WILLIAM H. JEFFRESS, JR., ESQUIRE

Oral History Project
The Historical Society of the District of Columbia Circuit
WILLIAM H. JEFFRESS, JR., ESQUIRE

Interviews conducted by:
Professor Angela J. Campbell
July 28, August 9, August 23, 2011;
May 4, 2012; June 5, 2013
NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

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PREFACE

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INTERVIEWEE ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of [Name of Interviewee]

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., and its employees and agents (hereinafter "the Society"), I, [Name of Interviewee], hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs of the interviews of me as described in Schedule A hereto, including literary rights and copyrights. All copies of the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs are subject to the same restrictions herein provided.

2. I also reserve for myself and to the executor of my estate the right to use the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs and their content as a resource for any book, pamphlet, article or other writing of which I or my executor may be the author or co-author.

3. I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said tape recordings, digital recordings, transcripts, computer diskettes, and DVDs in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

[Signature of Interviewee]  [Date]

SWORN TO AND SUBSCRIBED before me this 30th day of July, 2013.

[Signature of Notary Public]

My Commission expires: October 31, 2018

ACCEPTED this 18th day of September, 2013 by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

[Signature of President]
Schedule A

Tapes recordings, digital recordings, transcripts, computer diskettes and DVDs resulting from five interviews of William H. Jeffress, Jr. conducted on the following dates:

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The transcripts of the five interviews are contained on a CD.
INTERVIEWER ORAL HISTORY AGREEMENT

The Historical Society of the District of Columbia Circuit

Oral History Agreement of [Name of Interviewer] Angela J. Campbell

1. Having agreed to conduct an oral history interview with William Jetters for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Angela J. Campbell, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs of interviews as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said tape recordings, digital recordings, transcripts, computer diskettes, and DVDs in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

[Signature of Interviewer] 8-30-13

SWORN TO AND SUBSCRIBED before me this 30th day of August, 2013.

Karyn M. Boulton
Notary Public

My Commission expires: 12/14/15

ACCEPTED this 18th day of September, 2013, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
## Schedule A

Tapes recordings, digital recordings, transcripts, computer diskettes and DVDs resulting from five interviews of William H. Jeffress, Jr. conducted on the following dates:

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First Interview - July 28, 2011

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

PROF. CAMPBELL: Okay, it’s July 28, 2011, and I’m Angela Campbell. I’m here with Bill Jeffress at Georgetown Law School. We’re doing an interview for the D.C. Circuit Historical Society’s Oral History Project. Good morning Bill.

MR. JEFFRESS: Good morning, Angela.

PROF. CAMPBELL: So, maybe you could tell me a little bit about your family.

MR. JEFFRESS: Well, I was born in Birmingham, Alabama, at the tail end of World War II. My daddy was serving in the Army. I grew up in Richmond, Virginia, pretty much my entire life. Our family was a very close family. I had three brothers, none of whom became lawyers except myself. I graduated from high school in 1963, in the public schools of what was then a suburb of Richmond, Virginia.

PROF. CAMPBELL: Before we go on, I would like to hear a little bit more about your parents. Where did they come from? How did you end up in Richmond?

MR. JEFFRESS: Right. Well, my father was an electrical engineer. He went to Virginia Tech during the Depression. Graduated in I believe it was 1934, at a time when there were not many jobs.

PROF. CAMPBELL: What was your father’s name?

PROF. CAMPBELL: And you’re the junior?

MR. JEFFRESS: I’m the junior. And he decided to go back and get a master’s degree because of the lack of jobs. Served then for two years in the Army. He was in ROTC at Virginia Tech. When he got out of the Army, he went to work for DuPont, where he worked for his entire career. World War II came along, and he signed up. He was in the Reserves and he signed up for active duty and served throughout the war, but never was posted abroad. He said he prayed that he would be posted abroad and his father prayed that he would not, and he thought his father was a better Christian than he was. (both laugh)

During the war he managed to have the first two of four sons, one of them was me. I was born after the surrender of Germany but before the surrender of Japan.

PROF. CAMPBELL: Was your father living with your family at the time you were born?

MR. JEFFRESS: Oh yes. We moved around various times during World War II depending on where he was posted, but it was always in the United States. And my mother never worked. As a matter of fact, I learned after my father died that my mother had never in her career learned to type, (chuckles) or for that matter, balance a checkbook. But I had an excellent, excellent family situation and grew up as the son of a close middle-class family. My father was very active in his church, in the Boy Scouts and was kind of a model citizen I always thought.

PROF. CAMPBELL: So you were the oldest of the boys?

MR. JEFFRESS: Second oldest.
PROF. CAMPBELL: Tell me a little bit about your brothers.

MR. JEFFRESS: My older brother also went to Virginia Tech, became an engineer, fought in the Vietnam War, and went to work for DuPont following in my father’s shoes, and spent his entire career in DuPont. He’s now retired and his wife and daughter live in Richmond. He is an avid golfer. With only one child and having gotten married later in life, he had the leisure to learn how to become a good golfer.

I have a younger brother, who is two and a half years younger than me. I always thought it was a good illustration of the change in generations during the time we were growing up. Charles went to University of North Carolina, spent an awful lot of his time organizing anti-war demonstrations, went to the Democratic Convention in Chicago in 1968, and got beat over the head. He graduated and worked for a number of liberal Democratic candidates in North Carolina. Those kinds of candidates don’t get elected very often, but ultimately, a man he supported for labor commissioner got elected and Charles became his deputy. He was in charge of the OSHA program in North Carolina. At the time, there was a disastrous fire in a poultry processing plant that killed a lot of people. It was a tragedy; on the other hand, it got the attention of Congress, and North Carolina got a lot of extra money for their OSHA enforcement program. It became sort of a model, and he ultimately was appointed by President Clinton Assistant Secretary of Labor in charge of the OSHA program in Clinton’s second term. And now—after being executive director of the Legal Services Corporation for a while, he’s not a lawyer but he knows something about the law and is a good administrator—he now works in Washington as executive director of what used to be the American Trial Lawyers Association.
It’s called American Association for Justice. He is the executive director and has four children, lives in Washington.

PROF. CAMPBELL: And what was your older brother’s name?

MR. JEFFRESS: Jim.

PROF. CAMPBELL: Okay so Jim—

MR. JEFFRESS: Jim, then Charles, and then Dick, my youngest brother, lives in Richmond, has two children, boys. He also went to Virginia Tech, so I have a long tradition. My grandfather, my father, and two of my brothers and two of my nephews all went to Virginia Tech. Dick builds houses in Richmond, which was a great business until the recession hit in 2008. But he’s making out. And again, married, two boys.

PROF. CAMPBELL: Well let’s go back a little bit further even and tell me about your grandparents? Where did they come from? Have they lived in the U.S. for a long time?

MR. JEFFRESS: My ancestors came to the United States around 1700. John Fitzgeoffreys was the man’s name and he came to the U.S. and dropped the “Fitz,” which I understand means bastard son of Geoffrey. So, a lot of people dropped the “Fitz” when they came.

PROF. CAMPBELL: From?

MR. JEFFRESS: He came from Northern Ireland. And was part of the Scots-Irish migration to the United States and in, particular, to southern Virginia in the first half of the Eighteenth Century. I have an ancestor who was killed in the Revolutionary War. Quite a few
ancestors who fought on the southern side in the Civil War. So, the family goes back a long way in southside Virginia. Now, there are branches that are concentrated in North Carolina, some in North Carolina, some in Virginia.

I have a family tree that was done in 1918 that was quite interesting, I always thought. My father was very proud of it. He was an amateur genealogist and kept track of the various branches of the family. In his branch of the family, because of people who didn’t marry or who were childless, he always said he was the last remaining hope of continuing the Jeffress family name. And he did it well, he had four boys. (both laugh) So now there are quite a few of us.

PROF. CAMPBELL: What about your mother’s side?

MR. JEFFRESS: My mother’s side, she grew up in Norfolk, met my father there. Her father worked for—

PROF. CAMPBELL: Do you know how they met?

MR. JEFFRESS: He was teaching. He graduated from college, and before he got a job at DuPont I guess, or maybe before he went into the Army, I can’t remember which, he taught for a year in high school and she was one of his students. They got married in 1940, so I guess that was four or five years later. She spent only one year in college and then they were married. My father is now deceased. As of, let’s see, I guess it’s been five years now, gosh, five years ago today. Yeah, five years ago today.

And my mother, they had moved to a retirement home. This is interesting. My mother was 87 when he died and living in a retirement home in Virginia Beach. Lonely, and met a man
who was also in the retirement home. Ultimately they married. He was 97 and she was 89. He’s now 99, will be 100 next May. And they are just having the time of their lives.

PROF. CAMPBELL: What a great story.

MR. JEFFRESS: Oh it was written up in the Virginia Beach paper. People in the marriage license bureau had a grand time when they came in to get a marriage license. They said we’ve never given a marriage license to a 97-year-old. But she’s still doing very well and just happy as she can be.

PROF. CAMPBELL: That’s great. So you said the church was important to your father. What role did that play in the life of your family and in your life?

MR. JEFFRESS: Well I think it provided a sort of stability. They were active. They had a youth group at our home. We had a six-acre property on the James River outside Richmond where we lived. A fairly large house with a lot of land. They started having youth groups to their home and it spread to other churches.

PROF. CAMPBELL: What denomination?

MR. JEFFRESS: Methodist. And by the time they decided this is more than we can handle, I think they were having 150 kids at their house—like once a week. (laughs) And they decided this has gotten a little bit more than we can handle, so it kind of split up and went to different places.

But they also had a real commitment to helping other people. They adopted—didn’t formally adopt—but took into their home a Cambodian refugee, who now I consider one of my
brothers actually—Khany Kong. He married another Cambodian refugee. During the Pol Pot regime, their parents were murdered in Cambodia in the seventies. They walked through the jungles from Cambodia to the coast in Vietnam and somehow or another made their way to the United States. It’s an inspiring story. He starting repairing jewelry and then opened his own shop and has been quite a success, two kids—

PROF. CAMPBELL: But he came after you had left home?

MR. JEFFRESS: He did. Yep, he came after I left home. My parents also took in other kids from time to time, troubled kids, not adopted in the formal sense, but took responsibility for troubled teenagers. Some with success; some with not success. (chuckles) Kids that didn’t straighten out their lives. So, as I think I said about my dad in some article in the Richmond newspaper, he really was a model citizen. (chuckles) I always thought of him in that way.

PROF. CAMPBELL: Now you went to public school throughout. Do you remember anything about your elementary school?

MR. JEFFRESS: I remember those were the days of the baby boom. School construction hadn’t caught up with the explosion in the school age population. I went to elementary school. We had classes of thirty-five, thirty-six people in the class with one teacher who had a lot on her hands. We had at one time a class in a hallway that had been boarded off at two ends to make another classroom. I’ve got to say it was a fairly homogenous suburb—

PROF. CAMPBELL: The schools were segregated at the time?

MR. JEFFRESS: They were segregated in Richmond. The first black student who entered the high school I graduated from, Huguenot High School, in what was then Chesterfield
County, Virginia, entered two years after I left. She was in my younger brother’s class. And the
odd thing is, I met her at my daughter’s wedding. She is now married to my son-in-law’s uncle.
(both laugh)

PROF. CAMPBELL: What a small world.

MR. JEFFRESS: She says, you don’t know me, but I actually integrated your high school.

PROF. CAMPBELL: Was that a really big deal at the time?

MR. JEFFRESS: Well, I’ve got to confess, I am embarrassed that I would ride the school
bus to Huguenot High School, and we would pass on the road, black children who were waiting
for a different school bus to travel twice as far to go to an all-black high school. And, I didn’t
really think about it. And didn’t get involved or get active in supporting the civil rights
movement until after the Martin Luther King speech in 1963, after I got out of high school.

PROF. CAMPBELL: So when you were in high school, were there particular subjects
you liked or didn’t like, or any teachers that were important to you?

MR. JEFFRESS: The truth of the matter is, I liked them all. And I did very well in
school. I was valedictorian. The one thing that I did, for several years in junior high school and
high school, was to act. I was in a lot of one-act plays—we did the state competitions in one-act
plays. My talent was limited, however, by the fact that I can’t sing. I soon learned that if you
are going to be an actor, you need to at least sing passably, which I could not do. But I had a
great time. I’ve always had something of the performer in me, which I think helps when you’re
trying a case in front of a jury. So, I really enjoyed that.
Although I was five feet eight and weighed 140 pounds, I played football as a lineman. I always tell my kids, “Look, if you’re small and slow, just play in the line and be tough.” I started and I even played freshman football in college. So that was another highlight. I always enjoyed sports but was never very good at them.

PROF. CAMPBELL: Did you travel when you were young?

MR. JEFFRESS: Yeah, we traveled always by car. My dad always had a station wagon and at one time bought a trailer. One time, my family, during the summer, drove from Richmond out to California and saw the country. A year later, we drove through Canada and the northeast. We took a number of other trips—to Florida. After I was in college and couldn’t go, they also went to North Dakota and the Badlands and Mount Rushmore. So he believed in that.

We camped. We took a trailer and a tent and camped. But every third night my mother would insist we stay in a motel so she could have a hot bath. (both laugh) The whole family went; so there were six of us in the automobile all the time.

You get to see the country in a way that you don’t when you fly out and visit some place. That was before the interstates were really—there were one or two interstates maybe that had been completed. But, when you drove from Richmond to Florida, you were driving on Route 1 and Route 301. You got a sense of the country, in a way I think you don’t when you’re on interstates today. Certainly not when you’re flying.

PROF. CAMPBELL: What do you remember about those trips?

MR. JEFFRESS: One thing I remember about the trips is that the people really weren’t any different from me. If you grew up in a single city and your world was a fairly confined
world, you never knew. But when we would go and meet people in Austin, Texas, and in Los Angeles and Kansas City and whatever, they were no different than us. (both chuckle) Plus just the majesty of the United States geographically. We went to all the national parks. I think my dad was determined to visit the capital of every state of the union, and he did before he died. I never did, but he did. And he was a great traveler. He retired at age 64, he lived to 92, and he went around the world I think twice on a freighter that had 15 or 20 passengers. He and my mom loved to travel and went all over the world several times.

PROF. CAMPBELL: Now what was your mother’s name?

MR. JEFFRESS: Dot, Dorothy.

PROF. CAMPBELL: And her maiden name?

MR. JEFFRESS: Grubbs, G-r-u-b-b-s.

PROF. CAMPBELL: Where did she grow up?

MR. JEFFRESS: She grew up in Norfolk. Born in Philadelphia, but grew up in Norfolk. Her daddy worked for what was the Navy Ship Yard in Newport News. I think it became later part of the Newport News dry dock. He was a supervisor, not an executive or anything, but not blue collar either. They had a nice middle-class life. She had two sisters. One of them is now deceased but the other one is still living in Richmond and they are also part of our close family. When we have family get-togethers at Christmas, there are over forty people nowadays.

PROF. CAMPBELL: So you said you were a good student in high school. Did you have any idea what you wanted to do in terms of your career at that point?
MR. JEFFRESS: My mother reminds me I was quoted as saying I want to be a patent lawyer. Why I ever said that, I don’t know. I think because my family was all engineers, but yet I had this idea that I wanted to be a lawyer and I’m just not sure why I decided I wanted to be a lawyer. I thought I was good, I guess, at the gift of gab. (Campbell laughs) Enjoyed combat, so to speak, intellectual combat. I debated a lot. Was president of the student body and ran meetings and so forth. I just thought being a lawyer would be a good thing to do.

And, so I decided not to go to Virginia Tech. I chose between Princeton and Washington and Lee and went to Washington and Lee. One of the odd reasons why I went to Washington and Lee was I never lost the ambition to play sports. I figured at a small school like Washington and Lee, I could play football, which I did for a little while, and lacrosse.

PROF. CAMPBELL: How big is that school?

MR. JEFFRESS: At the time it was about 1,300 students. When they went co-ed, they enlarged it some.

PROF. CAMPBELL: But it was all men when you went.

MR. JEFFRESS: It was all men.

PROF. CAMPBELL: What was that like?

MR. JEFFRESS: As a matter of fact, it was one of the last schools to go co-ed. They didn’t go co-ed until 1985, something like that. It didn’t seem strange to me. I mean, Washington and Lee is surrounded by what were then-all women’s schools. Now few are still all-women—Sweetbriar, Hollins, Mary Baldwin, some others.
PROF. CAMPBELL: So they would have social events together, mixers, that sort of thing.

MR. JEFFRESS: Oh yeah. Just a half hour away in any direction there would be a women’s school. So it didn’t seem odd to me at the time. It seems odd to me now. None of my children went—although there are still some same-sex schools—none of my children went to them.

PROF. CAMPBELL: What’s the name of the town that it’s in?

MR. JEFFRESS: It’s in Lexington.

PROF. CAMPBELL: Isn’t that a pretty small town?

MR. JEFFRESS: Very small town, 5,000 people with two universities. VMI and Washington and Lee are both there, and there is very little else. That’s basically the economy. So it was a sort of an idyllic place to attend college. It’s a lovely, lovely campus, and you fall in love with it. It’s still a great place to go during the summer. I go back occasionally and still know people in the area.

But it was a small school. It was one where, I thought, I got a terrific education. Something about small schools at that time, and I think still is, they force you to be somebody. You can’t get lost. In very small classes you knew everybody. I had a great education and a very good time.
I graduated in 1963 from high school and ’67 from college. That was the beginning of an extraordinary time in the United States with the assassination of President Kennedy and the Vietnam War and beginning to try to solve the problem we had with race relations.

PROF. CAMPBELL: Everybody always says people remember where they were when they heard about President Kennedy. Do you remember?

MR. JEFFRESS: I do. I was walking on my way to chemistry lab. And I never got to chemistry lab. I wound up in a church in Lexington, where they invited everybody to come and had a service about it. Today, of course, that would be all over cable and computers and everything else. Then, basically you had radio, you had television, the three networks that didn’t really have much coverage. You heard all kinds of crazy things, rumors and so forth—sort of like 9/11 really. And, so it was a different time. But that’s where I was. I do remember it.

PROF. CAMPBELL: Now what did you major in?

MR. JEFFRESS: Economics. And I don’t know why I chose that. It just seemed something I ought to know something about I guess.

PROF. CAMPBELL: Did you have any particular mentors there?

MR. JEFFRESS: Yeah, I had a young political science professor who became and remains a good friend of mine named Delos Dyson Hughes—D. Hughes. A number of other professors that I really liked but have not remained close to since I graduated. I still have good friends but don’t see them very often. One that went to Yale Law School with me, Billy Want, is in South Carolina, and another one, Kirk Follo, became a professor at W&L later. I guess I have kept closer probably to more people from law school than I have from college.
PROF. CAMPBELL: Now did you work when you were attending college?

MR. JEFFRESS: I had some small jobs, but I really didn’t work. My father supported me. I did work during the summers. I taught a class at a high school, I did some research for a professor, things like that.

PROF. CAMPBELL: Aside from playing football, were there other extracurricular activities that you did in college?

MR. JEFFRESS: I became involved in student government. I was president of the student body and head of the honor council. That wound up taking a lot of my time and was what I concentrated on my last two years in college, more than anything else.

PROF. CAMPBELL: What kind of issues came up for you in that position?

