archibald Cox, was appointed.

Q. Now at that point in time, who were your targets? Dean, Magruder who you were having plea discussions with? Who else were your targets?

A. Messrs. Erlichman and Haldeman. John Mitchell. We were investigating the plumbers, those involved in the Ellsberg break-in, from top to bottom. The White House was recommending lawyers for those under our investigation. That number grew so large that the White House ran out of recommendations. In May, as part of the negotiations with Dean, when it became clear to him that we were tilting against giving him immunity, he began to up the ante. By that I mean his lawyer did. Mr Shaffer began to talk about the President. We had meetings about that. Imagine the significance of that. Dean's lawyer used to refer to the President as "Mr. P." He referred to Erlichman as "E" and Haldeman as "H." So we had meetings talking about
“E” and “H” and “Mr. P.” That was Charlie Shaffer. But he also was a very effective lawyer.

Q. So this was the first time you were getting some hard evidence that the President was involved?

A. Not hard. Dean was vague again. But he began to talk about the President’s involvement. Initially, in early April, Dean told us that the President didn’t know because of the Berlin Wall of E and H, Erlichman and Haldeman. But then he began to change and implicate the President and indicate that he did know. When you ask about hard evidence, it was certainly not the kind of evidence that I as a prosecutor would ever go into court and rely on alone. It was significant but didn’t come close to rising to the level on which I would rely on in a prosecution. Nevertheless, it was obviously monumental. In the cafeteria in the Courthouse the day after one of our evening sessions, I quietly asked Paul Friedman, the Administrative Assistant United States Attorney, and an outstanding lawyer, if he would look into the question of whether or not we could investigate the President and whether the President could be prosecuted without first going through the process of impeachment. I don’t believe I disclosed to anybody at the time that I asked Paul to do that.

Q. Was that your suggestion to talk to Paul or did you get orders from somebody else to do that?

A. I told no one about that except perhaps Seymour and Don. No one directed me to do it.
Q. Did Paul come back with a report to you?

A. He did. I believe he concluded, with some questions, that the investigation could go forward. We continued our investigation.

Q. Correct me if I’m wrong. I certainly don’t want to be leading you here, but were you thinking about calling Nixon in and talking to him?

A. No, not calling him in. We were trying to get information out of the White House. Eventually the Special Prosecutor had some problems and went to court about that, as we know – specifically over the tapes. We didn’t know about the tapes. But we were in contact with the White House Counsel, Fred Buzzardt. We sent to the White House a wide-ranging grand jury subpoena for documents.

Q. Up there, you mean to the White House?

A. Yes, to the White House for documents. Now that never got acted on because it was about that time, or very shortly thereafter, that the Special Prosecutor took over. So Seymour, Don, and I, didn’t pursue it. But that’s where we were headed.

Q. Now if my recollection is correct, Dean testified around the 23rd of June, 1973. He testified for four or five days, I believe. I think it was after his testimony that Alexander Butterfield testified and he revealed the taping system.

A. Correct.

Q. I take it that was the first time you learned about the taping system as well?

A. Yes. By that time we were no longer on the case.
Q. So at that point, Watergate was effectively over for you?

A. That's right.

Q. You were an interested observer, not a participant?

A. I was not a participant.

Q. Did you believe, once the tapes were revealed, did you believe that they enhanced Dean's credibility?

A. Absolutely.

Q. Was there anything after the revelation of the tapes and Dean's testimony that he told you in the earlier sessions that turned into the untruth?

A. I don't believe so.

Q. So he was as candid and honest with you in the early sessions in March and April as he was when he testified in June?

A. The one difference, and it was a significant difference, was that in early April when we were first meeting, he was telling us that the President didn't know.

Our investigation led us to the CIA and the early hold back in June, 1972, put on the FBI investigation that I mentioned previously. That turned out to be a White House directed effort to block the investigation back in its early stages. From the tapes, it was the smoking gun that resulted in the President's resignation. I can't remember how much Dean told us about the CIA. Some from President Nixon's White House are to this day blaming the CIA as the real Watergate culprits. The CIA was uncooperative during our investigation. To obtain information from it was excruciating. But its actual
involvement was peripheral. It was the White House and its mentality, its paranoia. To blame the CIA then or now is to evade responsibility. At a conference at Hofstra University in New York, on the Nixon Presidency, I talked with Messrs. Colson and Haldeman who were still blaming the CIA. I respectfully disagree. Although the CIA was the most difficult agency to deal with, it did not bear the responsibility for the Watergate cover-up, the Nixon White House does.

Q. How about Dean?

A. I hadn't heard from John Dean for more than fifteen years, until this book that you mentioned, Silent Coup, came out. Then the phone rang here in our house one Sunday afternoon. It was John Dean on the phone asking me about Silent Coup. He indicated he was thinking about bringing a defamation suit and asked what our investigation uncovered and what did I know about his wife and things like that? We chatted for awhile; I wasn't too anxious to get involved in a potential defamation suit.

Q. Let me in the time we have left, move on from Watergate. When did you become the U.S. Attorney for the District of Columbia?

A. I was court appointed in the first week of January, 1974.

Q. That process requires approval by the judges of the court?

A. Right.

Q. What are your recollections of becoming United States Attorney? How did you hear about it and what took place immediately prior to your confirmation?
A. Harold Titus was suffering from ill health. He told me that he was going
to resign. He did, effective, I believe, the end of 1973.