MR. JEFFRESS: Well, you know, Washington and Lee had a very strong honor system. It was student run and part of what we had to do was, when we had a report either from a professor or a student, we had to investigate it. And there was a hearing—I wouldn’t call it a trial necessarily—but we would investigate and hear from the student, and occasionally had to conclude that somebody had cheated. There was only one penalty, and that was immediate expulsion. So when we found that that was the case, we had to escort that student to a hotel and keep him there until his parents came, and he was gone. That was the only penalty. It was somewhat of a harsh system. It wouldn’t work today. Well, it still exists today. They still have one but it’s not quite the same rules. But at Washington and Lee, I don’t think I ever had a key to my house. We just never locked anything. I had a locker on campus, but it wasn’t locked. I’m not sure you could recreate that environment today. (chuckles)
PROF. CAMPBELL: Did that get you interested in the law—doing those kinds of investigations and hearings?

MR. JEFFRESS: I don’t know. Somehow I knew, before I graduated from college that what I wanted to do was to be a lawyer. I never knew any lawyers growing up to speak of, nobody in my family had ever been a lawyer. So it’s hard to say what exactly caused me to want to do that.

I was married as a sophomore in college. I remember talking to a counselor at W&L, one of the professors, who talked about law schools and law as a career. They had these various career seminars or meetings where people talked about it. I remember very clearly, he said “I’ve got one piece of advice for you. Marry for money and practice law for love.” And I told him, “You know, I’m already married.” He said, “Oh you’ll make it.” (both laugh)

PROF. CAMPBELL: Tell me about your wife. What is her name?

MR. JEFFRESS: She and I met in the fourth grade. (phone rings) No, I’m sorry, we met in the 5th grade. We met in the fifth grade, lived a little more than a mile from each other outside Richmond. And started dating when we were in the 8th grade. So, we have now been married forty-six years. But that’s not really representative because we dated for eight years before that. (both laugh) So I’ve known her all my life.

PROF. CAMPBELL: What’s her name?

MR. JEFFRESS: Judy, Judy Jones. And so as I say, we were married as a sophomore and I was in married student housing. Amy was born while I was in Lexington, Virginia, at Stonewall Jackson Hospital.
PROF. CAMPBELL: Wasn’t it pretty unusual to be married as a student?

MR. JEFFRESS: There were about a dozen students. We lived in married student housing which had been built for veterans after World War II. I remember the rent was $38 a month and that included utilities and a can of paint. (laughs) Judy and I still laugh about it. It has long since been torn down. But while we were living poor, we didn’t feel poor. And, we just had a grand time.

PROF. CAMPBELL: Now did she attend college as well?

MR. JEFFRESS: She did. Wound up getting her degree after we came to Washington from GW [George Washington University]. And then got a master’s in social work at Catholic. So she did complete her education, but that was in the interstices of having four children. (chuckles)

PROF. CAMPBELL: So what kind of things would you and Judy do for fun when you were in college? I guess since you had a little baby, you probably didn’t do a lot of things for fun.

MR. JEFFRESS: There were two movie theaters in Lexington, Virginia. One had first run movies, and one had a stable of about twenty to thirty movies—classics I thought. That is all they played, and they did them over and over again. So I saw lots of things like the Magnificent Seven, and One-Eyed Jacks, and Casablanca, and you know—some of the classics I saw over and over again. And when I became president of the student body, I learned that the first run theater gave free tickets to the president of the student body. So Judy and I would go see movies
all the time. I’ve kind of gotten out of that but she now—gosh with Netflix and everything—that’s still her passion.

PROF. CAMPBELL: Were you healthy pretty much throughout your young years?

MR. JEFFRESS: I was. Yep. Spent one week in a hospital with a football injury and that was the only problem I ever had.

PROF. CAMPBELL: So was Washington and Lee all white at the time you were there?

MR. JEFFRESS: It was integrated when I was there. The president of the school was Fred Carrington Cole. Against a lot of alumni angst, he insisted on actively recruiting and obtaining African-American students. The first one was a law student. He came in my junior year. I was on the executive committee. Fred asked me and a few other students to try to actively be the friend and protector so to speak of this student. I thought it worked well. He was an extraordinary guy. It certainly didn’t cause any—there was no commotion or anything like that. Still, this was a southern school with a long tradition and there were alumni I think who still resisted. But that disappeared fairly quickly. So it was integrated while I was there.

PROF. CAMPBELL: Interesting. And what else was going on at the time that seemed significant to you?

MR. JEFFRESS: Well, this was the Cold War and the beginning of the space race. President Kennedy said he would put a man on the moon and I never believed it. But it happened. And the Vietnam War really didn’t affect people in college because we had automatic draft exemptions. Lexington was not exactly a hotbed of anti-war activity. But, by the time I graduated, which was ’67, I was very much opposed to the war. There were meetings and
discussions, but I don’t really remember a demonstration at Washington and Lee while I was there. Probably happened later, but not while I was there. Now you remember, I think it was ’67, might have even been ’66, when the student unrest at Berkeley and Columbia and other places and formation of the SDS—when that activity really started, the violent protests. But that was not true at W&L when I was there.

PROF. CAMPBELL: But you were aware of it at the time?

MR. JEFFRESS: Oh yeah. And I do remember, in my senior year—just when I don’t know—I became very much opposed to the war. Then when I went to Yale in the fall of ’67, there was a lot more activity. And when the president eliminated the student draft deferments, it quadrupled.

Our daughter Amy was born at a time when there was a draft exemption called a 3-A, a fatherhood deferment, which President Kennedy had put in place. President Johnson didn’t eliminate that fatherhood deferment until some time after Amy was born in 1965. And people who had deferments already didn’t get them yanked. So I was sort of grandfathered in. I tell Amy, before she even knew what she was doing, she kept me out of the Vietnam War.

PROF. CAMPBELL: So you never served in the military?

MR. JEFFRESS: I didn’t, no.

PROF. CAMPBELL: So why did you decide to go to Yale?

MR. JEFFRESS: Because, at the time, I decided that was the best place. I thought it was probably the hardest law school to get into, where I thought I would meet the top people from
around the country. Look, I grew up in Richmond, I went to public schools, and went to a small college in Virginia. I just wanted to find out how I would stack up against the best people there were.

PROF. CAMPBELL: Do you remember when you got there, were there things that really surprised you? Did it meet your expectations?

MR. JEFFRESS: It definitely met my expectations. I had wonderful professors at Yale Law School. Really challenged my thinking. I didn’t find it, frankly, to be nearly as difficult as I thought it would be. And I attribute that partly to the fact that Washington and Lee was a very demanding school. You worked hard as a student and you had to perform. I thought I was at least as well prepared as people who had been to the Ivy League schools.

It was the first time I lived in what I call an urban environment, New Haven. And as much as I like Yale, I’ve never liked New Haven. I think we had been there a couple of weeks before something was stolen. I think I had two cars stolen while I was there (chuckles) and you know, all kinds of problems that we had.

One thing I didn’t really expect, because this was before you had movies like 3L or Paper Chase. I was a little surprised at the Socratic method and the way that seemed to embarrass—it was almost an intentional embarrassment of students—put them on the spot, make them stand up and perform. I guess that makes you tough, but it didn’t seem very humane or considerate to me. I thought if I ever became a professor, I probably would use a different style.

But I had professors like Fritz Kessler. People don’t remember him that much anymore outside of academic circles. He was in his sixties, taught contracts. He had done the revision of
Corbin on Contracts. He had a German accent. And was one of the finest teachers I ever met of anything—the love of the law and what the law is all about. Didn’t teach you the holdings of cases, but how to think about a problem.

PROF. CAMPBELL: Did he use the Socratic method?

MR. JEFFRESS: He did, he did. But with great humor. (side conversation about whether recording still working)

But anyway, Fritz Kessler used the Socratic method, but it was sort of a gentle way that he used it. I remember once he asked a question of Dick Balzer, a classmate of mine. So he said (speaking in German accent), “Mr. Balzer? Can the plaintiff recover for the marble garage?” And Dick says, “I think he can.” (raising eyebrows and speaking in a German accent) “Can, Mr. Balzer, c-a-n?” Balzer looked at him and said, “I think that’s the way you spell it.” (both laugh)

I wound up taking a second course from Fritz Kessler just because he was a man who taught you to think. I had other people—Fleming James in torts, James William Moore in procedure— [END OF FIRST RECORDING].

MR. JEFFRESS: There was an extraordinary group of professors at Yale Law School when I was there. I had James William Moore for procedure, Fleming James for torts, Alex Bickel for constitutional law, and Tom Emerson on civil rights. They were inspiring people. They were terrific professors who made an impression on me. I also took nine hours of credits, courses from Charlie Reich, who wrote The Greening of America. He was an extraordinary person in his own right; quite different from the ordinary law professor.

PROF. CAMPBELL: In what way?

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MR. JEFFRESS: He was writing *The Greening of America* at the time. He was kind of a free spirit. He had written a very influential law review article, the name of which was “The New Property,” and he insisted that it have no footnotes. I think the editors of the law review insisted that he have at least a footnote identifying the author. (Campbell chuckles)

He was writing *The Greening of America* while I was at Yale. He gave me the galley proofs and since I was the editor-in-chief of the law review and never read anything without a red pencil, I proofread the galley proofs as I read them, for which Charlie was everlastingly grateful. I lost track of him after I left Yale. But he taught courses like “Social Structure and Community”—that was the name of one of them. Another was a seminar that I think was just me and him—it might have been somebody else. But we met once a week over tea and talked about issues that he was thinking and writing about. And he gave me a lot of perspective. So Yale Law School I thought was a terrific place to be.

It was also a time that was not terribly conducive to scholarship and academics because so much was going on in the world. One of the professors who later became Dean of Yale Law School referred to the time that I was there as the “Dark Ages” at Yale Law School.

PROF. CAMPBELL: That was because the faculty wasn’t writing either? Were all so involved in the anti-war [efforts]?

MR. JEFFRESS: You couldn’t help but be. And there is a book out actually, that a woman wrote about Yale Law School at that time and later. [Laura Kalman, *Yale Law School and the Sixties*] I left the year that Bill Clinton arrived. I overlapped with Hillary and Clarence Thomas came the year after. So this book is about that entire period.
One of the things I remember the most is something called the trial of Eric Clay, is what I call it. It’s written up I think not too accurately in this book. Eric Clay is now a judge on the Sixth Circuit Court of Appeals in Cincinnati. But he then was a young black law student, at a time when minority admissions and the treatment of minorities at Yale and other places was very much on everybody’s mind.

There was a professor of property law who was from Atlanta. Eric walked up to him one day and said to him—let’s see, how did he put this—“if you don’t quit fucking over black students I’m going to kick your ass.” And this professor reported that to the Dean and to the disciplinary committee. They had a problem. What are you going to do? A student threatens a professor, but on the other hand, they don’t want to—

So they invited Eric in and Eric said, “I am not going to play this game. If you are going to accuse me of something I want a public trial.” (chuckles) That’s the way things were then. And how could they say they were going to deny due process? Bob Bork was on the committee; Joe Goldstein was on the committee. It was an extraordinary thing. They set up something resembling a living room in the front of a lecture hall to pretend like this was just the way they would ordinarily do it—just an informal meeting. They set up couches. But it turned out to be like a stage. They sat on the couches and Eric sat on a chair in front. And he had a lawyer, Mel Watt, my classmate who is now a congressman from North Carolina.

The property professor testified. And Mel did a brilliant job in cross-examining him, bringing out that he had never had any relationship with a black person other than in a position of servitude when he was growing up and when he was in school or whatever; that he didn’t
understand the language of the ghetto; that “I’m going to kick your ass” could mean “we’re going to party.” It was just a brilliant, brilliant defense.

But then apparently Eric insisted on testifying. As I recall it, Mel asked him, “So, did you say if you don’t quit fucking over black people I’m going to kick your ass?” And he said, “Yeah, I did say that.” And Mel asked him what he meant and he said, “I meant I was going to beat the shit out of him.” (laughter)

And this all was like theater. The lecture hall was crammed with students and faculty and so forth. So the committee had this problem, what are we going to do with this? I recall ultimately they worked it out. They backed off or something; they didn’t expel him. But, like I say, that’s written up in the Kalman book and it’s sort of a microcosm of everything that was going on at the time. Mel Watt went on to become a congressman, and Eric Clay went on to be a judge of the Sixth Circuit.

PROF. CAMPBELL: Were you in student government at Yale as well?

MR. JEFFRESS: No. I don’t remember there being any student government in the law school.

PROF. CAMPBELL: Okay. But you were the editor-in-chief of the *Yale Law Journal*.

MR. JEFFRESS: Of the law journal.

PROF. CAMPBELL: And so, why don’t you tell me about the article that you wrote with your colleagues?
MR. JEFFRESS: Paul Gewirtz, who is now teaching at Yale, and Paul Friedman, who is a lawyer here in town, Bob Borosage, who became a public interest lawyer, and Bill Kelly, who became head of the Washington office of Latham and Watkins, we got together and decided we would like to write an article about public interest law firms. That was a new thing at the time. Public interest law firms were just being created—things like the Environmental Defense Fund, the Children’s Defense Fund with Marian Wright Edelman, Charlie Halpern’s group, the name of which I forget—

PROF. CAMPBELL: Center for Law and Social Policy?

MR. JEFFRESS: Yes, Center for Law and Social Policy. So, we thought it would be an interesting thing. We got some funding from a foundation to do research. And wrote an article which was published in the *Yale Law Journal* called “The New Public Interest Lawyers.” [79 Yale L.J. 1069 (1969-1970)] Not a terribly academic piece, but dealt with some real issues that were arising then and still are—like what is the lawyer-client relationship in a public interest law firm. A lot of times clients are a convenience to give you standing to pursue an issue. There are funding issues, there are independence issues. We wrote about them. Justice White later told me that was the only article in any law review that he had actually read from start to finish in the last ten years. (chuckles) So we had a good time doing it, and like I say, it was an unusual thing.

Yale, in the time that I was there—I may have said this—but a professor who later became dean called it the “Dark Ages of Yale Law School” in the sense, I think, that there was not a lot of time for scholarship. There was a lot of unrest among the students and among faculty members over various political and social issues. Kent State happened in the spring of 1970,
which was my last year at Yale Law School, which was a massacre of students by the National Guard during an anti-war protest.

PROF. CAMPBELL: What impact did that have?

MR. JEFFRESS: It had a big impact on me. I at the time had actually supported a liberal Republican, Nelson Rockefeller, in the 1968 primary. I still didn’t know what I felt. But after Kent State, Richard Nixon appeared on television and referred to the students as “bums” and suggested they got what was coming to them. I said, That’s it. And I never had anything to do with the Republican Party after that. So, it made a big impression on me. I think it really did exacerbate the confrontation, which had already started, but became much worse after that, between the government and the people over the Vietnam War.

Then in the spring, Bobby Seale, who was a Black Panther leader, was indicted in New Haven. There were rumors that there would be a violent demonstration in New Haven in support of Bobby Seale; that people were coming from all over the country for that. The government in response brought in the National Guard. Armed troops came into the city with weapons and tanks and armored personnel carriers. Yale decided to let all students go home and cancelled exams. For me, I was about to graduate, I never took any exams my last semester in school. I just packed our car and trailer and moved to Washington.

PROF. CAMPBELL: They just said everyone graduates?

MR. JEFFRESS: They said you come back in the fall to take exams for most people. But if you were graduating, you just graduated—you got a pass. And you know—who cares—I
already had a job and a clerkship. So, it was very, very tense at that time in New Haven and everywhere.

PROF. CAMPBELL: And did the demonstration materialize?

MR. JEFFRESS: It wound up not being nearly as violent as people had feared. Yeah, there was a demonstration. But it was not the violent confrontation that everybody had feared. I remember walking down around the New Haven Green, and if you walked down a side street, you found all the military vehicles parked out of sight and soldiers in full combat gear. I didn’t experience that again until May of 1971, May Day here in Washington, where we had very much the same kind of problem.

PROF. CAMPBELL: You had participated in some demonstrations in New Haven.

MR. JEFFRESS: Oh I did, definitely.

PROF. CAMPBELL: And were you involved in organizing or just sort of going to demonstrations?

MR. JEFFRESS: No, I don’t think I was ever involved in organizing.

PROF. CAMPBELL: Is there anything else that you want to talk about concerning your experience at Yale?

MR. JEFFRESS: Just one little thing. When I was in law school, I got student loans. My dad had supported me through college, but said you have to support yourself now. So I got loans and I had a part-time job. And the second half of my first year and first half of my second year, before I was really full-time at the law journal, I worked for the Connecticut Public
Defender in the base-line Connecticut trial courts. A guy named Dick Meehan, who was quite a fine trial lawyer, gave me the opportunity, with permission of the judge, to cross-examine a couple of policemen and handle a case—a criminal libel case—which I thought was fascinating, which we won. But that helped me get interested in criminal law and in trial work. I saw that this is not easy, but I think I can do it. (chuckles)

So, that was my first opportunity to actually see a trial court. I remember cross-examining a policeman on a DUI about his filling out the form, describing the physical characteristics of the defendant. I watched Dick Meehan do it, and then I tried to do it, and I realized I’ve got a lot to learn. (both laugh) But it was inspiring. I could tell it was something, you know, I would like to learn to do this, I would like to do it. And that helped me get interested in criminal law.

PROF. CAMPBELL: Now, what was your wife doing while you were in law school?

MR. JEFFRESS: She worked part-time. Of course we already had Amy, and our second child was born in February of my last year at Yale Law School. So she had her hands full trying to help support me through law school.

PROF. CAMPBELL: So tell me how you got your clerkship. You said you had a clerkship and a job lined up when you graduated?

MR. JEFFRESS: I did. It’s an odd story. I was a summer associate at Covington & Burling in the summer of 1969. Judge Gesell had been a very successful trial partner at Covington & Burling before he was appointed to the bench in ’68. He came and spoke to the summer associates, and I met him at that time.
After I met him, he called one of the partners at Covington and said he would like to talk to me about maybe being his law clerk. Judge Gesell always picked law clerks from Yale at that time. So I went over there and I met him and he offered me the job and I took it. No, I didn’t take it on the spot. Let’s see, what happened?

I had intended to apply for Justice Black’s clerkship. I knew two of his law clerks who had already started. I went over and talked to them and they told me, “Look, if you want to apply now, you have a good chance, but nothing is wrong with spending a year with Judge Gesell, it would be a great year.” And so I decided that is what I would do. I wanted to be a trial lawyer anyway, so I would go to the District Court. It wound up being a fortunate thing really, because Justice Black died before I became a Supreme Court law clerk.

Judge Gesell only had one law clerk. He had been a terrific trial lawyer—had a terrific reputation. That was before the days of so many people applying for clerkships. He just asked me to come over and talk to him, I did, he offered me the job on the spot. I said well, I thought about clerking in the Supreme Court. He said, “Well, you know, let me tell you something, you’ll find more here.” I think I took a couple of days and then I told him yes. One of the best decisions I ever made.

PROF. CAMPBELL: So when you went to be a summer associate at Covington, was that your first time living in the Washington, D.C. area?

MR. JEFFRESS: It was. It wasn’t my first time being here, but it was my first time living here. I lived with my aunt and uncle out in the suburbs and worked. Because of the law journal, I was only here six or seven weeks maybe. But it was my first exposure to a law firm.
PROF. CAMPBELL: And what was that like?

MR. JEFFRESS: It was quite interesting. They had wonderful lawyers who did wonderful things. Skipping forward a little bit, the one thing I did notice was that it would be a long time before I ever became a trial lawyer if I was at a big firm like that. So that’s why ultimately I didn’t go there.

PROF. CAMPBELL: What things did you do as a summer associate?

MR. JEFFRESS: I worked for a lawyer named Al Moses. He had a situation—a client had come in with a problem wondering whether he had a lawsuit against somebody. So he and I went in on a Saturday and he dictated the facts that he knew and so forth. I analyzed it and tried to figure out what kind of lawsuit the client had and what his cause of action was. It was good, it was great. I did some other sort of research memos—typical summer associate things for FDA matters—hard to remember what else I did.

MR. JEFFRESS: I was going to say after graduating I had both a clerkship and a job. I couldn’t afford to go a week without a job at that time, and my clerkship didn’t start until I think July, and I came here in May. I went to work for the Lawyers’ Committee for Civil Rights. Jim Robertson, later Judge Robertson, was head of the National Lawyers’ Committee for Civil Rights at the time. Rod Boggs was head of the Washington Lawyers’ Committee. And so I spent a few weeks that summer before my clerkship started working for the Lawyers’ Committee for Civil Rights. I reminded Jim Robertson recently, you gave me my first job out of law school. And I enjoyed that.
But we had a tragedy. My wife and I came in I think May, and our infant son died in early June, sudden infant death.

PROF. CAMPBELL: Oh, I’m so sorry.

MR. JEFFRESS: That had a big impact on us. We survived and wound up having two more children. But that made that summer a tough one.

PROF. CAMPBELL: I’ll bet. Did you ever think about becoming a public interest lawyer?

MR. JEFFRESS: I don’t know that I really thought seriously about it. As I say, I wanted to be a trial lawyer. I thought about public defender, about prosecutor. But I had this friend, Bob McLean, who had clerked at the Supreme Court for Justice Marshall. He had joined a small firm of trial lawyers who did a lot of criminal work, and told me about it. I figured that’s the ideal thing for what I want to do. Which brings us to Miller Cassidy, and maybe that’s where we should quit for today.

PROF. CAMPBELL: Yeah, I think we should definitely continue that later. It is 11:30. Thank you so much. It’s really interesting.

MR. JEFFRESS: All right. I’m amazed how much I remember. [END RECORDING]
PROF. CAMPBELL: All right we’re recording and today is August 9, 2011. Bill, I thought I would see if there is anything you wanted to add from our last session?

MR. JEFFRESS: No, I don’t think I want to add anything about that period of my life. If I think of something, I’ll throw it in.

PROF. CAMPBELL: Did you want to talk about the Dionne Warwick incident?

MR. JEFFRESS: I was talking to you about when I was at W&L [Washington and Lee]—this was 1964—Dionne Warwick was, of course, a very famous Motown singer. She came to campus to perform at a campus-wide concert and then performed in a fraternity house later. There was no hotel in Lexington where she could stay. She had to drive all the way to Roanoke to find a place that would accept a black person to stay over. That was kind of an eye-opener to me. Shows how far things have changed in my lifetime.

PROF. CAMPBELL: I had one other question I wanted to ask you. We had talked a little bit about how religion was an important part of your upbringing. I was wondering about politics. You mentioned at one point you were a Republican, and I believe you’re a Democrat, is that correct?

MR. JEFFRESS: I am. I’m a Democrat. My family was not terribly political. I had two parents and three brothers, and we pretty much split in every election three to three. (laughs)
When I was either in high school or perhaps in college, Virginia had one of the first Republican governors they had ever had, Linwood Holton, who I thought was a really good governor and a good face for the Republican Party. We also had Nelson Rockefeller. They were progressives, I would say. There was a lot wrong with the Democratic Party in Virginia, including massive resistance to school desegregation and so forth. So that’s why I became interested in Republican candidates. I worked for Rockefeller actually in the summer of ’68.

PROF. CAMPBELL: You worked on his campaign?

MR. JEFFRESS: In the primary. But of course Nixon was nominated. I voted for the Democrat and became a Democrat thereafter, and have always been.

PROF. CAMPBELL: Okay. So when we were talking last time, you had just arrived in Washington with your wife and your daughter and a new baby and were starting a clerkship with Judge Gesell. Tell me what it was like at that time.

MR. JEFFRESS: Well, that was rather an eventful period in American history, including in Washington. We had the riots in ’68. Fourteenth Street, lower Pennsylvania Avenue, were still block-after-block burnt out buildings. Demonstrations against the Vietnam War had become violent in many cases. The Nixon administration chose to be highly confrontational against the demonstrations. There was a lot going on in federal court at that time, with the government seeking injunctions against demonstrators, challenges to various aspects of the war policy.

It was tense in Washington. While I was clerking for Judge Gesell on May Day 1971, the anti-war groups announced a May Day event at which they would shut down the federal government. They did things like drive old clunkers into tunnels in Washington and stopped
them and disabled them. I was riding my bicycle to court at that time. I remember riding that morning—I lived in Burleith [a Washington, DC neighborhood]—and rode down past the Memorial Bridge which was lined with National Guard troops. As I went through Georgetown, there was a strong odor of tear gas. But I got down to the mall and got to work that day. It was a very tense time. There was a lot going on.

PROF. CAMPBELL: You were working in the federal courthouse here on Constitution [Avenue]?

MR. JEFFRESS: Right.

PROF. CAMPBELL: When you first started clerking, were you his only clerk or did he have another clerk?

MR. JEFFRESS: Judge Gesell always had only one law clerk.

PROF. CAMPBELL: How would you describe your relationship with Judge Gesell?

MR. JEFFRESS: It was very, very close. He became my very good friend and mentor throughout my legal career until he died. If I had anything I wanted to talk about, I’d go down to see Judge Gesell, and he was very happy to talk to me.

But it was a special experience because he had only one clerk. The clerk did everything—sat in the court when he was trying cases. He would come to work at 7:00 in the morning and write out in longhand some opinion he was working on. He would hand it to Doris [Brown, his secretary] who would type it up and hand it to me. I would have to work in some law and cites and so forth for the opinion.
When we came off the bench after a session in court, he would discuss the lawyers’ performance and the witnesses and other things that had happened in court. It was a unique learning experience. I can’t think of anything that contributed more to my upbringing as a trial lawyer than that year with Judge Gesell.

PROF. CAMPBELL: Learning in terms of what was an effective presentation at trial or effective techniques at trial?

MR. JEFFRESS: That and I’ve got to admit one other aspect of it. It was a confidence builder. When you come out of law school you don’t have much basis to know whether you’ll be an effective trial lawyer, or whether you’ll like it. Sitting in court for that year watching lawyers, including lawyers with great reputations come in and out of court, I said no question in my mind, I’m as good as half these people anyway. I will not embarrass myself. (laughter) And I watched some very fine trial lawyers do things that have taught me a lot.

PROF. CAMPBELL: Anything stand out in your mind that you want to talk about?

MR. JEFFRESS: I saw some good lawyers that year. One that sticks out is Ken Mundy, who I’m sure you know of. Ken was trying a murder case—I think it was murder, might have been attempted murder—but it took place at an after-hours place over in Shaw, which was then a slum, on the second floor of a townhouse on P Street. His client had left the poker game in a dispute and had come back to the poker game according to the witnesses and shot one of the players. So Ken represented the defendant. One of the government witnesses, who was a guy at the poker game, had testified that after the shooting he had left and gone back to his house. He then came back and the police had already arrived when he returned. There wasn’t much
discovery in those days, and I don’t know that Ken really knew anything about it, but he smelled a rat. (Jeffress chuckles) About ten minutes into the cross-examination, the witness was clearly very nervous about Ken’s questions about going back to his house. The judge excused the jury and asked him, “Look, do you want to consult a lawyer?” He said “Yeah.” The judge found somebody to come in and advise him and he then took the Fifth on any further questions. And I think Ken knew that he didn’t leave the scene for no reason. He went back to his house to stash his gun. He had a gun there, went back to hide the gun, and then came back.

That whole performance by Ken, which I thought was brilliant, made me excited about being a criminal defense lawyer. I knew this is what I’d like to do. Ken just listened and used his experience to know something is wrong here and to not let it go, keep probing and probing. And it won the case for him. I think it was a mistrial, and his client later pled to some lesser offense as I recall. But I thought that was brilliant.

There were some very fine prosecutors in Judge Gesell’s court at the time. Jim Sharp is one that I remember tried an awful lot of cases in his court. After the case was over, often the judge would have the prosecutor or public defender, or for that matter private lawyer if he wanted to, come back to chambers and he would give him a critique of his performance. I would sit there and listen, and that was a learning experience too.

PROF. CAMPBELL: I’ll bet. So what percentage of the cases that he heard were criminal cases? Was that a large part of the docket?

MR. JEFFRESS: That was sort of a watershed year—1970. What had happened, they had just reformed what used to be the Court of General Sessions, which was now the Superior
Court. Jurisdiction over many cases that had been exclusively in the District Court was now in the Superior Court. That had happened I think a year or two earlier.

But in 1970 the District Court went to the individual calendar system, which Judge Gesell was very much a proponent of. So instead of having a bunch of cases over there being heard by whatever judge was available on the date, every case was individually assigned to a judge. The result of that was that Judge Gesell got, I think, 320 civil cases, many of which had been languishing in the court without any attention from a judge for years and years.

We also had a large criminal docket, but it was the civil cases that went to the individual calendar system and something had to be done. He devised a plan. He said I want to notice every one of these cases for a status conference and bring these lawyers in. I think by instinct he knew that if he did that, a third of them would settle or be dismissed. So he assigned me to do that.

Doris Brown—by the way, who is very active in the D.C. Circuit Historical Society and was his secretary at the time, also a close friend of mine—she had been thrown from a horse and suffered a fractured skull just about the time I started my clerkship. So I had to function as a secretary and a law clerk. I always told Doris, her job was a lot harder than mine. (both chuckle)

But we scheduled those cases. I scheduled four of them every half-hour for I think two solid weeks. I didn’t want to schedule all of them for nine in the morning and make people sit around. So we did four every half-hour. Well it wound up, three of them settled or dismissed before they ever came in, and the other one would take ten minutes, so we had a lot of down
time. If I had to do it over again, I would have scheduled 20 of them an hour. But he cleaned out his docket faster than any judge on the bench, I believe, after the individual assignment system.

We tried some civil cases. He had an interesting case by the beneficiaries of the United Mine Workers’ Pension Fund against Tony Boyle and the Union, which put the money of the Pension Fund in what was then called I believe National Bank of Washington, which was owned by the Union. Put it in there at no interest, so there was a breach of fiduciary suit against Tony Boyle and other trustees of the Pension Fund. That was an interesting case. It was tried to him as a judge. He wrote a lengthy opinion after hearing the evidence. Harry Huge represented the plaintiffs, and the defendants were represented by Paul Connolly, Edward Bennett Williams’ partner. So it was a well-tried case and an interesting case. [Blankenship v. Boyle, 329 F. Supp. 1089 (D.D.C. 1971)]

We had a number of other civil trials, but the criminal trials—he would probably try a case a week, or at least a case every two weeks. Some of those cases took a day or two to try. He was on the bench a lot—a lot more than I think is required today with the caseload that they have.

PROF. CAMPBELL: So what are some of the most memorable cases from your year of clerk ing?

MR. JEFFRESS: Well, two of them had to do with the Vietnam War. One was a case called Hentoff v. Ichord. Congressman Ichord was head of what used to be the House Un-American Activities Committee and by this time was called the House Internal Security
Committee. They were upset that college campuses were inviting people to speak who were against the war. They were prepared to issue a report which would list the speakers that they disapproved of and the campuses that had invited them to speak, and which would question the patriotism of the colleges.

And somebody—Nat Hentoff was I believe a journalist—brought a suit for a TRO and injunction against the issuance of this report, saying it violated the First Amendment and exceeded Congress’ power. Judge Gesell found that he could not enjoin a congressman who was engaged in an official act under the speech or debate clause. But he found he could enjoin the public printer, who was simply a functionary. He could enjoin him from printing the report and that is what he did.

There is a published opinion on that. [Hentoff v. Ichord, 318 F.Supp. 1175 (1970)]. I think the administration went nuts—well, Congress went nuts. Congressman Ichord went nuts. It was one of those instances where Congress and the administration were finding, not just in that instance but others, that the courts were standing up to them. They couldn’t try to suppress dissent without getting pushback from the courts. So that was one.

The other one was by far the most famous case that Judge Gesell had when I was there, which was the Pentagon Papers case. You recall that Daniel Ellsberg had pirated a copy of the Pentagon Papers and given it to the New York Times. The Times published excerpts. The administration sought a TRO, which was granted by Murray Gurfein in New York. [United States v. New York Times Co., 328 F. Supp. 324 (S.D.N.Y. 1971)] But then, the Washington Post published the next day some excerpts, and the government came in to seek to enjoin the Washington Post as well.
It was 4:30 I think on a Friday afternoon when they came in. Under the random assignment, the case was assigned to Judge Gesell. The bar exam was the following week, and I had intended to leave work Friday and take off the next week and study Saturday, Sunday, Monday, and Tuesday. The bar exam was Wednesday, Thursday and Friday. But the case came in, was assigned to Judge Gesell, I said the heck with the bar exam. We worked furiously that night, Saturday, Sunday, all day Monday. Judge Gesell denied the TRO. And it’s funny. When it was assigned to Judge Gesell, I think the government was disappointed probably because he was an activist judge. But the truth of the matter is, he was by no means a dove. He was a hawk on the war. He was a strong supporter of the military. We used to have lots of conversations about the war, and I disagreed with him.

But that didn’t affect him in this case. He had a strong view of the First Amendment and felt that the government was well beyond its powers in seeking to suppress dissent. At the same time, had he thought, or had he found, that there was something that was about to be published that revealed troop movements or endangered the military in the field, he probably would have had a different view. But there was nothing convincing in the TRO papers that said that, and so he denied the TRO.

The Court of Appeals, that night, reversed him and entered its own TRO. It said he should proceed to a preliminary injunction hearing, which he set for Monday. We had the parties in over the weekend. A lot of disputes, including the government insisting that the reporters and management of the Post could not be present for the hearing. Judge Gesell said, “That’s not going to happen in my courtroom,” and they relented. He felt that having Katharine Graham and Chalmers Roberts and some of the people at the Post who were working on the story in the
courtroom, would be a help; that if the evidence showed that there was something that would really damage the national interest, that the Post would act responsibly and not publish it. Interesting idea. I’m not sure I agreed with it at the time.

But anyway, the case went forward with the Post reporters and Katharine Graham in the courtroom. The judge told them: “Look, we’ve got a short time to consider this matter. I want the government to tell me the three most damaging things that are in these papers—things that they contend, if published, would be like shouting fire in a movie theater,” or something like that.

He told them pick three. They put on a witness whose name I now forget, but all this is now public. He started testifying that the papers revealed that a Canadian diplomat had behind the scenes assisted the government with intelligence and provided support. They contended the people of Canada didn’t know about this, the world didn’t know, and if something like this was published it would impair the country’s ability to get cooperation from our allies.

I was sitting there in the courtroom, and I could see Chalmers Roberts flipping through books and getting another book and flipping it through and handing it to his counsel. It turned out on cross-examination, this whole story had already been published in a book, memoirs, I believe, of this diplomat. (chuckles) Serious embarrassment to the government.

The other two instances were not really convincing at all. The judge felt that there is damage to a country when it gets a reputation that it can’t keep secrets, I mean there is diplomatic damage. But there is no imminent threat to military, to the conduct of the war, to troops. So he denied the preliminary injunction at the end of the day Monday. The government
asked him to stay that, and he said “No, the court of appeals is right upstairs. If there’s going to be any stay, you’ll have to go to them.”

The Court of Appeals did stay his ruling. Then, I think two days later, or maybe just a day later, the Court of Appeals affirmed Judge Gesell. [*United States v. Washington Post Co.*, 446 F.2d 1327 (D.C. Cir. 1971)] It said no preliminary injunction should issue. But the Second Circuit had affirmed Judge Gurfein that an injunction should issue. [*United States v. New York Times Co.*, 444 F.2d 544 (2d Cir. 1971)] So naturally, it was in the Supreme Court within twenty-four hours. [*New York Times Co. v. United States*, 403 U.S. 713 (1971)] The Court decided, Judge Gesell liked to say, “They decided that I was the only judge that got it right from the beginning, and I never enjoined them for ten minutes.” (both laugh)

So that was a fascinating case. It showed a lot of the strengths that Judge Gesell had as a judge, just in getting to the bottom of the case and wanting to know what the merits were, and to be able to get to it in a 48-hour time frame. It was quite a performance.

PROF. CAMPBELL: So how did you feel when the Supreme Court upheld his ruling?

MR. JEFFRESS: I felt good about it. It was something we had worked hard on.

PROF. CAMPBELL: Did you attend the argument at the Supreme Court?

MR. JEFFRESS: I didn’t. I was taking the bar exam. Even though I hadn’t been able to study and hadn’t taken a bar review course, I decided well, I paid my admission fee and may as well just go take it and see what happens. It turns out I passed anyway, so I never wasted any time on a bar review course. (both laugh)
So those were probably the three most notable cases, but we had everything from environmental cases involving complicated issues of standing; we had libel cases; we had run-of-the-mill Social Security cases; and contract cases. A complicated case went to a jury. A building was built and something went wrong. The owner is suing the builder; the builder is suing the architect and the structural engineer. It was one of these complex civil cases that took a lot of time to figure out. What are the jury instructions on the claim? How do you write a verdict form? And that’s just invaluable. There is no way anybody learns that in law school. And to be able to learn it from a master, Judge Gesell, again, has made me a much more knowledgeable trial lawyer.

PROF. CAMPBELL: So how many of the trials were bench trials versus jury trials?

MR. JEFFRESS: Civil, about half and half. Criminal, almost all of them jury trials.

PROF. CAMPBELL: Did you have any impressions about the jury system and how well that works or doesn’t work?

MR. JEFFRESS: I thought it worked well. And Judge Gesell did too. He said there have been times when he disagreed with a jury, but never times when he didn’t see some reason why a juror could legitimately conclude as they did. And I had great faith in the jury system, gave me great faith in the jury system. I felt that they got to the bottom of things pretty well.

I was surprised at the skepticism that jurors showed toward witnesses, not particularly police officers, but including police officers and FBI agents. Looking back on it, that’s healthy. I just helped an associate in my firm try an attempted murder case out in Frederick County, Maryland. They had police officers testify, and it was obvious to me that they were saying
things to make themselves look better, not because it happened. I think the jury system provides a dose of skepticism about testimony of both sides. That’s healthy. That is what a jury trial is all about.

PROF. CAMPBELL: So were there any other Watergate-related cases when you were with Judge Gesell?

MR. JEFFRESS: Well remember, Watergate didn’t happen until ’72. So I wasn’t there. He, of course, did wind up having the Ehrlichman case, the Ellsberg break-in case. He had a number of Watergate-related cases. Wound up having also Iran-Contra. He had the Oliver North case, but I wasn’t his law clerk. I would stop by chambers and talk to him many times about it. But by the time I left, the Watergate break-in had not occurred.