Q. And you were the number two person in the Office?

A. I was his First Assistant, yes.

Q. So did you serve for a period as Acting?

A. You’re not Acting. You are the U.S. Attorney, but you’re court
appointed as opposed to a U.S. Attorney who has been nominated by the President and
confirmed by the Senate.

Q. How long did you serve as U.S. Attorney?

A. As court appointed or as U.S. Attorney?

Q. Both?

A. Five and one-half years.

Q. For what period of time was it court appointed and when did you get
confirmation?

A. I was confirmed around August of 1975.

Q. Was there any resistance in the Ford White House to your confirmation
in the light of what happened with Watergate?

A. Not by the White House, as far as I know.

Q. Was there resistance to your confirmation?

A. There was some opposition, yes.

Q. Where did it come from?
A. Some Senators and from a lawyer who had a position with the ACLU, although the American Civil Liberties Union did not oppose my confirmation. But it was a lawyer named Morgan, whose first name I don't recall. He submitted a lengthy opposition to my confirmation.

Q. Do you remember what the Senate vote was?

A. About 84 to 12.

Q. Do you remember your confirmation hearing?

A. I had several. I was examined by Senator Hart, who I thought conducted a very fair and impartial examination. Senator Bayh examined me, but only for about 45 minutes or a half hour. And then I had a longer session, a little more adversarial in nature, with Senator John Tunney.

Q. So the opposition to your confirmation was coming from the liberal democrats?

A. Well, I don't think that is accurate. Senator Kennedy, for example, voted for me and he was on the Senate Judiciary Committee. I believe he is considered a liberal Democrat.

Q. During your tenure as United States Attorney, what would you consider to be the two or three most important cases that were handled by the Office?

A. There were a number. One was the brutal murder of a family of Hanafi Muslim by a group that came down from Philadelphia. It included four children and three others — seven people — brutally murdered. That was an extraordinarily difficult
investigation that was directed by now Judge Shuker of the Superior Court and John Evans. It was one of the most difficult because it was incredibly hard to get evidence, particularly since the defendants were fanatics against whom witnesses were terrified to cooperate. I believe at least one of our witnesses was murdered during the course of the investigation. It was an exceedingly well conducted investigation by those prosecutors, a very difficult trial, a very important case. No civilized society can tolerate that kind of brutal murder.

The Letelier assassination case was also an extremely important case. Again, an extraordinarily difficult investigation. When Mr. Letelier was murdered, we were going to investigate it as vigorously as we could. My initial thought was that that was the kind of crime that would be very difficult, if not impossible, to solve. But the Assistants who worked on it, Gene Propper and Larry Barcella did a tremendous job.

Q. In fact, that case in a way is still on-going today?

A. It's still going on today. That's right. There were a number of other key prosecutions in the fraud area. The Antonelli/Yeldell prosecution, which initially resulted in a conviction and then subsequently in a new trial and acquittal was an important case. So was the District Court Cellblock take-over case and the seizure of hostages in three buildings in the District of Columbia by the Hanafi Muslims. There were also a host of other corruption cases and white collar crime cases, as well as the effort to try and get a hold of the street crime problem in the District of Columbia. I thought we made some progress in the 70's. That was a major effort.
Q. What we read in the trade journals about the difficult time and criticism that the current U.S. Attorney has with the drug prosecutions in federal court. What was your relationship with the court like when you were U.S. Attorney? How would you characterize it?

A. I like to think that it was a very professional and one of mutual respect. I had good relations with the Judges. The Chief Judge of the District Court during a good deal of the time that I was U.S. Attorney was William Bryant. I tried a number of cases before him as an Assistant U.S. Attorney and had my share of battles in his Courtroom. Particularly in view of his remarkable accomplishments, he is one of the most modest and unassuming persons I have ever met, a wonderful human being. He was a pleasure to deal with. Harold Greene was the Chief Judge of the Superior Court. He, Police Chief Cullanane and I would get together from time to time to discuss mutual problems. I thought it was important to maintain liaison. The Courts and the Prosecution are different branches of government. Each branch has its own responsibilities and obligations and at times there are going to be differences of opinion. But at the same time it is important to discuss these differences. Sometimes you could resolve them, sometimes you might not be able to.

Q. Who were the principle people in your office working under you at that time?

A. I was the most fortunate person because I couldn't have had more able, dedicated people. Carl Rauh was the Principal Assistant. Henry Green, now a judge,
was Executive Assistant. Hank Schuelke became his successor when Henry moved over to Superior Court. Bob Shuker was in charge of Superior Court. Seymour Glanzer and then Bob Ogren were in charge of the Fraud Unit, Don Campbell and Larry Barcella of Major Crimes, Oscar Alshuler, of course, was down in Special Proceedings. The Chiefs of the Civil Division were Skip Akins, then Bob Ford, and then Royce Lamberth— all of whom were great. Ellen Lee Park was their Principal Deputy, in the Civil Division, the importance of which was increasing tremendously during that period of time. I was also blessed to have great lawyers John Terry and Mike Farrell— as Chiefs of the Appellate Section. There were many others; I was very lucky.

Q. If you could have waved a magic wand when you were U.S. Attorney what would you have changed? Without restrictions, no opposition. Anything. The way the office was run or your relationship with the court? Anything.