PROF. CAMPBELL: Right. Okay. In the Pentagon Papers case, who represented the government?

MR. JEFFRESS: The Justice Department. They were assisted by the State Department. There was a lawyer named Fred Buzhardt, who I think was Assistant General Counsel at the Defense Department. So it was a number of different agencies. Joe Hannon, who later became a superior court judge, was head of the Civil Division of the U.S. Attorney’s Office. He actually came to file the complaint. But they were all government lawyers. I’m trying to think who represented the Post. Rogers and Wells? It’s all public now, but I can’t remember the names of the lawyers. But they did a good job in forty-eight hours.

There was an incident I remember at Judge Gesell’s home. The courthouse cooling system was being renovated and so we couldn’t go to the courthouse. So he had all the lawyers
at his home on Sunday morning. He had asked that the government show him portions of the papers that they felt were most highly sensitive. So they brought an envelope which was triple sealed and top secret, SCI, and all this sort of thing. He said, “Just leave it here and I’ll read it. It will be ready tomorrow.” “Well, we can’t leave that here, you can’t keep that, that’s top secret” and so forth. He said, “Well, I’m going to put it under the sofa. That’s the safest place in Washington for one of these things.” And they backed off and let him keep it. (both chuckle) I never got to read it. I didn’t have a security clearance.

PROF. CAMPBELL: Okay, that was going to be my next question. That’s a great story. So your next experience was clerking for Justice Potter Stewart. How did you get that clerkship?

MR. JEFFRESS: Well, I had been editor-in-chief of the Yale Law Journal. Potter Stewart normally picked at least one, and many times two, of his clerks from Yale. I don’t know how frankly he had—I don’t think I even applied. No, I think I had applied. I think I applied to him and Justice White and Justice Marshall. But anyway, he called up Judge Gesell to ask about me, and Judge Gesell gave a—. This was like September, so I hadn’t been there long. But he asked me over to interview the next day. I went over and interviewed and he offered me the job on the spot, and I took it. While I was interviewing with him, Justice White had called Judge Gesell and he said, well I think he’s already taken. (both chuckle)

PROF. CAMPBELL: Now who were your co-clerks?

MR. JEFFRESS: Ben Heineman, who was also from Yale, who I knew very well. Went on to become general counsel of General Electric. A very good person. Richard Parker went on to become a professor of criminal law at Harvard Law School. At that time, we only had three,
although there were people who clerked for senior justices who would come help out from time to time.

PROF. CAMPBELL: How was the responsibility divided up within chambers? What was your role as a law clerk?

MR. JEFFRESS: At that time, Justice Stewart had his law clerks review every single cert petition.

PROF. CAMPBELL: There was no pool then?

MR. JEFFRESS: No, there was no pool. Or if there was a pool, it was only like three justices who participated in it. But Justice Stewart had his law clerks review every single petition. There were at that time maybe 3,000 or 4,000 petitions a year. I thought it was a really good system. You got to the point where, you know, two-thirds of them are frivolous. All Justice Stewart expected was a memo saying criminal case, search issue, fact question, deny. That would be enough for him, okay. And you got to know what he wanted and what he thought was interesting or certworthy. Maybe I would spend twenty minutes on a cert petition like that.

There would be others that I might spend a whole day on, that really were complex. And also, when you had six to nine chambers, each one doing an independent review, there were petitions—handwritten petitions, IFP [in forma pauperis] petitions—that some clerk got interested in and started reading the record and said, “you know, this guy’s got a point.” There were a handful, maybe four to six cases, that either got granted or got summarily reversed just based on the cert petition, where the court below had failed to read the record or made some
finding which was directly contradicted by the record, or something like that. So I thought that was a really healthy system.

That’s the cert petitions. And then, when the argument calendar came out— they would have an argument calendar come out for two weeks, ten to twelve cases each week for two weeks running. They heard a lot more cases back then than they hear today. When the argument calendar came out, Richard and Ben and I would hold a draft to see who took responsibility for each case. What we would do is draw straws, and one of us would get first choice, one get second choice, and one would get third choice. And then the guy that had third choice would get fourth and so on. You selected the cases that you wanted. By the time you got to the end you had *Port of Portland v. United States* [408 U.S. 811 (1972)], which was a direct appeal to the Supreme Court from some decision about allocation of rail lines in the port of Portland. All of us felt, gosh I hope Justice Stewart doesn’t get assigned this opinion. (laughter) We would have to write it. We weren’t sure how it would come out, but it was clear it was going to be nine to nothing because nobody was going to write a concurring or dissenting opinion.

Clerking at the Supreme Court has a lot of things that are educational and interesting. One part of it is reading through all those cert petitions. By the time you leave, you have a good idea of what the cutting issues are in every area of the law, whether it’s patent law, antitrust, criminal law, jurisdiction, and what have you. It’s invaluable. I’m sure you could go do that yourself, but I probably wouldn’t have the self-discipline to do it if I hadn’t had that job.

PROF. CAMPBELL: So what about Justice Stewart? What was your relationship like with him?
MR. JEFFRESS: It was excellent. He was a very fine lawyer. He said one time to me, “Look, I don’t want to be known for having any particular ideology. I want it to be known that I was a first-class lawyer.” And he was, he really was. He wrote some of his own opinions. I remember he had one opinion, I won’t mention the case, but there was an opinion on a criminal procedure issue where he knew all his law clerks disagreed with his position. He said I’m going to write this myself and he did. It was an excellent opinion.

When his law clerks wrote opinions, he often heavily edited them. He was a good craftsman and a very smart guy and a fundamentally nice person. I remember he had three law clerks a year. He was on the bench from 1958, and here I was in 1972. He would have reunions of law clerks that were well-attended. But he would forbid his clerks and secretaries who organized the event from preparing name tags. He was very proud of the fact that he not only remembered all his law clerks, he remembered their spouses, called them all by name, remembered their children and what they were doing. He was a very, very nice person and good person to work for.

PROF. CAMPBELL: Did you ever have any interactions with him outside the office setting?

MR. JEFFRESS. I would stop in every now and then just to say hi. We talked about some issues. We had the annual law clerks reunion. I would see him there. I had interaction with Justice Powell. I had known Justice Powell from Richmond where I grew up. He grew up in Richmond, and he was a trustee of Washington and Lee where I went to college. So I knew him, and he was appointed to the Court my year, I think January, maybe February, that he took his seat.
He was a friend. I had a lot of interaction with Justice Powell in later years. He got me to represent his bailiff, who had a little problem with a drunken driving charge; two or three other cases. I represented a seamstress at the Supreme Court in a claim that we settled. I used to stop by and talk to him as well. He was also a very, very nice man, an excellent justice I thought.

One thing about that year at the Supreme Court that made it particularly interesting was over the summer, both Justice Black and Justice Harlan died. In replacing Justice Fortas a year earlier, President Nixon set out to find nominees who were Republicans, who were under sixty, and there just weren’t that many of them, and who were judges—a Republican judge under sixty years old. And the first person he landed on was the Fourth Circuit—

PROF. CAMPBELL: Carswell?

MR. JEFFRESS: No, Carswell was second. I’ll come to him. Haynsworth, Clement Haynsworth. Clement Haynsworth, for reasons that I can’t fully recall, proved unacceptable. It was obvious that he was not going to be confirmed in the Senate. And I think Nixon was really—people thought when the Haynsworth nomination had to be withdrawn, that he just out of pique nominated Harrold Carswell, who was about the least qualified person ever nominated for the Supreme Court. But other people said no, it wasn’t really pique. If you make your qualifications a Republican judge under 60, there were only a handful of them. Carswell was one. That, of course, went down in flames very quickly. Finally he found Harry Blackmun.

So in 1971, [President Nixon] appointed two very well-qualified people, [William] Rehnquist and Lewis Powell. Rehnquist did not meet his criteria of being a judge, and Powell
didn’t meet his criteria of being under sixty. But at least he found some very well-qualified people. They passed the Senate in no time and they took office in, I think it was January.

What had happened was that in the fall, the Court had heard argument in the abortion case [*Roe v. Wade*, 410 U.S. 113 (1973)] to a seven-person court. Probably Chief Justice Burger thought this case will be unanimous, not going to be a big problem, no reason to wait until we have nine justices. But it turned out, they took a vote in chambers, and that’s not the way it was at all. And when they got to the end of the term, everybody, I think, and Justice Stewart agreed with this, felt that this is a case where if it’s going to be close, much less invalidate the abortion laws, it ought to be a nine-person court. So they re-listed it for argument the next year, and it was decided the following year. So that was one big case.

PROF. CAMPBELL: So you were there the first time it was argued but not the second time?

MR. JEFFRESS: Right. Wasn’t decided my term. It was decided the next term. The death penalty cases—when I became a law clerk, the Supreme Court had stayed all death sentences since I believe 1967 or ’68, for a case that was decided having to do with equal protection. They decided the death penalty was not invalid as a denial of equal protection. At the time they decided that, there were probably three hundred or more people scheduled to die on Death Row.

But there was another cert petition—the first one was *Aikens v. California*—that raised the due process Eighth Amendment cruel and unusual punishment issue. They decided to grant cert on that and continue the stay of the executions. So when you had a backlog of almost four
hundred people scheduled to be slaughtered if the Court upholds the death penalty, that puts some pressure on the Court to knock it down. And sure enough, they did.

That case, *Aikens v. California*, [406 U.S. 813 (1972)] was dismissed because I think Aiken either died or had his sentence commuted, I forget which. And *Furman v. Georgia* [408 U.S. 238 (1972)] became the lead case. The Court waited and argued that case when they had nine members. It was argued right after Rehnquist and Powell came, and the Court decided, as you know, to invalidate all death sentences as imposed, but not to find that it was *per se* cruel and unusual. So, that avoided the execution of all these people on Death Row. I thought at the time, wrongly, that that would put an end to the death penalty. I didn’t think it had the popular support that it turns out it did have. To my surprise, most legislatures went on to pass revised statutes providing standards, and those survived muster.

PROF. CAMPBELL: Now did Justice Stewart write the opinion or a concurrence in that case?

MR. JEFFRESS: No, there was one short *per curiam* for the Court, and then each justice—two of them may have joined together in some opinions—but as I recall, there were at least five or six opinions, separate opinions, and maybe nine. No, there wasn’t nine; nine was Pentagon Papers. I forget how many opinions, but there were a lot of separate opinions and one short *per curiam*.

PROF. CAMPBELL: Okay. He wrote a concurrence. So there were a number of cases that were re-argued. Do you remember any others?
MR. JEFFRESS: The abortion case is the only one I remember being re-argued. Because others they had held if they knew they were controversial. They didn’t’ argue them until they had a full court.

PROF. CAMPBELL: Are there any other cases that were particularly memorable from that term that you worked on?

MR. JEFFRESS: There was a case in which Justice Stewart wrote a—did it wind up being a dissenting opinion or a concurring opinion [it was a dissenting opinion]—but it was the reporter’s privilege case, *Branzburg v. Hayes*, [408 U.S. 665 (1972)]. I think Caldwell was the name of the reporter. But anyway, Justice Stewart was a very strong supporter of the First Amendment. He used to say, if it was one of these right-to-know type of cases, he would uniformly be in favor of the government. He said the First Amendment is not a Freedom of Information Act. But when faced with a question of freedom of speech, he would uniformly come down on the side of the freedom. And the reporter’s privilege was sort of a combination of those. He wrote a pretty well-received, reasoned separate opinion in *Branzburg v. Hayes*. That was an interesting case decided that term.

PROF. CAMPBELL: Would he have written his own dissent or would that be something that—

MR. JEFFRESS: Ben Heineman worked with him, but they worked together on it. If there was an opinion over his name, it definitely represented his thinking and not his law clerks.

PROF. CAMPBELL: Did he encourage you to present your own views and then debate them?
MR. JEFFRESS: Oh absolutely. We would in advance of every argument—I told you how the law clerks would divide up the cases—and we would all meet with the Justice and talk about each case. He would ask questions and we would give opinions. They were great discussions because there was nothing you couldn’t say to him. I mean, even if you knew he disagreed, I would tell him that I disagreed.

PROF. CAMPBELL: Did you write bench memos for the cases that were going to be argued?

MR. JEFFRESS: He didn’t want bench memos. He wanted you to study the briefs and everything and take notes, and he wanted to sit down and talk about it. And we would spend at least a full afternoon, sometimes a full day, before the argument session, talking about the cases. Then after the arguments sometimes, we would talk about them again before conference.

PROF. CAMPBELL: When you say the full session, you’re talking about the two-week—

MR. JEFFRESS: Two-week arguments.

PROF. CAMPBELL: So you would talk about all of them at the beginning or you would talk about it the day before the case would be argued?

MR. JEFFRESS: I know we would talk about more than two or three cases at a time. So I think we did it before. We might have done it twice. There were two weeks of arguments. We might have done it for the first week’s cases and then again for the second week’s cases. Ben or Richard might remember better than me. All I know is, when we would go back and talk to him, there would be a number of cases that we would talk about.
PROF. CAMPBELL: And did he tend to know how he was leaning before the argument or did he wait to see—?

MR. JEFFRESS: In at least half to two-thirds of the cases. He had been there a long time; he had seen similar cases; he had taken positions on issues in the law. When you had a case like that, you would look at how he had ruled, and you would try to see whether what he had said or positions he had taken applied or might not apply to the facts of this particular case.

He was a guy who believed in—what’s the word—consistency, I guess is the best word, in the court. Even though he had dissented in most of the Warren-era’s criminal procedure cases, he was not about to overrule *Miranda [v. Arizona, 348 U.S. 436 (1966)]]* or overrule *Wade* or any of these cases that the Warren Court had decided because he felt like the Court should not reflect the election returns, and changes of personnel should not lead to tremendous changes in the law of the Supreme Court. So, even though he dissented in the original cases, he would uniformly apply those cases when later issues came up to sustain the precedent.

PROF. CAMPBELL: I took a quick look at the term. *Sierra Club v. Morton, [405 U.S. 727 (1972)]* were you working on that?

MR. JEFFRESS: I did. I worked on that opinion actually. That was a standing issue; lots of controversy among the law clerks. Justice Stewart felt, look, you shouldn’t be able to sit in front of the television, see something you don’t like, and file a law suit to change it. Law suits are about something more concrete than that. And Sierra Club, if they had chosen to assert personal interests of their members, I think he would have said they do have standing. Somebody that’s visited the Tuolumne Valley, somebody that regularly fishes or camps there, or
even hikes there, who would say that this is interfering with my enjoyment of the environment. He would have said, I’m confident, that there is standing. But the Sierra Club, for one reason or another, just decided no, we’re going to put this thing to rest. The Sierra Club, as an organization, has standing just because these are issues that we believe in, lobby for, promote and so forth. He said, “I’m sorry but that’s not standing.” So, that’s why the case came out as it did. And I thought his opinion was correct. It did not curtail those law suits; it just meant that people had to come in with real plaintiffs.

PROF. CAMPBELL: Would you go to hear the oral arguments?

MR. JEFFRESS: Yes. Well, many times. Not every single one. But if I had a case assigned to me, I normally would go.

PROF. CAMPBELL: And then they would have the conference at the end of the two weeks?

MR. JEFFRESS: At the end of the two weeks.

PROF. CAMPBELL: And then that’s when the assignments would be made as to—

MR. JEFFRESS: As to who was going to write the opinion.

PROF. CAMPBELL: Would he talk to you about how the vote came out so that—

MR. JEFFRESS: Oh yeah.

PROF. CAMPBELL: And did you try to write opinions that you thought might get a majority or to get as many votes as possible? I’m just wondering how that dynamic shaped the writing of the opinions.
MR. JEFFRESS: Very much. You know, some Justices didn’t do it as much. Justice Douglas was famous; he could care less what anybody else thought. But Justice Stewart very much wanted to build a consensus. Sometimes, if he got an opinion that was written by some other Justice that he thought was just poor, or that said some things that he couldn’t say, he would circulate a concurrence. And if the Justice modified the opinion, he would withdraw the concurrence.

He was a consensus builder. Putting aside possibly Justice Douglas, I think he got along with all the justices; certainly Brennan and White; and became fast friends with Rehnquist and Powell, when they came on the Court. So there was a lot of consensus building. Sometimes rather than write a concurrence or something, he just sent a note. Other justices would send notes. Get a note from Justice Brennan—“I read your very fine opinion.”—it was always very fine opinion (laughter)—“draft and such and such. I wonder if you would consider—.” It was all very polite and professional. There was a lot of consensus building that went on.

Chief Justice Burger was not a great consensus builder. When I came to the Court, he and Blackmun were known as the “Minnesota Twins.” Blackmun always voted with Chief Justice Burger. That changed with the abortion case. Even though Burger concurred with Blackmun’s opinion in that case, he didn’t really believe it. I think from that time on, there was a real split between those two. But Chief Justice Burger, I didn’t think was the kind of consensus builder that Warren was or, for that matter, that Rehnquist was later.

There were other people on the Court who were. Brennan was. I remember Brennan talked to the law clerks one time. He said when he was first on the Court, if there was a decision that he strongly disagreed with, he would write a dissent that talked about how awful the
majority opinion was. He said he learned after a few years that all he was doing was making it worse. Lower court judges read the opinion; they see he is casting the majority opinion in the worst light; and that it has a sweeping ill effect. He said he then began to write his dissents pointing out the narrowness of the holding. (chuckles). Instead of talking in apocalyptic terms about how bad it was, he would just talk about how narrow it was.

PROF. CAMPBELL: I’ve seen some of those opinions; that’s interesting. Now were the obscenity cases argued when you were there? Miller [v. California, 413 U.S. 15 (1973)] and those cases?

MR. JEFFRESS: No, Miller had already been decided—no, I’m sorry, Redrup had been decided. Miller was not argued my term. There was a case—I mean, this is just a ludicrous period of Supreme Court history—but there was a case called Redrup v. New York, [386 U.S. 767 (1967)]. Redrup v. New York said that in any obscenity case, the Supreme Court would review de novo whether the materials were obscene under the First Amendment. Crazy case. What that led to is, at least the law clerks, and quite often the justices, would go down to this room in the basement of the Supreme Court and look at these dirty movies in order to make their judgment under Redrup. And our cert memo would be—I would say: obscenity question, I’ve looked at the movie, doesn’t fit your standards, Redrup. And what the Court would do is per curiam, it’s reversed and remanded under Redrup v. New York.

And some of the Justices went. Stewart went occasionally, if we would tell him it’s a close question. I remember one time Justice Powell, who is just the world’s most elegant gentleman, came down. I looked over at him, and I thought he was turning purple. (laughter) I think that was the last one he thought of going to. (laughter) But that was the state of obscenity
law at that time. I think *Miller*—it wasn’t decided my term—I think it may have been decided the next term. Finally they got rid of *Redrup*, and I forget exactly when.

**PROF. CAMPBELL:** Any memorable films that you saw?

**MR. JEFFRESS:** Oh Lord. Put them out of my mind.

**PROF. CAMPBELL:** I wanted to go back. We were talking about how the Justices would send notes to each other and try to build consensus. Did the clerks also play a role in that? Were you like sort-of messengers?

**MR. JEFFRESS:** Yeah. Paul Gewirtz was Justice Marshall’s clerk and he found this IFP [*in forma pauperis*] petition, and he said there is something wrong with this case. He would go talk to other law clerks. The case wound up, I think being summarily reversed. And the law clerks did. We would argue vociferously about issues and opinions. I don’t know that any of it ever had any effect on any Justice’s vote, but it certainly was an exciting time for the law clerks.

**PROF. CAMPBELL:** There is one case I have some personal curiosity about. I think it was argued your term, and you may or may not remember it. The *Midwest Video* case involving the FCC and cable television rules?

**MR. JEFFRESS:** I don’t remember it.

**AC:** Okay.

**MR. JEFFRESS:** I remember Curt Flood [*Flood v. Kuhn, 407 U.S. 258 (1972)*] was argued my term. It was sort of a funny case, but just upheld baseball’s antitrust exemption.

**PROF. CAMPBELL:** How much time do you have?
MR. JEFFRESS: Maybe another fifteen minutes.

PROF. CAMPBELL: I know you have other things to do. So is there anything else that you want to mention about your clerkship, or either of your clerkships for that matter?

MR. JEFFRESS: No, I think nothing else at the moment. I will tell you that being a Supreme Court law clerk has a lot of advantages. One of them is what I mentioned—by the time you finish you know what all the cutting issues are in every area of the law. And another is it gives you a feeling of confidence. You don’t mind, you’re not terrified to go up and argue a case. I will mention, I’m getting ahead of myself I’m sure, but it wasn’t that long after I left the Court, 1977 or ’78, that I argued my first and only case in the United States Supreme Court.

PROF. CAMPBELL: Oh, that was your only one?

MR. JEFFRESS: That was on behalf of Richard Nixon. Edward Bennett Williams was on the other side. I had a great time. I thoroughly enjoyed it. But I remember I had all my family in the audience. Since I was the petitioner, I gave the first argument. I started out with something about the facts and procedural history. I was about a minute into my argument when Justice Stewart interrupted and asked a question. It was a question that I knew the answer to, and more important, it was a question that he knew I knew the answer to. It was just to break the ice, you know. (chuckles)

PROF. CAMPBELL: Well, that was nice.

MR. JEFFRESS: And then, sometime during the argument, Justice White, who I knew pretty well when I was at the Court— he was famous in oral argument for sort of grilling counsel—and he with a smile was asking me some questions. At one point he leaned back and
said, “I don’t think you’ve answered the question counsel.” And Justice Stewart leaned forward and said, “Yes he has.” (laughter) I thought: Let’s take a poll. Who did this fella clerk for. But it was an exciting time. Like I say, I felt perfectly comfortable there. I’m sure had I not clerked at the Supreme Court, the opposite would have been true. I was what, thirty-two years old, something like that.

PROF. CAMPBELL: Well do you want to talk more about that case now or would you like to talk about when you started at law firm at Miller and Cassidy?

MR. JEFFRESS: Actually maybe we ought to break. Then I’ll start with the Miller Cassidy era. There are a lot of things I want to say about the firm and about the practice back in those days. So maybe we’ll do that next time.

PROF. CAMPBELL: Okay great, that’s fabulous. [END RECORDING]

Third Interview – August 23, 2011

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

PROF. CAMPBELL: It is already August 23. Last time we had finished talking about your clerkships. You said you had a lot to say about your time at Miller Cassidy. So unless there is something you want to add from last time, we can just get started with that.

MR. JEFFRESS: No, I’m amazed at how long I’ve talked already, and I’m not even to my practice of law. So, I think when we left off, I left my clerkship with Justice Stewart and joined what was then a six-lawyer firm—Miller, Cassidy, Larroca & Lewin.

PROF. CAMPBELL: So four of them were the named partners?

MR. JEFFRESS: The four of them were the named partners, and there were two other former Supreme Court law clerks, both of whom were friends of mine.

PROF. CAMPBELL: And who were they?

MR. JEFFRESS: Bob McLean, who left not long after I started to move back home to Chicago. He became the managing partner of Sidley and Austin. He unfortunately died about eight or ten years ago. And the other was Marty Minsker, who clerked for Justice Harlan. When Justice Harlan died, he had helped wind up Justice Harlan’s affairs at the Court and then he had started with Miller Cassidy a few months before I did. So it was just the four plus those two. I was the seventh come to think of it.

It was a very interesting firm. Jack Miller had been head of the criminal division of the Justice Department under Bobby Kennedy. He had been president of the bar in D.C. and run for lieutenant governor of Maryland, unsuccessfully, as we were happy to note. He was a unique
fellow. He loved practicing law, loved people. He was a great leader of that firm and always was our inspiration.

The firm did almost entirely litigation. We were trial lawyers. The four named partners had served in the Justice Department at one time or another. We handled almost any kind of case. We didn’t do divorce cases and we didn’t do personal injury cases, but we did just about any other kind of litigation—small to large. Lots of interesting cases. Small enough cases where I, as a brand new lawyer, could walk into court on my own and argue the case, or take a deposition, or whatever. So it was a way to learn by getting my feet wet immediately, which is one thing that most attracted me to the firm.

When I started at Miller Cassidy I wanted to know whether I would like being a trial lawyer and whether I would be any good at it. You never know until you do it. If I didn’t like it, or wasn’t any good at it, I thought I would go teach at a law school somewhere. I had the credentials, what was then considered credentials, to teach. But I loved it from the beginning. I tried cases with Nat Lewin. Tried my first case on my own, I guess in 1974. Well, I did everything I could find. I was in small claims court. I did everything I could to get in court whether it was a paying case or not a paying case.

PROF. CAMPBELL: Are there some of those early cases that you particularly remember?

MR. JEFFRESS: Well yeah. Let’s see. I had a friend from law school—the wife of a friend—she was a real estate agent in town, and she thought her employer had cheated her out of a commission for, I think it was $10,000 or some small amount, relatively. And I said, sure, I’ll handle it, and my fee if I win, will be dinner at the restaurant of my choice. I picked a restaurant
in San Francisco. Unfortunately, we lost the case before Judge Hannon in Superior Court. I told Mary it was because she was not a credible witness. (laughter)

PROF. CAMPBELL: Are you still friends?

MR. JEFFRESS: Yes, we’re still good friends. And one of our clients was Ringling Brothers Barnum and Bailey Circus. I had a case against Abe Pollin when he built the Capital Centre out in Largo, Maryland, having to do with his breach of an agreement to allow the circus to play at Capital Centre on certain terms. When the agreement fell apart, he started producing his own circus. We had a Lanham Act claim that he was creating confusion between his circus and Ringling Brothers Barnum and Bailey. We had a preliminary injunction hearing before John Lewis Smith in District Court, which we won. Went up on appeal, we won.

During that time Ringling Brothers put on the circus here, and they had a number of complaints by people that they didn’t get the seats they paid for or this, that and the other. I went into small claims court and represented them on that. It was really great—I got to see their headquarters in D.C. I met the lion trainer, Werner [Gunther Gebel-Williams]. Anyway it was a fascinating case.

We represented a company called Darling Delaware. You weren’t here then, but back in the late 60s, early 70s, Darling Delaware ran a rendering plant on the Georgetown waterfront. And the stink was terrible throughout Georgetown. There would be days when all of Georgetown was affected. You had protests from senators and congressmen—get rid of this thing. And we defended them. The D.C. government had something called the “smell-o-meter,” or something like that, to prove this was a nuisance. We proved the smell-o-meter was not a scientific instrument. (laughter) To make a long story short, kept it open long enough that somebody had them to pay them a lot of money to go out of business.
I did another case for Darling Delaware where they picked up fat and bone at grocery stores that was cut off the meat, and transported it to make tallow for candles and other things, soap. The D.C. government started giving all their trucks tickets because they weren’t covered. They said you’re hauling garbage, and the D.C. Code requires a special license and covered trucks to haul garbage. Well, that would have meant a lot of money for them. [Darling Delaware Corp. v. Dist. of Columbia, 380 A.2d 596 (D.C. 1977)]

So I tried the case in Superior Court. The sole question was whether what they were hauling was garbage—the definition of garbage under the D.C. Code. So that was another of my famous cases. We won that case. (laughter) So that’s an illustration of the just dozens of cases, fairly small cases.

But two years after I started, Nixon resigned. We had represented Richard Kleindienst in the Watergate stuff; represented Richard Moore, who was a White House advisor. Jack Miller had become known to Nixon through Moore. After Nixon resigned, within a week I believe, he hired us to represent him. Those were exciting days. There were a number of issues that he faced, one of which was, would he be indicted.

Immediately, we started meeting with Leon Jaworski, who was the Watergate special prosecutor. Did some work to try to show that it would have been impossible for Nixon to get a fair trial. We had some arguments that you cannot indict a former president for conduct while in office, but given that the impeachment clause says if somebody is impeached they can be prosecuted, we thought we would probably lose that argument. He resigned rather than be impeached but still—. For about thirty days we worked furiously night and day on the various issues presented. Another one was what happens to his tapes and papers.

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PROF. CAMPBELL: Before you get to that, I remember reading an article about this where it basically said that Jack Miller was responsible for convincing Nixon to accept a pardon. Is that correct?

MR. JEFFRESS: Yes.

PROF. CAMPBELL: I don’t know what your involvement was and how much you can say about it, but I think that would be very interesting.

MR. JEFFRESS: Well that’s the third segment, it sort of follows this.

PROF. CAMPBELL: Okay, so let’s keep it in your order.

MR. JEFFRESS: There were White House tapes that the special prosecutor was seeking to obtain and had obtained some, which led indirectly to his resignation. He had hundreds of thousands of papers in addition. By history and tradition, the White House papers of a president were considered his personal property. Lincoln’s heirs actually had sold his papers for $50,000, I think. George Washington’s son had taken custody of his papers. There was a long history. That issue was more one of history than of law, because it had never been challenged. Marty Minsker, I remember, became the world’s leading authority on the presidential papers.

As a practical matter, no one was going to let Nixon walk off with all his tapes and papers and destroy them. And that was a big issue between us and the White House and special prosecutor at the time.

Contemporaneously, Jack was talking to people in the White House, including the White House counsel, about a pardon and the wisdom of President Ford pardoning Nixon. Nixon was ill at the time, if you remember, he went to California and he had phlebitis. So Jack was back and forth between California and Washington quite a bit that month. The way things worked out
is that—I don’t say Ford agreed to pardon Nixon—but he did make it clear that nothing would be done until this problem of the tapes and papers was solved.

We negotiated an agreement called the Nixon-Sampson Agreement [Sampson was head of the General Services Administration] to govern custody of Nixon’s tapes and papers. Basically, it was a two-key system. The government would keep the tapes and papers, but access would require two keys: one, which we would hold as Nixon’s attorneys, and one, which the government would hold. Nobody could have access without the permission of the other. We negotiated that, signed that, and the next day, Ford pardoned Nixon.

We had made various arguments, including some legal arguments, but mostly arguments about what is best for the country. Convinced Leon Jaworski. Although he never said anything in our presence or made any representation to us, it’s clear from his book that he thought that was the best thing to do and signaled the White House that he had no objection to the pardon. And so the pardon occurred. And then a firestorm happened.

I think within a matter of days, Congress passed a law declaring the Nixon-Sampson Agreement invalid, taking sole control for the government of Nixon’s tapes and papers, and stating in one provision of the law that if the court should determine that these are his personal property, he shall be compensated as provided in the Fifth Amendment for a taking. That led to two decades of litigation; more than two decades, twenty-five years I think.

PROF. CAMPBELL: Now that act was the Presidential Documents Act or something like that, do you remember the name?

MR. JEFFRESS: Yes, the Presidential Recordings and Materials Preservation Act. It was passed in 1974, shortly after the pardon. We first challenged that law and ultimately lost in
the Supreme Court. They said the government has provided that if you show they are your papers, you’re entitled to compensation.

PROF. CAMPBELL: So this was brought as like a declaratory judgment? I have the case Nixon v. Warner, but that’s not this case?

MR. JEFFRESS: No. I’ll get to that one because I argued that one. Nixon v. Administration of General Services, [433 U.S. 425 (1977)] was to declare unconstitutional the law passed by Congress. We did that, I think, as an injunctive case, but probably declaratory as well. That zipped through the courts pretty quickly. We ultimately lost in the Supreme Court.

We then started a case seeking compensation for Nixon for the tapes and papers. Simultaneously, because the Act had provided that if there were personal and private documents among Nixon’s papers, he was entitled to have them, there were hundreds of disputes with the government. At one point, the court ordered that the government excise the personal and private conversations from the tapes. The government archivist went all up in arms because you couldn’t excise them without destroying the tapes. So all this went on. To make a long story short, because of all the litigation we had, all of the disputes with the government, the information became public later than it would have under the Nixon-Sampson Agreement. (chuckles) It would have expired after twenty-five years and all become public. There were different stages at which other stuff would become public. That litigation was unbelievable, and it lasted a long, long time.

PROF. CAMPBELL: Can you give some examples of some things that were disputed?

MR. JEFFRESS: Well, there would be conversations with his daughter, for example, that got recorded because this was a voice activated system. We said, “Well, a conversation with his daughter, you know we’re entitled to that, so cut it out of the tape.” “Well, we can’t cut it out of
the tape because that will destroy the integrity of the tape.” That probably took five years to
resolve those questions, and I forget even how we did it.

PROF. CAMPBELL: Maybe the technology got better by then.

MR. JEFFRESS: Probably, probably.

PROF. CAMPBELL: I do vaguely remember what a shock it was when it was
discovered that he had been taping these conversations all along and I guess the technology was
fairly new.

MR. JEFFRESS: Actually, Johnson had had the same system and there are a lot of his
tapes that are available. But his was not voice activated, so it didn’t pick up everything.

PROF. CAMPBELL: I see.

MR. JEFFRESS: And I think what happened with Nixon, it was voice activated and
therefore, he would forget it was on and forget he was being taped. He never told me that, but
it’s possible.

Johnson, on the other hand, I think he had to flip a switch. There are lots of fascinating
conversations that Johnson had that are available at the Archives. They published a disk with
one of the biographies of Johnson. It’s fascinating stuff. Johnson was quite a manipulator. You
can see him manipulating people to get to where he wanted to be. Like in the 1964 murders of
Goodman, Chaney and Schwerner down in Mississippi. Remember the Philadelphia,
Mississippi, murders? He’s on the phone constantly, trying to get information about that and
motivate the FBI to get answers. You can hear him—he’ll talk to one person and then another
person will tell him something different. And he won’t just say well look, I was just told
something different. Instead, he’ll let them dig themselves in, and then he’ll say, well, let me tell
you something, I don’t believe that you’ve done what you say you’ve done, because I happen to know blah-blah-blah. (laughter) But anyway, I digress on Johnson.

So, there was a lot of other litigation as well. Part of the litigation was requests or demands for Nixon’s testimony—demands in the Watergate case, demands in the sort of sub-Watergate case, where Judge Gesell had the Ellsberg break-in case where Ehrlichman was a defendant, lots of others. For the most part, we were helped by the fact that Nixon was in bad health. Some we decided we could not successfully oppose, and others we opposed but were unsuccessful. The testimony was taken, I believe in every instance, out in California. And I didn’t attend any of that. Jack did. Or Stan Mortenson, my partner.

PROF. CAMPBELL: Did you talk to Nixon personally about these matters?

MR. JEFFRESS: I did. Well, you say about these matters. I had one case that I handled personally. After the Watergate conspiracy trial—the Mitchell, Ehrlichman, Haldeman trial—the network news organizations and Warner Communications sought copies of the tapes that were played at the Watergate trial. They said there can’t be any claim of privilege because they are public. I argued, first before Judge Gesell, who was assigned this matter, that when tapes are obtained by subpoena to do justice in a criminal case, the person from whom they are subpoenaed should not be subjected to their commercialization just from the fact that they happened to have become evidence in a criminal case. [United States v. Mitchell, 386 F. Supp 639 (D.D.C. 1975)]

I argued that; lost that in the D.C. Circuit. [United States v. Mitchell, 551 F.2d 1252 (D.C. Cir. 1976)] Filed a cert petition which was granted; and the Court, rather than resolving that question, decided that the Presidential Recordings Act sort of occupied the field here and controlled access to these tapes. And that if the networks were to obtain copies, they would have
to obtain them within the rules and procedures set by the Archives.  

[Nixon v. Warner

Communications, 435 U.S. 589 (1978)] So that was the result. But it was exciting to argue a case in the Supreme Court—my client is Richard Nixon, and I’m thirty-two years old. So it was an exciting time.

PROF. CAMPBELL: But since this is for the D.C. Circuit Historical Society, do you remember what happened at the D.C. Circuit?

MR. JEFFRESS: Yes, I do.

PROF. CAMPBELL: Probably something you’ll never forget I imagine.

MR. JEFFRESS: Frankly, when we signed the Nixon-Sampson Agreement, a lawsuit was filed by some—I forget even who were the plaintiffs—citizens and maybe some congressmen to enjoin the Nixon-Sampson Agreement. And that was consolidated with Nixon v. Sampson [389 F. Supp. 107 (D.D.C. 1975)] and assigned to Judge Richey. As I mentioned before, Congress then passed a law invalidating the Nixon-Sampson Agreement. A three-judge court was required to rule on our lawsuit to declare that unconstitutional, with a direct appeal to the Supreme Court.

PROF. CAMPBELL: So that was in the Presidential Act, that provision for the [three-judge court]?

MR. JEFFRESS: No, that’s just a matter of law. We sued to declare that law unconstitutional and enjoin its enforcement. And under the law at that time, the three-judge court was necessary to consider the constitutionality of an act of Congress. And there was no dispute about that—a three-judge court was required. So that was assigned as a related case also to Judge Richey.
It soon became apparent to us that Judge Richey was not going to rule on the motion for a three-judge court. Instead he was going to proceed with the *Nixon v. Sampson* case, where he would be the only judge. And we worked Christmas Eve, Christmas Day, New Year’s Eve, New Year’s Day, we always had something due. While refusing to rule on the three-judge court, Judge Richey set a schedule in *Nixon v. Sampson* to enable him to rule in a matter of two weeks or something on the ownership of the tapes and papers. It was clear he was just itching to do that.

So we filed a petition for mandamus in the D.C. Circuit to require Richey to convene a three-judge court and to cease proceedings in *Nixon v. Sampson* and related cases where the news media had sued Sampson to enjoin the agreement. [Ed. Note: Judge Richey had three consolidated cases, *Nixon v. Sampson*, *Reporters Committee for Freedom of the Press*, and *Hellman v. Sampson*, see *Nixon v. Richey*, 513 F.2d at 433, n. 8.] We filed it in the afternoon and Judge Richey became aware of it. The clerk of the court of appeals called Judge Richey’s chambers wanting to know how much time the Court had to consider this before he ruled in *Nixon v. Sampson*. He told the Court he was not going to rule today. So, at 2:00 in the morning, he got his staff in and ruled.

PROF. CAMPBELL: Oh my goodness.

MR. JEFFRESS: This is all set out in the opinion of the Court of Appeals. [*Nixon v. Richey*, 513 F.2d 430 (D.C. Cir. 1975)] I’m not making this up. They even had a time line when all this occurred, which is attached to the opinion.