A. The relationship with the Courts, I thought, was good. I was so incredibly fortunate to have a remarkable group of supervisory personnel. My first goal, obviously, as U.S. Attorney was to run the most professional office that we could and to be as effective as we could in performing our day-to-day responsibilities. Another goal that I had when I became U.S. Attorney was to see if there was any way to bring better coordination to the law enforcement effort. Through my years in the process, working at the Department, working from the bottom-up in the U.S. Attorney's Office, the lack of cooperation was painfully obvious. I referred to it in discussing the
first stages of the Watergate investigation. Law enforcement agencies were not cooperating. Often times they were working almost as much against one another as with one another. To make any progress, to try to do something about crime, at least from the prosecutor’s point of view and law enforcement point of view, required better coordination. One of the first things I did when I became U.S. Attorney was to call a meeting of all the heads of the law enforcement agencies in D.C.: the Chief of Police, Special Agents in Charge of the FBI, DEA, Alcohol, Tobacco & Firearms, Secret Service, the Chief of the Park Police, and U.S. Marshals Service. I had been around long enough that I knew a lot of these people. This was a great benefit. We had a meeting. That was the first time there had ever been such a meeting in the District of Columbia. I said that this was not going to be a meeting for deputies, only for Chiefs. They came. For some of them, it was the first time they had met one another. That said something by itself. That by itself made the meeting worthwhile. We developed some programs to address specific problems. I would call the meetings and some of them began to look forward to it.

I was also very fortunate, for example, that Maurice Cullanane was the Chief of Police. Police chiefs tend to be very independent and are often isolationists. It’s not healthy. Chief Cullanane once told me that at a meeting of big city chiefs of police, they got to talking about prosecutors. Most of the chiefs were talking about how they never talk to their counterparts in the prosecutorial world. Chief Cullanane said that he talked or met with our prosecutor once a week. He was an aberration – all too
typical, but very unhealthy. When we set up our career criminal program, which was an attempt to focus on dangerous offenders who were in and out of the criminal justice process, I called everybody in the system. I spoke to the Department of Corrections, the Parole Board, and the D.C. government. I also spoke to the Court before we instituted the program, with Chief Judge Greene. As a separate branch of Government, the Court couldn't be a part of the joint effort against career criminals. That's inconsistent with the independence of the judiciary and its function. However, we met and I asked if the Court could set up a separate calendar to handle these cases. That was within his discretion and would not in any way adversely affect the independence of the Court. Chief Judge Greene, who scrupulously protected and asserted the independence of the judiciary, was willing to do that. That was very important for the success of that program. That was part of what I mean by the prosecutor and the judges meeting and working out problems. In some areas there will be differences but there are some areas where they can work together, without infringement on their independence.

Q. So when you left office as U.S. Attorney you thought there was better cooperation among law enforcement agencies?

A. I thought there was, yes. I looked on that as one of my accomplishments.

Q. What would you consider the other accomplishments?

A. As I said, to me the most important thing was to try and professionalize the Office. Not that it wasn't a great Office when I became U.S. Attorney. That Office
had a marvelous tradition with outstanding U.S. Attorneys whom I had had the
privilege of serving under. I tried to continue and build on that marvelous tradition.
For example, the Office had never really had a policy manual. We undertook a major
effort to put together all the office policies so that when a new assistant came in, he or
she would have something to look at rather than be limited only to office gossip or talk.
Prosecutors have enormous discretion. If exercised with good judgment, this broad
discretion is beneficial. But there has to be consistency and even-handedness. I had
prepared a policy manual when I was in General Sessions for that section of the Office.
I thought one should be done for the U.S. Attorney's Office as a whole. It was a big
project, but something that I thought was worthwhile. We also took steps to broaden
the range of our investigative efforts, especially into white collar crime and corruption.
These were growing areas of law enforcement concern, important areas.

Q. What year did you leave the U.S. Attorney's Office?
A. Mid-1979.

Q. And you went into private practice?
A. I did.

Q. Where did you go?
A. A law firm by the name of Schwab, Donnenfeld, Bray & Silbert. I was
the 10th lawyer in that firm.

Q. So you joined an existing firm?
A. A firm that had been in existence only for fifteen months. But yes, it was existing.

Q. You're still there today?

A. Yes.

Q. What's the nature of your practice today?

A. The firm as a whole does all litigation. Probably about 30% in the white collar criminal area and 70% in civil/commercial litigation. I do about half and half. I do represent a number of lawyers, too, for varied purposes, including ethical obligations and questions.
Q. So you have been in primarily civil litigation since 1979?

A. I do about half that and half white collar crime.

Q. What happened to some of the more interesting cases you've handled in private practice that you're able to talk about?

A. One certainly is when Judge Griffin Bell, the former Attorney General, asked me to represent him when he was sued for defamation arising out of an independent investigation he had conducted in the Hutton case. That was a great honor to be selected by him because he's an extraordinary attorney himself, with more experience of all kinds, including trial experience, than I have had. Despite his greater experience, he never once tried to second guess my colleagues and me. He was also a great witness in his own defense. When the jury returned its verdict in his favor, its members requested copies of the report he had written that was the subject of the purported defamation.