We learned about it first thing in the morning and immediately went to the Court of Appeals before noon and asked that they rule on our petition for mandamus because Judge Richey had flouted the Court of Appeals by ruling at two o’clock in the morning. The Court of
Appeals had an argument on it. No, the first thing they did was they issued a temporary stay of his ruling. They then had an argument, I believe the next day.

I’ll never forget that argument. Bill Dobrovir, who was a good lawyer, friend of mine, was representing Jack Anderson and he was arguing that “Look, there is no rush here. They are asking that you issue a mandamus. Just let the process play out, they can appeal Judge Richey’s ruling” and so forth. Judge Wilkey leaned over the bench, he said “Well, Mr. Dobrovir, if there was no rush, why did Judge Richey rule at 2:00 o’clock in the morning?” (laughter) So anyway, they overturned his ruling—they stayed it, vacated it.

PROF. CAMPBELL: Now did you argue that case?

MR. JEFFRESS: No, Jack Miller was arguing these cases. I was working on them, and I was in court. So that was a fascinating period. And then we went on to a three-judge court; they ruled against us. [Nixon v. Administrator of General Services, 408 F. Supp. 321 (D.C. Cir. 1976)] That’s what produced the Supreme Court ruling that upheld the congressional statute. [Nixon v. Administrator of General Services, 433 U.S. 425 (1977)]

Those were exciting days. I’ll never forget that year—the end of the year 1974. I probably worked sixteen hours a day every day including Christmas and New Year’s and everything else to meet those deadlines.

PROF. CAMPBELL: And you were a young father?

MR. JEFFRESS: I was a young father with three children.

PROF. CAMPBELL: How was that for your wife?

MR. JEFFRESS: Well she was excited too.

PROF. CAMPBELL: She knew you were making history.

MR. JEFFRESS: Oh sure.
PROF. CAMPBELL: Well okay. The case that I read was in the D.C. Circuit, Judge Bazelon wrote the opinion—

MR. JEFFRESS: Is that in *Warner Communications* or which one is that?

PROF. CAMPBELL: Oh yes, that’s *Warner Communications*, never mind.

MR. JEFFRESS: That’s the case I lost on the way to the Supreme Court.

PROF. CAMPBELL: Yes, okay.

MR. JEFFRESS: But the most fascinating case is the opinion of the D.C. Circuit on Judge Richey, on our petition for mandamus, where they append a time line (chuckles) of Judge Richey. [*Nixon v. Richey*, 513 F.2d 430, App. B (1975)]

So let’s see. That Nixon litigation actually continued even after his death. We represented his estate in seeking compensation for the value of the tapes and papers. That again was fascinating because how do you put a value on Nixon’s handwritten notes on a yellow pad of his Moral Majority speech? I mean it’s invaluable; it’s part of history. You just don’t think of it as commercial.

That litigation stretched out. Judge Penn probably did us a favor. There was a motion in the litigation which he sat on for eight years; didn’t rule; nothing happened in the litigation. And by the time that eight years was up, Nixon—I won’t say he was rehabilitated—but the anger was gone. We were now in a different era altogether. We had Iran-Contra to worry about and so forth.

So, Judge Penn sat on it for a long time, finally ruled. We took it to the Court of Appeals, and they reversed and held that Nixon was entitled to compensation. [*Nixon v. United States*, 978 F.2d 1269 (D.C. Cir. 1992)] That was followed by a trial which went on for about three or four months. I believe in 2000, no, in 1999, and before the conclusion of the trial, we settled that
They paid as I recall $18 million or something, which is probably less than the value of the papers, but took into consideration that we might lose. Some of that money finally went to pay legal fees to Miller, Cassidy, Larocca & Lewin and some of it went to Nixon’s estate. But the majority of it went to the Nixon Library to house and preserve many of his papers.

PROF. CAMPBELL: So the motion that Judge Penn was sitting on, I didn’t quite understand what that was.

MR. JEFFRESS: I think it was a motion for summary judgment by the government; could have been a motion to dismiss. My memory doesn’t serve me, but it was dispositive motion. [Ed. note: It was on cross-motions for summary judgment. *Nixon v. United States*, 782 F. Supp. 634 (D.D.C. 1991).]

As I say, that started in August of 1974, when we started representing Nixon and continued all the way until Miller Cassidy merged with Baker Botts in 2001. So it pretty much was the whole time. And always very interesting. So that was a big case, one big case to start with.

As far as my own career, sometime in 1974, I went to Louisiana to represent a company that was under investigation by the Antitrust Division—criminal investigation.

PROF. CAMPBELL: Before we get to Louisiana, did you want to talk more about the Warner Communications case, because I don’t know that we actually finished that one.

MR. JEFFRESS: I think I talked about that last time, didn’t I? I talked about Justice White and Justice Stewart. Anyway, what questions do you have about it?
PROF. CAMPBELL: I guess the question I have is really about the Presidential Recording Act. Not knowing that history, my question is, when I read the case, I was so surprised that the Supreme Court ruled on a ground that you didn’t argue before the Court.

MR. JEFFRESS: Right.

PROF. CAMPBELL: It just struck me as very odd.

MR. JEFFRESS: I think they didn’t want to reach the merits. It was very hard to make the argument from the language of the statute. The language of the statute—I can’t remember exactly what it said at this point—but basically said this doesn’t displace other rights on other grounds that persons may have. I think probably Congress had in mind subpoenas that other people might issue for some of the papers. But, it’s not all that unusual to have a case in the Supreme Court that goes off on an issue that neither party really argued. Many times that’s a matter of—not judicial restraint, that’s the wrong word—but avoiding making rulings that the Court doesn’t have to make and would rather not make. That’s the way I always explain the majority in that case.

PROF. CAMPBELL: I guess the other question I had was why did President Nixon object so strongly when the tapes at issue I gather had actually been played in court and the transcripts had been released to the public? So why was this such an important issue for him?

MR. JEFFRESS: Warner Communications, for example, was going to produce a set of phonograph records, which is what we had back in those days, and maybe tapes as well, narrated by George C. Scott, of Nixon using all kinds of expletives and saying things that would have had a more intrusive impact on his privacy, on his psyche, than anything ever published in a transcript. And that was one of the major things we argued. I think every member of the Supreme Court agreed with me just from their own experience that it’s a different order of
magnitude when you have videotape or audiotape of an individual than if you have somebody writing a book describing his conduct.

I remember what I thought was a brilliant argument by Edward Bennett Williams in the Supreme Court. He said “transcripts cannot give you the full meaning of what occurred.” For example, he said, “the transcripts are littered with the entry ‘u-h-hyphen-u-h.’ But a reader of the transcript doesn’t understand whether Nixon is saying uh-HUH or unh-unh or UNH-uh.” (Jeffress pronounces the word differently) (laughs) I thought it was a good argument.

But anyway, that’s why Nixon cared. That’s what was at stake really. I think that if Warner Communications had not come in with the idea of commercializing the tapes, it could have been different. And another thing that happened was Bill Dobrovir—and this got a lot of publicity—had a portion of one of the tapes under some sort of protective order. He made the mistake of playing them at a cocktail party, and that got out, and it was pretty offensive. So, had Warner Communications not come in with the idea of commercializing the tapes, I think I would have had a harder time in the Supreme Court. I don’t think they would have been as eager to find a way to keep the tapes out of the hands of the news organizations.

And what happened, the case in the D.C. Circuit you’ll notice is Nixon v. NBC News or something. Do you have the opinion? What’s the caption?

PROF. CAMPBELL: This is United States v. John Mitchell [551 F.2d 1252 (D.C. Cir. 1976)].

MR. JEFFRESS: Is that what the caption was? All right. But who were the applicants?

So you see what happened was in the criminal case of United States v. Mitchell, we had an appeal of National Broadcasting Company, et al., plus lots of other news organizations. [ABC, CBS, the Public Broadcasting System, and the Radio Television News Directors Association].

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And then we had a separate petition by Warner Communications, which was going to commercialize the tapes. So when you are drafting a cert petition, I decided you can caption it anything you want. I called it *Nixon v. Warner Communications.* (chuckles) I didn’t call it *Nixon v. NBC News.* I remember, oh gosh, what’s his name, great First Amendment lawyer?

PROF. CAMPBELL: Floyd Abrams, I think was on the other side, right?

MR. JEFFRESS: Floyd Abrams. So Floyd, I think he called me up. And he said, “Look, what are you doing?” (pounds on the table) “This is not the caption, we’re the appellants.” (pounds again) And I said, “Well, you’re one of the appellants, but I can call it what I want.” “No you can’t. We were the first appellant listed in the D.C. Circuit.” I said, “Well Floyd, you know I filed the petition. I mean, if you want to do something to change the caption, that’s up to you.” He was furious. (laughter) For good reason. Believe me, it was not accidental that I called it *Nixon v. Warner Communications.*

PROF. CAMPBELL: Yeah, that’s fascinating. I guess the other question I had was what was it like to have a former president as your client?

MR. JEFFRESS: Well, I’ll tell you. Before August of 1974, I was agitating for Nixon’s impeachment and had very little good to say about him as president. But from the day that we started representing him, I considered him very much an underdog. He had very few friends in the judiciary or in the country. Everything, the powers of all kinds of institutions, were arrayed against him. And that’s just the kind of person I like to represent.

From the time we started representing him, I had nothing bad to say about him. I liked him as a person. He was always kind and considerate. I only met him once, but I talked to him on the phone several times. It was a thrill. Even though most of my friends didn’t have any use
for Richard Nixon. One friend called me up and said, “Kleindienst, Nixon,” he says, “who’s
your next client – Satan?” (laughter)

PROF. CAMPBELL: So you didn’t have any qualms about taking on this case?

MR. JEFFRESS: Oh, not a bit, no, not a bit. I was thrilled to do it. I don’t know this
personally, but the story was that he had talked to a lawyer with another California-based, large
firm, somebody he knew, about representing him. That lawyer had said, “Well, we’re going to
have to take this through our firm’s executive committee, and we’ll need to iron out the problems
and we’ll get back to you in a week.” And I think Nixon was a little taken aback by that. When
Richard Moore called Jack Miller, Jack got all of the partners in Miller Cassidy in his office, and
we decided in five minutes to do it.

PROF. CAMPBELL: So being a small firm gave you that flexibility?

MR. JEFFRESS: It helped. And we were excited to do it; really, we were excited to do
it. Nat Lewin had written an article that had not yet been published calling—gosh, couldn’t have
been calling for his impeachment because he already resigned. I forget what the article was—it
may have been arguing that he should be indicted. Anyway, it was an article that, obviously if
you were Nixon’s lawyer, you have no business writing. But he had written it, it was in the New
Republic, and it had already been printed but hadn’t been released. It was released either the
very day we announced we were going to represent Nixon or the next day. And that was
something of an embarrassment. But, it couldn’t be helped. We didn’t do anything wrong. At
Miller Cassidy, we had Republicans and Democrats, and we had people that liked Nixon and
people that didn’t. But once we started representing him, there was no question. It was a thrill to
do it, and it was an exciting adventure.
PROF. CAMPBELL: So, I guess I had interrupted you. You were talking about how you went down to Louisiana?

MR. JEFFRESS: Yeah, that does change the subject. In 1974, a friend of Jack Miller’s in Louisiana, his wife’s family, owned a bakery in Louisiana that was under investigation under the antitrust laws. Ultimately, that company was indicted. I had primarily handled the case.

PROF. CAMPBELL: So this was a criminal antitrust case, like price fixing?

MR. JEFFRESS: Price fixing. We got through motions, and the case was headed to trial. I was down there with my client and they said, “Who is going to try this case?” And I said, “Well, I’m sure Jack Miller will be happy to come try it.” And they said, “We would be just as happy if you tried it,” which I thought was a compliment. I was twenty-nine years old or something. I said I would love to do it. So I got to try my first criminal case as lead counsel when I was twenty-nine years old; maybe I had turned thirty by the time of the trial. And it was successful. That family became very close friends of mine, still are. Judge Reggie is the man’s name who was the son-in-law of the owners of the bakery. He became my good friend and client in any number of things and referred cases to me and recommended me to other people. The result was that over a period of twenty years, maybe a little more, I tried nineteen criminal jury trials in the state of Louisiana, including cases in which I represented the Insurance Commissioner and the Commissioner of Natural Resources and a congressman and a judge and a number of businessmen. I was in three of the four trials of Edwin Edwards. (rumbling sounds) It’s not raining; I don’t know what it is.

PROF. CAMPBELL: It’s like an earthquake. But they must be doing construction— (rumbling sounds get louder) Oh, my God! (other voices can be heard in the background)

MR. JEFFRESS: Had to be an earthquake, huh?
PROF. CAMPBELL: I think it was. What else could it have been?

MR. JEFFRESS: You don’t think it was an explosion? I didn’t hear anything.

PROF. CAMPBELL: The clock fell down.

MR. JEFFRESS: That is weird.

PROF. CAMPBELL: And the battery fell out so we know exactly what time it was.

MR. JEFFRESS: (looking out the window) Nobody out there seems to be excited.

PROF. CAMPBELL: That really kind of freaked me out. [Ed. Note: It was an earthquake.]

[END RECORDING]
Interview with William H. Jeffress, Jr.

Fourth Interview – May 4, 2012

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

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

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

One of those was Governor [Edwin] Edwards, who was indicted for the first time back in 1985 by a U.S. Attorney named John Volz on supposedly trafficking in hospital certificates of need. I represented a co-defendant who was alleged to have paid bribes. Edwards was truly a character. He was represented by Jim Neal in this case, from Nashville. We had a great time in that case. And I got to know Edwin.
I’ll tell you one story about him to show you how he survived all those years by a sort of self-deprecating humor. We’re in court one day and the government calls its plea-bargained witness–star witness–and he testifies. He had a lot to say about my client, not too much to say about Edwards. But on cross-examination he admitted that he lied the first time he went to the grand jury, he lied the second time he went to the grand jury, and he lied in a civil deposition. So we broke for lunch and went outside the courthouse. Edwards was a sitting governor at the time. So the reporters came up and stuck a microphone in his mouth, and said, “Governor, do you think it’s right for John Volz to call as his star witness a three-times confessed liar?” And Edwards didn’t miss a beat, he said, “Oh, I don’t know, I might have to testify myself.” (laughter)

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

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

I remember selecting the jury. There was this old man. The judge asked the standard voir dire question, “Now, the charges in this case are vote-buying. Does anyone have any strong opinions about this offense that would make it difficult for you to serve as a juror?” Nobody ever holds up their hand on a question like that. But this old man held up his hand. “Yes sir, yes sir.” So he stood up and in the hearing of all the other jurors he says, (imitating voice of an old
man) “Well, if he was accused of murder I’d cut off his head soon as anybody,” he says, “but I don’t know, this vote-buying doesn’t sound like much of a crime.” (laughter)

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

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

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

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

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

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

MR. JEFFRESS: Actually, that case, I had tried in bankruptcy court in New Orleans a case which we had lost and the appeal goes to a district judge. And the district judge was named
“Tut” [Lansing Leroy] Mitchell, long deceased now, so I can talk about him. But I got up there and argued the case, and he gave me a hard time. Then the local lawyer stands up and the judge says, (in a Louisiana accent) “Tom, come up here and tell me what this case is really about.” (laughter) I felt like a stranger. But that’s very rare.

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

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

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

So the state appointed a special prosecutor, a private lawyer who brought this huge case. We went to trial in Cincinnati at the end of 1986. About a three-month trial, where it became clear that the president of the bank, not Mr. Warner, but the guy he had installed as president, had a cozy relationship with a broker who had sold the bank a lot of phony investments and caused the bank’s downfall. And so the jury convicted the president of the bank of all the counts
— on eighty-eight counts. They acquitted Mr. Warner on all the fraud counts, but they found him guilty of some criminal negligence counts under the Ohio laws the way they interpret them. We appealed, and the court of appeals reversed the conviction on various grounds. I really thought it was an unfair trial by the judge, although I thought it was a perfectly fair jury. And the special prosecutor then took that to the Ohio Supreme Court. The day before the election in 1988 I guess it was, they issued an opinion that hadn’t even been set in type yet and had all kinds of typos—but they obviously wanted to get it out before the election—reinstating his conviction. (laughter) So, my experience in Ohio was not a happy one.

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

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

The other cases that are probably worth talking about—I represented ABC News in a suit by Food Lion. ABC on “Prime Time Live” had run a program narrated by Diane Sawyer on health and sanitation issues in Food Lion stores, and it was a very powerful program, very powerful. They had done it by having two producers, young women, obtain jobs at Food Lion.
PROF. CAMPBELL: I’m just going to pause it for a second. Okay, so we were talking about the Food Lion case.

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

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

PROF. CAMPBELL: Who represented Food Lion?

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

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

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

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

ABC appealed. And we won on appeal. [*Food Lion, Inc. v. Captial Cities/ABC, Inc.*, 194 F.3d 505 (4th Cir. 1999)] They threw out the fraud count, said resume fraud is not fraud—that was the count on which punitive damages had been awarded. They did uphold the trespass and breach of loyalty counts, but the verdict on those was one dollar each. I always thought ABC should have paid with a Food Lion coupon, but they decided against that. That was a very interesting case.
We just had two months ago, I guess January, a program down in Florida at the media law conference on the 15th anniversary of the Food Lion case. David Westin, who was then general counsel of ABC, and the lawyer on the other side, and one of the producers who I hadn’t seen in ten years, were there. Very, very interesting program.

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

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

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

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

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

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

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

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

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

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

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

I tried that case before Judge Jim Robertson. I think the world of him as a trial judge. Some trial judges you appear before are just very comfortable and never have any problems with counsel because counsel understands that this is a judge who expects excellence and you want to do it, you know. Somebody says something improper, he gives them the eye. He doesn’t scream at them or excuse the jury and threaten to hold them in contempt. He just knows how to run a courtroom, and it was a real pleasure to try a case in front of him.
And then there was the Scooter Libby case. Even after the independent counsel law was repealed, they essentially did the same thing by appointing Pat Fitzgerald as Special Counsel. The difference is, he wasn’t a private lawyer; he was a government lawyer. But they gave him full powers and discretion without review by anybody, to do whatever he wanted in this leak investigation. We challenged that on constitutional grounds under the Appointments Clause and lost before Judge Walton on that.

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

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

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

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

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

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

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

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

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

MR. JEFFRESS: No, we just figured it out. This is absolutely consistent with Scooter’s testimony. It’s inconsistent with Cooper’s testimony. And I could see when he was on the stand, when the light went on in his mind, when he realized what those typewritten notes really said. He was not a happy camper when he left the stand.
That was a fascinating case, both because of the independent counsel aspects of it, and I thought that was a very important issue we had, on whether the government could give total power to a single unappointed, unconfirmed individual to handle a criminal case on behalf of the United States. I don’t think it’s right.

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

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

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

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

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

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

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

PROF. CAMPBELL: Safire?

MR. JEFFRESS: No, not Safire. You know, the big heavyset guy – he died a couple of years ago. Robert Novak. But anyway, that was the leak, in July. It was Novak’s column that did it. And that leak was by Richard Armitage. He’s admitted it. And it was totally innocent.
Armitage didn’t know, nobody knew, at the White House anyway, that this woman was covert, if she was covert. I don’t think she had been covert in twelve years. But he didn’t know, and he’s a gossip. Richard Armitage is a gossip. He was over at the State Department, and he didn’t even like the White House.