Q. Do you have another favorite case since private practice?

A. In the criminal area, most of the cases that you have that are successes are when you persuade or convince a prosecutor not to bring a case. Those are the kind that are non-publicized and so it's difficult to talk about them.
Q. But your experience as a prosecutor, I take it, that helps you a great deal in understanding not only the procedure and process but the mentality?

A. Absolutely. Whenever I am asked to represent somebody in a criminal investigation, I try to put myself in the position of the prosecutor and ask how I would be planning or thinking about this. I ask myself what they are looking for? What's their attitude going to be toward my client in this situation? I try to draw from my own experience when I was sitting on the other side of the table. To me it's very helpful.

Q. Let me ask you a few more tough questions.

A. Right. Go ahead.

Q. How do you compare the quality of prosecutors today with 20 years ago?

A. I don't know that I can do that. I deal with prosecutors a lot. Some are excellent; some, however, lack the experience and, most important, good judgment, that I think a prosecutor ought to have. You learn as time goes on. It's hard to judge. I see a lot more gray these days than I did, certainly in my early years as a prosecutor. When I was a young Assistant U.S. Attorney, things were clear, to me. Persons were guilty or not guilty. If they were guilty, they ought to be prosecuted, most of the time for whatever it was. There wasn't a whole lot of gray. Today, I see a lot more gray. Part of this I think is part of growing up, having a little more experience and hopefully a little more maturity. Prosecutors for understandable reasons tend to be younger and closer to law school days. They have their visions and ideals and views, which are understandable. So it's hard for me to evaluate or compare. There's always a tendency
to say that it was never like the good old days. I promised myself that when I left the
U.S. Attorney's Office, I wouldn't criticize it. I was in the office too long to do that. I
will, of course, fight as hard as I can on an individual case for a client, but I will stay
away from general observations.

Q. How would you compare the quality of the bench today to 20 years ago?

A. I thought it was very good when I was trying cases before the Court. As
any young prosecutor, I had my share of differences and battles with judges. But that is
the adversary process. They were a group of good judges. I tried a number of cases, as
I mentioned, before Judges Keech, Gasch, Bryant, Gesell, and others. Some I won and
some I lost. But I thought they were good judges. I think the court today is a little
more varied in terms of the personalities. They come from wider or more diverse
backgrounds. I think that's healthy for the court. I consider it a conscientious, capable
bench.

Q. Would you like to join it some day?

A. I have not had an interest in becoming a judge and have none at the
present time.

Q. Any particular reason?

A. I sometimes wonder whether I'd have trouble deciding. You have good
lawyers before you who each can present very persuasive arguments. It may be
difficult to decide. Some issues are fairly simple but there are a lot of very tough issues
out there. But that's not the controlling factor. At this time, one reason is partially
financial. I thought judges had been grossly underpaid and was very unhappy when the pay raise about three years ago did not go through for both senior executive employees, judges, and members of Congress. I am relieved that at least there was some satisfaction and improvement recently. It's very important. It also strikes me that a judge's life may be somewhat limited in the sense that trial judges are in their own chambers with their law clerks. A lot of your lawyer friends are hesitant to contact you because they're nervous or edgy that they'll have a case before you and that'll raise questions about partiality or preference. Many lawyers, therefore, draw back from contacting their judge friends. It can tend to be a little isolating. One of the aspects I enjoy about private practice, and enjoyed in the U.S. Attorney's Office, was the camaraderie. It was terrific both as an Assistant and even when I was a Supervisor. There were a number of contemporaries of mine with whom I became very close friends and who continue to be my closest friends. In private practice, you're in a law firm, even though ours is comparatively small. But there are a number of cases on which I work together with other lawyers, many of them former Assistant U.S. Attorneys. That is very enjoyable. That is something I fear might be sacrificed in going to the bench.

Q. So you're not ready to do that then?

A. I suppose the short answer to your question is yes. There's also the question of how one gets to be selected to be a judge. To me, it is a totally unpredictable phenomenon. To say I want to be a judge, and put your heart and soul
on that desire can prove very disappointing. I've seen lawyers like this and I've said that's not going to be for me because I saw the harmful effect that it had. I think that it is not a very wise goal to have in a sense because it's so unpredictable and not subject to control.

Q. Well, let me bring our interview and discussion full circle. What about teaching law some day?

A. That would be a challenge. I think it would be hard. Law students are very bright. I've interviewed at law schools and I've seen the resumes of these students and they are awesome. I might be a little hesitant to stand up in front of a group of these students and purport to try and teach them when they might be a lot smarter than I am. Not might be, very well are.

Q. But not out of the question?

A. Not out of the question.

Q. Well, I think we're at the point where we can end. On behalf of the Oral History Project for the D.C. Circuit, I certainly want to thank you for the generous amount of time you've given and the candor that you've displayed and I hope you've enjoyed it as much as I have.

A. I have. I've enjoyed talking with you and I thought your interview reflected considerable background work, good organization, and questions right on point.

Q. Thank you.
Index

Acheson, Dave, 27, 59
Akins, Skip, 131
Alch, Jerry, 75-76, 85-86, 101-102
Alexander, Harry T., 41
Alfred, Professor, 11
All the President’s Men, 68, 73, 90-91

see also Watergate investigations and trial
Altshuler, Oscar, 40, 60, 131
American Civil Liberties Union, 128
Anderson, Jack, 84
Antonelli/Yeldell prosecution, 129
Arnold, Dick, 15
Bachrach, Bill, 35
Bacon, Sylvia, 49
Bailey, Lee, 85, 86
Baldwin, Al, 67, 78, 95, 96-97

see also Watergate investigations and trial
Barcella, Larry, 129, 131
Barker, Mr., 70
Bayh, Senator, 128
Bazelon, David, 38, 60
Bell, Griffin, 136

Bellow, Gary, 15-16
Belson, Jim, 64-65

see also Watergate investigations and trial
Bernstein, Carl, 68

see also Watergate investigations and trial
Bierbower, Jim, 105
Bittman, Bill, 47, 75-76, 81, 85, 99
Blackwell, Joel, 42
Boston, Massachusetts, 1-4, 29
Bragdon, Mr., 8, 11, 13
Bress, Dave, 52-53, 59
Brookline, Massachusetts, 2-7, 20
Bryant, William, 45, 53, 130, 138
Butterfield, Alexander, 124
Buzzard, Fred, 124
Caddy, Douglas, 66, 68, 79

see also Watergate investigations and trial
Califano, Joseph, 98
Campbell, Don, 83, 86, 94-95, 99, 114-116, 119, 123-124, 131

see also Watergate investigations and trial
Caputy, Vic, 46, 59
Central Intelligence Agency, 67, 70-72, 83, 125-126

see also Watergate investigations and trial
Christian v. United States, 394 A.2d 1 (D.C. 1978) (Hanafi Muslim case), 128-129
Clark, Ramsey, 58
Coleman, Dick, 26
Colson, 126
Committee for the Reelection of the President (CREEP), 64, 67, 74-75, 88-89, 97

see also Watergate investigations and trial
"the Counter," 28-29
Court Reform Act of 1970

see District of Columbia Court Reform and Criminal Procedure Act of 1970, P.L. 91-358, 84 Stat. 473
Cox, Archibald, 122, 124
CREEP

see Committee for the Reelection of the President
Cullanane, Maurice, 130, 132
Curran, Chief Judge, 43
Dahlberg, Kenneth, 71

see also Watergate investigations and trial
Dash, Sam, 118
Davis, Bill, 43
Davis, Rennie, 86
Dean, John, 72, 81, 103, 104-111, 112-114, 116, 117, 119-123, 124, 125, 126

see also Watergate investigations and trial
Dean, Maureen, 117-118
"Deep Throat," 73, 89-93

see also Watergate investigations and trial
Democratic National Committee, 63-64, 85, 95-97, 120

see also Watergate investigations and trial
District of Columbia Court of Appeals:

Judges:

Belson, Jim, 64-65
Finkle, Austin, 36
Rogers, Judy, 49
Terry, John, 131

District of Columbia Court of General Sessions and Superior Court of the District of Columbia,
28-40, 41-43, 64, 131, 133-134
the "Counter," 28-29

Judges:

Alexander, Harry T., 41
Bacon, Sylvia, 49
Belson, Jim, 64-65
Finkle, Austin, 36
Green, Henry, 130-131
Greene, Harold, 41, 130, 133
Halleck, Charles, 41
Kelly, 32
Kronheim, 31
Murphy, Tim, 28, 41, 42
Pryor, Bill, 35
Shuker, Bob, 128-129, 131
Smith, Don, 43
Stewart, Bill, 37

see also under Silbert, Earl, Legal career, with U.S. Department of Justice

District of Columbia Court Reform and Criminal Procedure Act of 1970, P.L. 91-358, 84 Stat. 473:

Drafting of, 36, 48-52

"no knock" provisions, 49, 51-52
pre-trial detention provisions, 49-51
wire-tapping provisions, 49

Implementation of, 57-59

District of Columbia riots of 1968, 52-55
Charging rioters with felonies, 53
Effect of, 54, 56

Dukakis, Mike, 15, 20
Duncan, Charles, 27
DuPont, Robert, 55

Durham rule (Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954)), 60-61
“Eduardo” (Howard Hunt), 83

see also Watergate investigations and trial

Ellsberg, Dan, 119-120
Ellsberg break-in, 119-120, 122
Ellsberg trial, 120
Erlichman, 106-107, 109, 119, 122-123
Evans, John, 128-129
Farrell, Mike, 131
Federal Bureau of Investigation, 69-70, 75, 89, 96-97, 125

see also Watergate investigations and trial

Felt, Mark, 93
Finkle, Austin, 36
Flannery, Tom, 50, 58-60
Fletcher case, 46-47, 60
Ford, Bob, 131
Friedman, Paul, 123
Furcolo, Foster, 20
Gasch, Oliver, 45, 138
Gesell, Judge, 138
Glanzer, Seymour, 84, 94-95, 99, 105, 114-116, 119, 123-124, 131
Green, Henry, 130-131
Green, June, 47
Greene, Harold, 41, 130, 133
Haig, Alexander, 89, 93
Haldeman, 93, 106-107, 109, 119, 122-123, 126
Halleck, Charles, 41
Hammer, Roy, 21
Hanafi Muslim case (Christian v. United States, 394 A.2d 1 (D.C. 1978)), 128-129
Hanafi Muslim hostage-taking case (Khalis v. United States, 408 A.2d 313 (D.C. 1979)), 129
Hart, Senator, 128
Harvard University, 2, 9-19, 21
Heiman, Dick, 24
Hemenway & Barnes, 20-21
Heymann, Phil, 15
Hofstra University, 126
Hogan, Thomas, 105
Howard Johnson's Hotel, 66