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

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

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

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

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

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

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

MR. JEFFRESS: Yeah. I did not handle the criminal case. Jamie Gorelick was hired by Clifford and Altman to handle the litigation involving First American Bank and their claim on First American for indemnification of legal fees. And then Jamie left to go first to the Defense Department and the Justice Department, and I took over the case. Fascinating case. The charges
against Clifford and Altman—really I think were a product of a loose cannon in Morgenthau’s office in New York. The idea that Clifford and Altman were complicit in BCCI’s [Bank of Credit and Commerce International] fraud just gathered a lot of steam, and by the time they started getting the true evidence, they just couldn’t back off, you know. It was like they heard what they wanted to hear. The case against both Clifford and Altman, I always thought was extremely weak. Neither Clifford nor Altman would make any kind of a deal, never took the Fifth, always testified, cooperated, just insisted that they were innocent.

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

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

“Have you ever met Mr. Clifford?”

“No, I never met him.”

“You ever been in his presence?”

“Never been in his presence.”

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

“I did.”

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

“Well I’m not sure I do, but yeah, I was in that meeting.”
“Well, where were you sitting?”

“Well let’s see. I was sitting on this end of the table.

“Was Mr. Clifford here?”

“No. I’ve never seen Mr. Clifford.”

(laughter)

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

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

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

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

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

PROF. CAMPBELL: Wow, which was that?

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

Joyce Green had that case.

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

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

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

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

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

And so I just took a chance. I said, “So you’re from Villanova. Are you a basketball fan?”

“You bet.”

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

“Of course I went.”

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

And he said, “You bet.”

“Was everybody else standing?”

“Oh, you bet.”

Boy, he was really into it. And I said, “So, the people in wheelchairs, what could they see?”
And he says, “They could look at the Jumbotron.” (laughter)

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

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

MR. JEFFRESS: A jury.

PROF. CAMPBELL: And why is that?

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

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

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

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

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

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

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

The government’s witness was Mel’s former client, who was a totally, really bad guy. My client had set up a re-insurance company for Carlos Miro, was the guy’s name. He had looked all over Europe for where to set this up and found in Ireland they had these incentives, tax incentives and other regulatory advantages. So, he decided to establish a re-insurance company in Ireland. And this re-insurance company is what wound up being one of the vehicles by which Carlos Miro stole the money. It wasn’t really an operating company at all; it didn’t have any assets.
So, the government had a document, which was a letter from my client to Carlos Miro, in which he discussed all the advantages of this Irish re-insurance company. And down at the bottom in his handwriting was, “P.S. Perhaps we could call it Shamrock Insurance Company,” underlining sham three times. (laughter) The prosecutor thought I didn’t have a chance. But Mel testified. I asked him, “So, is that your handwriting?”

“It is.”

I said, “Well, what did you mean?”

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

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

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

MR. JEFFRESS: That’s a real problem. I wouldn’t say, though, that all that large a number of my cases have been that complicated. There have been some, and it’s just, I don’t enjoy those cases. One of them, the Marvin Warner case, you really had to understand how this broker had ripped off the bank through these incredibly complicated transactions called “reverse re-purchase agreements” in government securities. I’m not sure I ever understood it. How do
you explain that to a jury? You’ve got to figure out some way. The jury is never going to understand it. So you’ve got to figure, what essential part of it is necessary that they do understand, because they are not going to understand very much of it.

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

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

MR. JEFFRESS: Sure.

PROF. CAMPBELL: Okay.

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

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

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

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

Fifth and Final Interview – June 5, 2013

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

PROF. CAMPBELL: So it’s already June 5th, and this should hopefully be our last interview. So, Bill, when we first talked, you told me the story about the Billy Graham Day case. [Sparrow v. Goodman, 361 F.Supp. 566 (W.D.N.C. 1973)] We forgot to get that on tape, so I would like to get that on tape now.

MR. JEFFRESS: I think that would be a good one. That happened to be the first jury case I tried as lead counsel. I can give you a brief background which is very interesting. In 1970, Richard Nixon appeared in Charlotte at the Coliseum with Billy Graham. It was Billy Graham Day, and Nixon was there in honor of Billy Graham. In preparation for the event, the Charlotte police and the Secret Service learned that there were protesters planning to disrupt the event. They were distributing flyers and so forth. These were young, harmless people, who back in those days we called “hippies.” They were not violent demonstrators or anything. But they did intend to disrupt the thing, blowing their horns and waving signs and so forth.

So the Charlotte police and the Secret Service and the White House advance staff that was advancing Nixon, put together a plan to try to control this. Part of it involved what they called a “demo chute.” To get in the Charlotte Coliseum you had to have a ticket, but the tickets were free—you picked them up at banks and grocery stores. They had barrels with ropes to guide people toward the various doors of the Coliseum. On the end there was what they called a “demo chute,” to which the VFW—who were the ushers—would guide anybody with long hair
or looked like they might be protesting or something, guide them into this chute. And as they went through the ropes and barrels, that chute didn’t go into the Coliseum at all (chuckles) — it led out to the parking lot. So that was one way. If anyone didn’t get caught and put into the demo chute, they would come up to the front, show their ticket. And the ushers would look at them and say,” I’m sorry that ticket is counterfeit, I can’t let you in.” (chuckles)

So anyway, they filed a law suit. The demonstrators—some 20 members of the Red Hornet May Day Tribe — filed a law suit against the police and Bob Haldeman, who at the time was in charge of the White House advance staff, and a number of other people, Secret Service. I represented one of the advance men from the White House.

PROF. CAMPBELL: This is when you were at Miller?

MR. JEFFRESS: Miller Cassidy. That case was tried in 1975. And it was a pretty wild case. It was before Judge James McMillan, who was a wonderful judge with a great reputation. He had done the Charlotte busing case, which was very famous back in those days. It was the first case ordering busing to the suburbs. But [he was] a very gentle man, gentlemanly man. So we’re trying the case. I remember in closing argument, my argument was based on the Book of Revelations—there is a time for every purpose under heaven, a time to speak and a time to remain silent. I had one of those jurors nodding her head. (chuckles)

But George—I can’t remember his last name—George was the plaintiff’s lawyer [ed. note: George S. Daly, Jr., of the N.C. Civil Liberties Union] gave a very stirring closing argument I thought. We were there in 1975 — it was the 200th anniversary of the Boston Tea Party. And he said, “Those were protesters. Were they violent? Yeah, they were violent. They boarded the ship and threw tea into the bay. That’s a tradition in America, and that’s what the
First Amendment means, and this is a violation of the First Amendment.” Really it was much more stirring than what I just said.

I remember the lawyer for the Charlotte police stood up and said, “Objection, Your Honor. I ask for an instruction that the Boston Tea Party led to a violent revolution.” (chuckles) It was quite a trial. But we won that case, I think because the protesters tried to come across as people who simply wanted to express their views, but unfortunately, there were all kinds of flyers that they had put out calling for people to use tactics that would not be protected by the First Amendment. So we won the case. It was a very interesting trial, and like I say, it was my first jury case as lead counsel.

PROF. CAMPBELL: So who was your client, and what was his role?

MR. JEFFRESS: He was a White House advance man named Mike Duval. Every time the president goes on a trip, they go and work with the local police and the local community, the mayor and so forth, and try to anticipate any threats to the president. Try to organize, to make sure the right people are there and that the transportation is taken care of. So that is how he got involved. He was not really a major actor, but clearly did work with the Charlotte police and security for the Coliseum.

PROF. CAMPBELL: How long did the trial last?

MR. JEFFRESS: A week, it lasted a week. But it was one of those funny cases where I remember, one of the plaintiffs came to his deposition in a Superman uniform, with a blue cape and everything else and had bright red hair. So one of the counsel got a Polaroid camera, and took a photograph of him there at the deposition, and then showed it to him and said, “Is that the way you appeared today at this deposition?” And the guy looked at it and said, “Doesn’t look a thing like me.” (chuckles)
PROF. CAMPBELL: I did read the judge’s opinion and it was actually quite fun to read because he describes each plaintiff, what they look like, how long their hair was, what they were wearing and all of that.

MR. JEFFRESS: I had forgotten about that opinion. This was a jury trial, so the verdict was the jury’s, but I guess did he write an opinion on the motion for a new trial or write an opinion on the motion to dismiss? Must have been the motion to dismiss.

PROF. CAMPBELL: I think so. [ed. note: it was on motions of the federal defendants for summary judgment and for dismissal].

MR. JEFFRESS: He was a very fine judge. It was a privilege to appear in front of him. But it was a funny trial, it was a funny trial.

PROF. CAMPBELL: How did the jury respond to all these shenanigans during the trial?

MR. JEFFRESS: Well, I think the jury thought, as everybody thought, that these were not dangerous people. I mean they are not terrorists, they are not the kind of people we are really afraid of today. But I do think they believed—and Charlotte was a good place for defendants to try that case — that Billy Graham was owed respect, that the President of the United States was owed respect, and that these people didn’t intend to show respect. So the First Amendment [issue] was on which side does their conduct fall. And they concluded that it was beyond any First Amendment rights.

PROF. CAMPBELL: And the other thing that is mysterious in that decision, was the role of the guy named Helms. He was like a bouncer type. He is described as a very large person who refused to testify because he took the Fifth. Do you remember him at all?

MR. JEFFRESS: Vaguely, but I can’t remember. Was he from the Veterans of Foreign Wars?
PROF. CAMPBELL: Yeah.

MR. JEFFRESS: Yes, that is what I thought. They were the ushers, volunteer ushers, that
had been used. And he undoubtedly was the guy—this is coming back—yeah he was the guy
that bounced protesters, tore up tickets, wouldn’t let them into the Coliseum. But until you said
that, I had forgotten there was somebody who took the Fifth.

PROF. CAMPBELL: Okay, so anything else you want to add from that period?

MR. JEFFRESS: No, that’s the *Sparrow v. Goodman* case.

PROF. CAMPBELL: All right, do you now want to talk about Judge McBryde?

MR. JEFFRESS: Judge McBryde is a federal judge, still is, in Fort Worth, Texas. The
reason that case is really interesting [is] I don’t think there’s ever been a case remotely like it. In
the Northern District of Texas, Judge McBryde is pretty well known for being a very stern judge.
Probably threatens or issues more findings of sanctions and contempt than all the rest of the
judges in that district put together. And I think it would be fair to say, and Judge McBryde
wouldn’t disagree, that he and the chief judge, Jerry Buchmeyer, I believe was his name, did not
get along.

There came a time when there were two cases sort of simultaneously. One was a
sentencing of a defendant who had been convicted in his court, where the U.S. Attorney in
Arizona, happened to be Janet Napolitano, didn’t want Judge McBryde to proceed with
sentencing. They wanted to have the sentencing first in Arizona and then Judge McBryde go
second. Well that not only infringed on his prerogative, but he sensed that they were trying to do
that because of some law in the Ninth Circuit that would have given the defendant a double
jeopardy claim if Judge McBryde had gone first. And so he asked a lot of questions and
demanded that the government back up some of their statements to him. And he just got more
and more suspicious. Ultimately held the Assistant U.S. Attorney in contempt, created something of a ruckus, and caused at least the U.S. Attorney, and perhaps the judge in Arizona, to complain to Chief Judge Buchmeyer about the way her people were being treated.

There was a second case in which the clerk of court had made a mistake. They had not invested some monies that were due to a minor beneficiary of a settlement in interest-bearing accounts as they should have been. The clerk told the plaintiff that, “Look, we can’t do anything. It was our mistake but we can’t do anything. You’ve got to go through the Federal Tort Claims Act or something like that to get reimbursed.” Judge McBryde didn’t like that. He issued an order to the clerk. She wrote a letter back that at least he viewed as somewhat insulting, provocative. He didn’t hold her in contempt, but he issued an order which was very critical, and she was afraid she was going to be held in contempt. So she complained to Judge Buchmeyer.

So Judge Buchmeyer, as Chief Judge, reassigned those two cases to himself and vacated Judge McBryde’s orders. Judge McBryde challenged that, and before I got into the case, it was denied by the Fifth Circuit Judicial Council. They refused to overturn Judge Buchmeyer’s rulings. At that point, he hired me to challenge that in court. That was 1995 or 1996, something like that.

PROF. CAMPBELL: How did he find out about you?

MR. JEFFRESS: Well, that’s a good question. He had a relationship with, I believe it was Chuck Ruff. He knew Chuck Ruff here in D.C., who I knew pretty well. He didn’t want to hire anybody from Texas, he didn’t want to hire anybody that appears in front of him or would be likely to appear in front of him. And I believe it was Chuck Ruff that recommended me. And I was delighted to do it. It seemed a pretty interesting issue of judicial independence. We filed
in the Fifth Circuit a mandamus petition against the Fifth District Judicial Council and against Judge Buchmeyer. It was a fascinating case with fascinating issues about judicial independence and the powers of the chief judge and so forth. There is a long and very well done opinion by Judge [Patrick E.] Higginbotham which is—

PROF. CAMPBELL: I actually have the case right here. [In re The Honorable John H. McBryde, 117 F.3d 208 (5th Cir. 1997)]

MR. JEFFRESS: When I argued that case, the Fifth Circuit Judicial Council had hired Bob Fiske of Davis, Polk to represent them. I think the world of Bob. I think he’s a superb lawyer and a good man, known him a long time. When we appeared at the oral argument, the first thing that happened—Judge Higginbotham and Judge Garza and Judge Dennis were our panel—they asked counsel to come back into the robbing room, out of the public. I wondered what was up. But he said, “Look, we realize that this is a very delicate case with strong opinions on either side by different judges.” Chief Judge Politz, for example, was adamant (chuckles) against my position. And he just thanked us for being willing to do this and complimented us on the briefs and everything. I thought that was a very nice thing. So we argued the case and we won it.

PROF. CAMPBELL: What was the legal claim for mandamus?

MR. JEFFRESS: The legal claim was that the chief judge does not have the power to assign a case based on disagreement with the merits of a district judge’s decision. That’s the essential claim; there were lots of issues. The central claim was when a chief judge reassigns a case based on disagreement with the merits of a trial judge’s actions [phone rings, pause]. So where was I?

PROF. CAMPBELL: You were talking about the legal arguments.
MR. JEFFRESS: Yeah, the legal arguments. When a chief judge reassigns a case based on disagreement with the merits of a decision, that’s a violation of judicial independence. There is Supreme Court case law going back—

PROF. CAMPBELL: So is that Article III?

MR. JEFFRESS: It’s all Article III, going back to the *Chandler* case from Oklahoma, where Justice Douglas had written a really very strong opinion about judicial independence. [*Chandler v. Judicial Council of the Tenth Circuit*, 398 U.S. 74 (1970)] And so we won. What happened then, was that the Fifth Circuit Judicial Council, Judge Politz at the head, decided they would start a proceeding under the judicial misconduct statute, which they did.

PROF. CAMPBELL: Against Judge McBryde?

MR. JEFFRESS: Against Judge McBryde. Seeking to take away some of his cases or some other remedy. Again Bob Fiske represented them; I represented Judge McBryde; it was a fascinating thing. It was, I think, a two-week, essentially trial before a special committee of the Judicial Council. Took testimony from 40-some witnesses, theirs and ours. I argued that matter before the Fifth Circuit Judicial Council, which is made up of the 15 judges of the Circuit, nine district judges, and a couple of more judges who were members of the committee but not members of the Council. Almost 30 judges.

PROF. CAMPBELL: That you argued before?

MR. JEFFRESS: Yes. We’re in a huge conference room in Judge Politz’s conference room in the Fifth Circuit in New Orleans. I’m arguing to 30 judges, almost 30 judges. (chuckles)

PROF. CAMPBELL: Oh my goodness, I can’t even imagine.

MR. JEFFRESS: It was fascinating.
PROF. CAMPBELL: Did they let you talk at all?

MR. JEFFRESS: Oh yes, yes. But you know, you’d get questions from all sides.

Ultimately they did find a violation of the misconduct statute; they issued some relief. This is public. To me, it seemed clear from the argument that it was not unanimous, that there were pretty strong feelings on either side. But in any event, it was a decision by them which was then challenged by Judge McBryde in the D.C. Circuit, and actually, the District Court here in D.C. [McBryde v. Committee to Review Circuit Council Conduct, 83 F.Supp.2d 135 (D.D.C. 1999), aff’d in part, vacated in part, 264 F.2d 52 (D.C. Cir. 2001), rehearing den., 278 F.3d 202 (D.C. Cir. 2002), cert. den., 537 U.S. 821 (2002)]

PROF. CAMPBELL: Now how would the District Court have jurisdiction over what happened in the Fifth Circuit Judicial Council?

MR. JEFFRESS: Well, the Judicial Council had essentially taken away some of Judge McBryde’s suspended assignments of new cases, I think that basically was what it was. And that’s a violation of the Constitution. I forget what the jurisdiction was that we used, but certainly we survived the jurisdictional issue.

But I wound up getting out of that case. It was a mutual agreement between me and the client. And the case proceeded. Anyway, the District Judge sat on the case for long enough where the main relief they had granted, which was suspension of case assignments, expired. It was only for a year I think, and a year passed, and she would not expedite the case or make any rulings. By the time she ruled on it, I think she ruled on the merits against the judge, but when it went to the Court of Appeals, they said this is moot. We don’t have to face this issue because it’s expired and it’s moot.

PROF. CAMPBELL: Who took over the case?
MR. JEFFRESS: David Broiles. He had been my co-counsel. He’s from Fort Worth, and he continued handling the case in the D.C. District Court and then the Circuit. This won’t show up on the transcript, but up on the wall up here, I have a cartoon in color from some magazine. And it’s signed by Judge McBryde. The story behind that cartoon is: one of the witnesses in the proceeding said the judge has got in his chambers this painting of sharks approaching the bench, and that just proves how paranoid he is. (chuckles) Well, I found on line several copies of this and ordered it, had them printed, and Judge McBryde inscribed each of them to me and the other lawyers working on the case. Sharks approaching the bench.

PROF. CAMPBELL: That is cute.

MR. JEFFRESS: But anyway, I thought that was a highly unusual case, representing one federal judge against essentially the chief judge of the Circuit and a lot of other federal judges. It doesn’t come along many times in a career that you have a case like that. And the issues were fascinating, so I was delighted to do it and had a good time.

PROF. CAMPBELL: Any other cases that you wanted to talk about?

MR. JEFFRESS: Those were the two cases beyond the ones that we discussed in the earlier interviews that I ought to mention.

PROF. CAMPBELL: I had a question about the mandamus part. So was that a 15-minute argument, or was it a much longer, sort of back and forth?

MR. JEFFRESS: No, it was much longer than that. The courtroom was packed and this was a special case. I don’t remember how long we argued, but it was a long time. And they kept us going. I’ve got to say, you talk about judicial independence, that was important. When Judge Higginbotham ruled as he did, he had to know that Judge Politz was not going to like this at all, or Judge Buchmeyer. And Judge Higginbotham, I don’t know how much you know about him,
but he’s a very fine judge, one of the stars of the Fifth Circuit. I guess he’s senior now but, certainly a great judge.

PROF. CAMPBELL: So you started private practice in the early 70s?

MR. JEFFRESS: ’72.

PROF. CAMPBELL: And you’re still at it, in 2013, that’s a long period of time. What would you say has changed over time?