see also Watergate investigations and trial

Hunt, Howard, 68-69, 75-76, 77-78, 82-83, 91-93, 98-99, 101, 112, 120

see also Watergate investigations and trial
Hutton case, 136
Johnson, Al, 75-76, 101-102
Jones, John, 23-24
Justice Department, U.S.:
Attorneys General:
Clark and Mitchell, differences in philosophies, 58
Clark, Ramsey, 58
Kleindienst, Richard, 57, 58, 116-117, 121
Mitchell, John, 58, 75, 106-108, 115-116, 122-123
Rogers, 23
Federal Bureau of Investigation, 69-70, 75, 89, 96-97, 125
see also Watergate investigations and trial
Tax Division, 21-27
U.S. Attorney's Office, 26-61, 126-134
size of staff, 62
U.S. Attorneys:
Acheson, Dave, 27, 59
Bress, Dave, 52-53, 59
Flannery, Tom, 50, 58-60
Gasch, Oliver, 45, 138
Rauh, Carl, 49, 130
see also under Silbert, Earl, Legal career
Keech, Judge, 43-44, 138
Kelly, Judge, 32
Kennedy Administration, 22, 24-25
Kennedy, Robert, 22
Kennedy, Senator, 128
Khaalis v. United States, 408 A.2d 313 (D.C. 1979) (Hanafi Muslim hostage-taking case), 129
King, Martin Luther, 52
Kleindienst, Richard, 57, 58, 116-117, 121
Kronheim, Judge, 31
Lamberth, Royce, 131
Lano, Angelo, 96-97
LaRue, Fred, 116
Lawton, Mary, 49
Layton, John, 53
Legal Aid Agency, 15-16, 35
Leetelie assassination case (United States v. Sampol, 636 F.2d 621 (D.C. Cir. 1980)), 129

see also Watergate investigations and trial

Lithuania, 1

Lombard, Tom, 49

Lowther, Joe, 46, 59

Magruder, Jeb, 72, 75, 103, 105-108, 110-111, 112-116, 120-121

see also Watergate investigations and trial

Maroulis, Peter, 75-76, 86-87, 101, 102-103

Marshall, Millard, 35

Massachusetts, 1-7, 20

Matthews, Judge, 45

“Maximum John,” 80-81

McCord, James, 64, 67-68, 74-76, 78, 85-86, 100-104, 112, 118

see also Watergate investigations and trial

McDaniels, Bill, 47

McGovern, 88

McGuire, Matt, 43

McNaughton Rule, 61

Meeks, Mr., 35

Metropolitan Athletic Association, 29-30

Metropolitan Athletic and Educational and Cultural Association, 29-30

Michaelman, Frank, 15


Mitchell, John, 58, 75, 106-108, 115-116, 122-123

see also Watergate investigations and trial

Morgan, 128

Murphy, Tim, 28, 41, 42

Nixon, 72, 106, 119, 122-124, 125-126

see also Watergate investigations and trial

“No knock,” 49, 51-52

see also District of Columbia Court Reform and Criminal Procedure Act of 1970, P.L. 91-358, 84 Stat. 473

O'Brien, Larry, 95

Oberdorfer, Judge, 23

Ogren, Bob, 131

Oliver, Spencer, 96, 100

Park, Ellen Lee, 131

Pekins, Mr., 35
Peterson, Henry, 89, 90-92, 100, 101, 102-103, 111, 114-117, 119-120, 121

see also Watergate investigations and trial

Phillips Exeter Academy, 7-9, 10

Plunkett, Paul, 15

Porter, Herb, 75

Pre-trial detention, 49-51

see also District of Columbia Court Reform and Criminal Procedure Act of 1970,
P.L. 91-358, 84 Stat. 473

Propper, Gene, 129

Pryor, Bill, 28, 35

Rafferty, Joe, 66

see also Watergate investigations and trial

Rauh, Carl, 49, 130

Richey, Judge, 97-98

Robinson, Aubrey, 45

Robinson, Spottwood, 45

Rogers, Judy, 49

Rogers, Secretary, 23

Rothblatt, Henry, 86, 94-95

Ruckelshaus, Bill, 15

Sachs, Albert, 17-18

Saint Elizabeth's Hospital, 60

Santarelli, Don, 48-49, 57, 58

Sarbanes, Paul, 15

Schafer, Charles, 32, 35, 72, 105-111, 117, 119-123

Schuelke, Hank, 131

Segretti, Donald, 120-121

Senate Judiciary Committee, 128

Senate Watergate Committee, 118

see also Watergate investigations and trial

Sharp, Jim, 105

Shuker, Bob, 128-129, 131

Silbert, Earl:

Early life:
career ambitions, 12-13, 18-19, 21, 25, 138-140
family background, 1-4
father's career, 3, 21
Education:
    early reading, 6
    elementary education, 5-7
    further education, 25-26
    Harvard College, 9-12, 13, 14
    Harvard Law School, 12-13, 16-19, 20
    classmates, 14-16
    living arrangements, 19, 21
    professors, 17-18
    jobs during, 10-11, 15, 20-21
    secondary education, 7-9
    favorite subjects, 8
    sports, interest in, 4, 9, 11-12
Politics, interest in, 3, 19-20
Civic volunteer work, 25, 30
    Metropolitan Athletic Association, 29-30
    Metropolitan Athletic and Educational and Cultural Association, 29-30
Legal career:
    with U.S. Department of Justice:
        Office of Criminal Justice, 48-52, 57
            District of Columbia Court Reform and Criminal Procedure Act of 1970,
        Tax Division, 21-27
            Appellate section, 23-27
U.S. Attorney's Office:
    District of Columbia Court of General Sessions Section:
        assignments in, 28-35, 40-42, 43, 134
        the "Counter," 28-29
        first nonjury trial, 31-32
        first trial lost, 32-33
        joins section, 26-27
        judges, experiences with, 33-34
Executive Assistant U.S. Attorney:
    responsibilities as, 58-59, 60
    Court Reform Act, implementation of, 58-59
    insanity defense, test for, 60-61
Principal Assistant U.S. Attorney:
Watergate investigations and trial, chief prosecutor in, 47, 62-126
called in on case, 62-64
Dean, John, relationship with, 106
FBI, relationship with, 96-97
Sirica, Judge, relationship with, 79-81
pressures in, 76-77
trial:
  focus as prosecutor, 87
goals as prosecutor, 80
significance of, 94-95

see also Watergate investigations and trial
U.S. District Court Grand Jury Section, 42-43
U.S. District Court Special Proceedings Section, 40
insanity defense, test for, 60-61
U.S. District Court Trial Section, 43-48
  District of Columbia riots of 1968, cases arising from, 52-55
drug cases, 55-57
  DEA and police, relationship between, 55-56
memorable trials, 43-44, 46-47, 53, 61
U.S. Attorney for the District of Columbia:
accomplishments as, 133-134
career criminal program, 133
cooperation among law enforcement agencies, 56, 131-133
appointment as, 126-127
confirmation process, 127-128
major cases:
  Antonelli/Yeldell prosecution, 129
  Hanafi Muslim case (Christian v. United States, 394 A.2d 1 (D.C. 1978)),
    128-129
  Hanafi Muslim hostage-taking case (Khaalis v. United States, 408 A.2d 313
    (D.C. 1979)), 129
  Letelier assassination case (United States v. Sampol, 636 F.2d 621
    (D.C. Cir. 1980)), 129
  U.S. District Court cellblock takeover case, 129
principal assistants under, 130-131
U.S. District Court, relationship with, 130
in private practice:
   joins Schwalb, Donnenfeld, Bray & Silber, 134
major cases:
   Judge Griffin Bell case (Pearce v. The E.F. Hutton Group, Inc., 664 F.Supp. 1490
   (D.D.C. 1987)), 136
   nature of practice, 135
Legal philosophies:
   Dean, John, credibility of, 125
   defense attorneys, exceptional, 35, 46-47
   insanity defense, test for, 60-61
Justice Department, comparison of under Ramsey Clark and John Mitchell, 58
judges, attributes and role of:
   age, desirable, 37-38
   attributes needed, 37, 41-42
   exceptional judges, 45
   experience needed, 36-37
   judicial temperament, 41-42
   limitations in lives of, 139-140
   role of, 45-46
nomination of judges, weaknesses in system, 36-38
police, juror perception of, 54, 56
prosecutions, purpose of, 102
prosecutors, exceptional, 46
quality of the bench, 138
trial work, lessons from, 33
   United States v. Wade, 388 U.S. 218 (1967), application of, to search warrants, 65
   Warren Court, effect of, 38-40
   search and seizure, 39
U.S. Army, rejected from service in, 12, 13, 19
Silent Coup, 126
   theories in, 117-118
Sirica, Judge, 66, 68, 76, 78-81, 87, 93-95, 99, 101, 102-103, 104, 118
   see also Watergate investigations and trial
Smith, Don, 43
Stein, Jake, 47
Stewart, Bill, 37
Sullivan, Harry, 52
Superior Court of the District of Columbia

*see* District of Columbia Court of General Sessions and Superior Court of the District of Columbia

Supreme Court, U.S.

Warren Court, 38-40

Terry, John, 131

Thompson, Fred, 118

Tinney, Bill, 35


Tunney, John, 128


*United States v. Sampol*, 636 F.2d 621 (D.C. Cir. 1980) (*Letelier assassination* case), 129

*United States v. Wade*, 388 U.S. 218 (1967), 65

U.S. Attorney’s Office

*see under* Justice Department, U.S., *and* Silbert, Earl, Legal career, with U.S. Department of Justice

U.S. Court of Appeals for the District of Columbia Circuit, 38-39, 66, 100

Judges:

Bazelon, David, 38, 60

Rogers, Judy, 49

Wright, Skelly, 38

U.S. District Court for the District of Columbia, 38, 40-41, 42-48, 56

*Cell block takeover* case, 129

Change in jurisdiction, 47-48

Judges:

Bryant, William, 45, 53, 130, 138

Curran, 43

Flannery, Tom, 50, 58-60

Gasch, Oliver, 45, 138

Gesell, 138

Green, June, 47

Greene, Harold, 41, 130, 133

Hogan, Thomas, 105

Keech, 43-44, 138

Lamberth, Royce, 131

Matthews, 45

McGuire, Matt, 43

Oberdorfer, 23

Richey, 97-98
Robinson, Aubrey, 45
Robinson, Spottwood, 45
Sirica, 66, 68, 76, 78-81, 87, 93-95, 101, 102-103, 104, 118
see also Watergate investigations and trial
Youngdahl, 45
Warren Court, 35-36, 38-40
Washington Post, The, 47, 72-73, 89
Watergate investigations and trial, 47, 62-126
Arraignment, 64-66
Arrests, 63-64
Assistant prosecutors, 83-84
Break-in, motives for, 95-96
Breaks in case, 66-67, 113
Burglars, interviews with, 77-78
Central Intelligence Agency (CIA):
  involvement of, 67, 70-72, 83, 125-126
  relationship with prosecutors, 125
Civil suits, 97-98
Committee to Reelect the President (CREEP):
  destruction of documents, 88-89
  involvement of, 64, 67, 74-75, 88-89, 97
Conspiracy, extent of, 81-83
Cover-up:
  Ellsberg break-in, relationship with, 120
  investigation of, 71-72, 121-122
  Mitchell, John, implicated in, 115-116
  motivation for, 120
  responsibility for, 125-126
  revelation of, 103
  testimony, compelling of, 87-88, 95
Cox, Archibald, 122, 124
Cubans, 70-71, 78, 83, 86, 88, 94, 112
Dean, John:
  cooperation with prosecutors, 72, 81, 103, 104-111, 112-114, 116, 119-123, 125
  crimes, admission of, 111
  evidence of cover-up, 106-107
  implicates President Nixon, 122-123
  implicates White House, 119
  Liddy's break-in plans, 108
plea discussions, 121
pressures on, 109-110
Senate Watergate Committee, testimony before, 109, 124
Silent Coup, 126
"Deep Throat," 73, 89-93
Defense attorneys, 66, 72, 75, 85-87
Ellsberg break-in, 119-120, 122
Federal Bureau of Investigation:
relations with local police, 69-70
wiretapping, sweeps for, 96-97
takes lead in investigation, 69-70, 75, 89, 125
Florida bank accounts, 70-71
Grand jury, 66, 68, 71, 75, 77-78, 78-79, 83-84, 90-91, 96, 97, 104, 106-107, 111, 112-113
see also under individual defendants
Hunt, Howard:
CIA, relationship with, 83
character of, 82-83
cooperation with prosecutors, 77-78, 112
Ellsberg break-in, 120
grand jury appearances, 112
involvement in break-in, 68-69, 91-93, 101
plea discussions, 98-99
Immunity, granting of, 75-76, 87
Liddy, G. Gordon:
character of, 82-83, 104
cooperation with prosecutors, 101, 104, 112-113
defense at trial, 86-87
Ellsberg break-in, 120
grand jury appearances, 77, 104
involvement in break-in, 68-69, 74, 88, 108
sentence, 102-103
Magruder, Jeb:
cooperation with prosecutors, 72, 103, 105-108, 110-111, 112-116, 120
evidence of cover-up, 108, 115
grand jury appearances, 75
plea discussions, 121
McCord, James:
  CIA, relationship with, 67-68
  Committee to Reelect the President, relationship with, 64, 74
  cooperation with prosecutors, 100-104
  defense at trial, 85-86
  grand jury appearances, 78, 103
  letter to Judge Sirica, 76, 100-101
  plea discussions, 101-02
  sentence, 102-103
Mitchell, John:
  grand jury testimony, 75, 116
  involvement in break-in, 106-108, 122-123
  relationship with defendants, 115-116
Motions, 79
Nixon:
  Ellsberg break-in, 119
  involvement in break-in, 106, 122-124, 125-126
  prosecution of president, research on, 123-124
  resignation, 72, 125
Plea bargaining:
  with Dean, John, 121
  with Hunt, Howard, 98-99
  with Magruder, Jeb, 121
  with McCord, James, 101-102
"the Plumbers," 122
Post-trial investigation (phase 2), 111-114
  reason for, 112
Press leaks, 72-73, 84-85
Search warrants, 63-65
  United States v. Wade, 388 U.S. 218 (1967), application to, 65
Senate Watergate Committee:
  hearings, 118
  Special Prosecutor, appointment of, 122
  White House connection, investigation of, 124
Sentences, 102-103
Silent Coup, 117-118, 126
Sirica, Judge:
  assigned to case, 78-79
  letter from James McCord, 100-101
  purpose of trial, views on, 94-95
  reputation of, 78-81
Trial:
  criticism of handling of case, 78
  defense, arguments of, 85-87
  length of trial, 99
  pressures of, on prosecutors, 88, 99-100
  proceedings, 98-100
  purpose of trial, 94-95
  testimony, compelling of, 87-88, 95
White House:
  involvement of, 100, 120
  documents subpoenaed from, 124
  responsibility for break-in, 126
  taping system in, 124
White House, 100, 120, 124, 126
  see also Watergate investigations and trial
Williams, Edward Bennett, 46-47, 98
Williams & Connolly, 98
Wilson, Jerry, 52-53
Wire-tapping, 49
  see also under District of Columbia Court Reform and Criminal Procedure Act of 1970, P.L.
   91-358, 84 Stat. 473
Woodward, Bob, 68, 89-92
  see also Watergate investigations and trial
Work, Chuck, 63-65
  see also Watergate investigations and trial
Wright, Skelly, 38
Youngdahl, Judge, 45