MR. JEFFRESS: Of course, a lot of things have changed in the profession. We know a lot more about law firm economics and organization and who is changing firms and all that sort of thing. When I started, we didn’t have the *American Lawyer*, we didn’t have the *Legal Times*. I didn’t know anything about practicing in a law firm. I remember based on talking to my dad, who was not a lawyer but knew some lawyers, thinking that when I went to a law firm I would be expected to buy into the practice. So I talked to John Cassidy when I was interviewing at Miller Cassidy and asked him, if I become a partner, how much is that going to cost me? John paused a minute and he said, I like your attitude. (chuckles) So I didn’t know much about law firms. Now you know there is all this — *American Lawyer* and *Legal Times* and *Above the Law*, blogs and all kinds of other information that tend to emphasize the economics of the practice, and who is doing big deals. So it’s different. I don’t know if it’s better or worse, but it’s certainly different today. There is much more emphasis on the business of law.

In the area where I practice, which is litigation, there are many fewer trials. They’ve gotten so expensive that for a small case, you can’t go to court now. You’ve got to do some alternative dispute resolution procedure. It just doesn’t make any sense. I mean, I was in a case where the plaintiff had a fair claim for about $150,000. The client was going to have to pay me a
million dollars to defend it. So you might end up settling it for $300,000. That is what happens in those cases, and it happens more and more.

In criminal cases, the advent of the sentencing guidelines made it harder to go to trial. Before the guidelines, in many cases I believed that my client would do better, even if convicted, at sentencing if the judge heard the actual evidence instead of the prosecutor’s description of the evidence, as she would in a plea bargain. But that no longer was possible under the guidelines. They have been ameliorated a little bit since Booker [*United States v. Booker*, 543 U.S. 220 (2005)], but I still think the guidelines drive people to where they can’t risk a trial or it’s harder to risk a trial.

So that’s been one effect. But also I think the Justice Department has been successful in causing more compliance, more attention by private companies to obeying the law. There was a time in the 80s I guess, maybe late 70s, where there were an awful lot of procurement fraud cases against very major companies that violated the Truth in Negotiation Act or done something to overcharge the government. There were lots and lots of cases, and I had probably, I don’t know, a dozen of them. You don’t see those anymore, at least by the major actors. There was an initiative at the Department of Defense for companies to self-police and self-report and that’s been very successful. I think they are trying to do that in FCPA area now, without a lot of success so far, but maybe they’ll have success in the end and those cases will go down.

PROF. CAMPBELL: FCPA is?

MR. JEFFRESS: Foreign Corrupt Practices Act [..]

PROF. CAMPBELL: Okay.

MR. JEFFRESS: But then third, companies just can’t risk going to trial anymore. It’s not just the guidelines. I see a public company—let’s take one in the pharmaceutical industry.
The government has been incredibly successful in obtaining three hundred, six hundred million dollars, in two cases over a billion dollars, from pharmaceutical companies based on marketing of their products for off-label uses not approved by the FDA. Doctors are free to prescribe these drugs for these uses, because Congress doesn’t want to regulate doctors. But they say the pharmaceutical companies can’t promote those uses. Well that’s kind of difficult when you are talking to doctors who you know are prescribing for unapproved uses. And yet, the government is getting hundreds of millions of dollars from the drug companies in these investigations because they can’t afford to do anything else. They’ve got to make an agreement where they don’t get debarred from Medicare, where they can still sell their drugs. I’m sure it drives up the price of health care. But it’s a public company. And they’re not the only ones. Financial services companies are heavily regulated. The Bank of America, they can’t defend a case, a criminal case. So, it’s very weird.

I did have a case for Reliant Energy Company arising out of the California energy crisis. Reliant decided we’re going to defend, we’re going to go to trial. It was one of the only companies that took that position. The reason they were able to do it, is we’d settled all the civil cases, so no matter what happened in the criminal case, it wouldn’t have any effect. I calculated the guidelines were about $36 million, even if they were convicted. And we had a good defense. This was the first prosecution under a statute that was 69 years old; first prosecution under this part of the statute. There was a big article in the American Lawyer about this. We hung in there. We were there to pick a jury one day, and the government said we can’t go forward because we are going to take an appeal to the Ninth Circuit of one of your rulings. They lost in the Ninth Circuit, came back, and we were about to start trial again, and the prosecutor finally called and said, “Can’t we settle this case?” I said we’re not going to plead guilty. He said, “Well, I’m not...
sure that will be required.” (chuckles) So he worked out a deal for a deferred prosecution for everybody, and that was the end of that case. But that’s one of the few companies. For a company that is heavily regulated, a company that faces huge civil consequences, debarment consequences, they just don’t feel that they can go to trial anymore.

PROF. CAMPBELL: So do you find that you spend a lot of your time then in negotiations?

MR. JEFFRESS: Sure, negotiations with the government in an investigation. But that’s always been true; that hasn’t changed. You negotiate a deal. The deals are not entirely cookie-cutter, but you can take this piece and that piece of former deals. Once they decide that they’ll do it, it’s not that hard to get it done. So there really are many fewer trials, and people have fewer opportunities in private practice at least to get trial experience. I think that’s kind of sad. As for alternative dispute resolution, there was a handful of people doing that when I started practicing law, and now it’s a huge industry. I’ve done a lot of it myself. But that’s always leading to a settlement, not to a trial.

The other thing I wanted to talk about—for trial lawyers, it really is hard on your family. My wife kept track, I think I was out of town one-third of the time. The kids were small, and of course, very hard on her, undoubtedly hard on the kids. There are certain sacrifices you make to do it. You said you had seen the article in the Washington Post. [Carol D. Leonnig, Courthouse Is a Home Away From Home, Washington Post, Dec. 6, 2006.] There was a time my daughter was Assistant U.S. Attorney, my son a federal public defender, and I was a defense lawyer all trying cases in the same courthouse, and it was fun. We would run into each other in the hall and have lunch together and that sort of thing.

PROF. CAMPBELL: You obviously didn’t scare them away from the practice of law.
MR. JEFFRESS: No, it was interesting, it was interesting. I never really thought my daughter would want to be a lawyer, but she did. She’s been hugely successful at it, now at the U.S. Embassy in London as the Justice Department attaché. And Jonathan is still trying cases in court. My youngest son decided I’m not going to follow my brother and sister into the grave; I’m not going to be a lawyer; I’m going to go to business school; which he did. He has a great job now. All of them are in Washington. It wound up being a very close family but partly because my wife was long-suffering and very good at what she did. (chuckles)

PROF. CAMPBELL: So was it mostly the travel or did you have to spend a lot of weekends and evenings preparing?

MR. JEFFRESS: I did when we were in trial. But I made a decision which wound up being a terrific decision. When we moved to Washington, I decided I am not going to be a commuter. Since 1970, I have never lived more than 15 minutes from my office. So, when I had to work late, I went home, I had dinner with the kids, we did their homework, whatever, and then I would go back in and finish work. Even today, I live 13 minutes from my house to my office. I knew people who lived in Reston and Herndon, places like that, you can’t do that. And if you are really busy, you’re home after dinner, kids are in bed. So that was important. I’m sorry I’ve got to cut this short, but I appreciate your doing all this and I think we’ve covered an awful lot of territory.

PROF. CAMPBELL: I think we have too. I’ve enjoyed going through the transcripts.

[END RECORDING]
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Statute

William H. "Bill" Jeffress, Jr., is a trial lawyer. He was born July 17, 1945, in Birmingham, Alabama, and grew up on the outskirts of Richmond, Virginia, where he attended public schools. He graduated from Washington & Lee University and from Yale Law School, where he received his LL.B in 1970 and was Editor-in-Chief of the Yale Law Journal.

Bill came to Washington in 1970 and served as the law clerk to U.S. District Judge Gerhard A. Gesell, and then as a law clerk to Justice Potter Stewart on the U.S. Supreme Court. He began practicing law in 1972 with Miller, Cassidy, Larroca & Lewin, then a 6-lawyer firm devoted entirely to litigation and specializing in white-collar criminal defense. In 2001, the Miller Cassidy firm merged with Baker Botts LLP and became the core of the trial department in its Washington office.

Over the years Bill has tried 34 cases to juries in ten states and the District of Columbia, and many more to judges and administrative tribunals. He served for six years as a member of the ABA’s Standing Committee on Ethics and Professionalism, and chaired the ABA’s Criminal Justice Standards Committee. He is a Fellow of the American College of Trial Lawyers.

Bill has been married almost 50 years to his high school sweetheart Judy Jones. They have three children and five grandchildren, all living in the District of Columbia.
ANGELA J. CAMPBELL
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Teaching Experience:

Professor of Law (1995-present), Associate Professor of Law (1988-1995), Georgetown Law.

I direct the First Amendment and Media Project (formerly known as the Citizens Communications Center Project) at the Institute for Public Representation. The Institute is both a public interest law firm and a clinical program at Georgetown Law. The Institute serves as counsel for nonprofit organizations at the Federal Communications Commission (FCC), the Federal Trade Commission (FTC), and in federal courts. Some of the issues that we have worked on over the past several years include media ownership, children and media, access to communications services for persons with disabilities, and public interest requirements for broadcast stations.

I supervise graduate fellows and upperclass law students. Clinic students have opportunities to conduct legal and factual research, engage in sophisticated analysis, do extensive legal writing, interact with clients and other counsel, and participate in case planning and developing strategy. I also teach classes for the clinical students on such topics as how lawyers use the media, statutory interpretation, administrative rulemaking, and legal writing.

In addition to teaching in the clinic, I have on occasion taught a seminar on Comparative Media Law at Georgetown Law. I also taught in the summer program of the Programme in Comparative Media Law and Policy at Oxford University in 1998, 1999 and 2001.

Professional Experience:

Trial Attorney, Communications and Finance Section, Antitrust Division, United States Department of Justice (1984-1988)

Investigated requests for enforcement of the Modified Final Judgment in United States v. AT&T. Reviewed proposed mergers involving communications firms. Drafted comments filed in FCC rulemaking proceedings. Received Special Achievement awards in 1986 and 1987.

Associate, Fisher, Wayland, Cooper & Leader (1983-1984)

Briefed and argued appeals of FCC decisions to the D.C. Circuit. Drafted applications, petitions, oppositions, comments and other filings in FCC proceedings. Advised clients in the areas of broadcasting, cable television, satellites and common carrier telecommunications.

Graduate Fellow, Institute for Public Representation, GULC (1981-1983)
Education:

LL.M., 1983, Georgetown University Law Center
J.D., 1981, UCLA School of Law
    Editor-in-Chief, Federal Communications Law Journal
B.A., 1976, Hampshire College, Amherst, Massachusetts
    Political Science Concentration

Law Review Articles:


The Legacy of Red Lion, 60 Admin. L. Rev. 783 (2008).


Publish or Carriage: Approaches to Analyzing the First Amendment Rights of Telephone Companies, 70 N.C. L. Rev. 1071 (1992).

Online Publications:


Book Chapters:

*Self-Regulation and the Media*, in Regulating Audiovisual Services (Thomas Gibbons, ed. 2009).

*Toward a New Approach to Public Interest Regulation of Digital Broadcasting*, in Digital Broadcasting and the Public Interest (Charles M. Firestone and Amy Korzick Garmer, eds. 1998).


*Keynote Address: US Perspective on World Wide Web Sites Targeting Children*, in Children and Interactive Media: A Place to Play? (Tracy Newlands and Michele Rogers, eds. 1997).

*Keynote Address: US Perspectives on the Regulation of Toy TV Tie-ins*, in Marketing Toys: It's Child's Play (Stephen Frith et al., eds. 1995).


*Telecommunications: Federal Communications Commission*, in America's Transition: Blueprints for the 1990s, (Mark Green and Mark Pinsky, eds. 1989) (with co-authors Nolan A. Bowie and Andrew Jay Schwartzman).

Supreme Court Briefs:


**Presentations:**

**August 9, 2013**

**March 22, 2013**
Keynote Speaker, *Is this Even Legal? Demystifying the Laws on Marketing to Children, and How Companies are Using Data to Target Children and What You Can Do About It*, Consuming Kids Summit, Boston, MA

**January 28, 2013**

**January 24, 2013**
Moderator, *Telecommunications Legislation in the 113th Congress*, Georgetown Law

**July 24, 2012**
Speaker, Privacy Working Group Lunch, Washington, D.C.

**May 8, 2012**
Panelist, *Dump the Junk: The Legal Battle Over food Marketing to Children*, Weight of the Nation, conference sponsored by the Centers for Disease Control and Prevention, Washington, D.C.

**May 24, 2011**

**April 9, 2011**
Panelist and Moderator, *Privacy in the Age of Google*, National Conference on Media Reform, Boston, MA

**March 25, 2011**

**February 2, 2011**
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<tr>
<td>November 9, 2010</td>
<td>Moderator, <em>Telecommunications Legislation in the 112th Congress</em>, Georgetown Law</td>
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<tr>
<td>April 23, 2010</td>
<td><em>Public Participation at the Federal Communications Commission</em>, Midwest Political Science Association Conference, Chicago, IL</td>
</tr>
<tr>
<td>November 2, 2009</td>
<td>Panelist, Media, Kids and the First Amendment, Georgetown Law and Commonsense Media.</td>
</tr>
<tr>
<td>October 3, 2009</td>
<td>Panelist, <em>Mass Media, the Internet and Service to Communities of Color</em>, 14th Annual Latcrit Conference, Washington College of Law, American University.</td>
</tr>
<tr>
<td>February 24, 2009</td>
<td>Panelist, <em>The Public Interest Standard – And the Public’s Participation at the FCC</em>, Federal Communications Bar Association Seminar: The Communications Act and the FCC at 75: What Will the Future Bring?</td>
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Telecommunications Symposium, Keeping Pace with Technological Change, Howard University.

November 18, 2008  *The Role of Food Marketing in Preventing Childhood Obesity*, Colloquium, O’Neill Institute on Public Health and Chronic Disease, Georgetown Law,

October 30, 2008  “*The Seven Dirty Words*” Case Reconsidered, Faculty Workshop, Georgetown Law

June 6, 2008  *Are You Being Served? Public Accountability of Local Television Stations*, National Conference on Media Reform, Minneapolis, MN


May 3, 2008  *The Role of Empirical Data and the Data Quality Act in the FCC’s Media Ownership Proceedings*, at Information and the Information Economy, Fordham University, New York, NY

March 13, 2008  Panelist discussing the FCC’s modified newspaper-broadcast cross-ownership rule at a brown bag lunch sponsored by the Diversity and Mass Media Committees of the Federal Communications Bar Association, Washington, D.C.

March 3, 2008  Panelist discussing the FCC’s recent actions concerning broadcast localism and disclosure requirements at an event sponsored by the Campaign Legal Center and the Benton Foundation, National Press Club, Washington, DC.


June 25, 2007  Conducted Workshop at ATV, a company about to launch the first private television station in Jordan. I presented an overview of how licensing procedures and content regulation in the US has evolved over time and suggested how this experience might have relevance for ATV.

January 19, 2007  A Historical Perspective on the Public’s Right of Access to the Media,” at Reclaiming the First Amendment: Constitutional Theories of Media Reform, Hofstra Law School, NY.

January 11, 2007  Panelist, Race & Gender Matter in Media Ownership, National Conference on Media Reform, Memphis, TN.

January 10, 2007  Addressed both the Media Ownership Working Group and the Children’s Research Working Group at the Media Policy Research Pre-Conference, sponsored by the Social Science Research Council, Memphis, TN.

January 6, 2007  Panelist, Telecommunications and the Internet, Race, Ethnicity, Language and Socio-Economics, Georgetown Conference on Socio-Economics.

November 4, 2006  Panelist, Industry Marketing: Subverting Children’s Health, The Public Health Advocacy Institute’s Fourth Annual Conference on Legal Approaches to the Obesity Epidemic, Northeastern University School of Law, Boston, MA

October 11, 2006  Panelist discussing the Local Television Rules at CLE Seminar Reconsideration of the Media Ownership Rules, sponsored by the Federal Communications Bar Association.

June 7, 2006  What the Blackmun Papers Can Tell Us about Red Lion and Miami Herald,” GULC Summer Workshop.


October 21, 2005  Prohibiting Product Placement and the Use of Characters to Market Junk Food to Children, at Symposium, Food Marketing to Children and the Law, Loyola Law School of Los Angeles
<table>
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<tr>
<td>September 20, 2005</td>
<td><em>Prohibiting Product Placement and the Use of Characters in Marketing to Children</em>, Georgetown Law Faculty Research Workshop</td>
</tr>
<tr>
<td>March 13, 2005</td>
<td><em>Protecting Children and Free Speech</em>, presentation at the 2005 Campaign for a Commercial-Free Childhood Summit, Howard University</td>
</tr>
<tr>
<td>February 23, 2005</td>
<td>Participant in <em>Through a Foggy Lens: The Role of TV in Modern Campaigns</em>, Hinckley Institute of Politics, University of Utah.</td>
</tr>
<tr>
<td>July 8, 2003</td>
<td><em>A Comparison of Media Ownership Regulation in the US and Canada</em>, Summer Faculty Workshop, Georgetown Law</td>
</tr>
<tr>
<td>March 10, 2003</td>
<td>“Self-Regulation and the Media: Four Years Later,” Programme on Comparative Media Law and Policy, Oxford University</td>
</tr>
<tr>
<td>January 5, 2003</td>
<td>Annual Meeting of the Mass Communication Section of the Association of American Law Schools, moderated panel <em>At War with Communications Law</em></td>
</tr>
<tr>
<td>September 16, 1999</td>
<td>Panelist for plenary session on Mega Mergers and Acquisitions, 19th Annual Conference of the National Association of Telecommunications Officers and Advisors, Atlanta, GA.</td>
</tr>
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January 6, 1996  Annual Meeting of the Mass Communication Section of the Association of American Law Schools, moderated panel The Future of Communications Law

September 30, 1995  Moderated panel, Brave New World: Telecommunications Reform-Boon or Bust for the American Consumer? Georgetown University Graduate Public Policy Program

June 5, 1995  Summer Faculty Workshop at the Annenberg Washington Program of Northwestern University. Presented an overview of legal and regulatory issues raised by the National Information Infrastructure

March 14, 1995  A Comparison of US and Australian Efforts to Increase the Quantity and Quality of Children’s Television Programming, World Summit on Television and Children, Melbourne, Australia

March 9, 1995  Keynote Address: USA Perspectives on the Regulation of Toy TV Tie-ins, Marketing Toys: It’s Child’s Play, New College, University of New South Wales, Sydney, Australia

January 9, 1994  The Future of Political Broadcast Regulation and the Fairness Doctrine, Annual Meeting of the Association of American Law School, Mass Communications Law Section Program

July 11, 1993  Teaching Advanced Legal Writing in a Law School Clinic," Third International Conference on Lawyers and Lawyering, Lake Windermere, UK

November 7, 1992  The Congress, the Courts and Computer Based Communication Networks: Answering Questions about Access and Content Control, Villanova Law Review Symposium

September 25, 1992  Teaching Advanced Legal Writing in a Law School Clinic, Mid-Atlantic Clinical Theory Workshop

May 14, 1992  Participant on Panel on Regulatory Issues, Telestrategies’ Conference on Video Dialtone
June 20, 1991  

October 22, 1990  
Panelist, *Competition and Public Policy: What Lies Ahead?* Telestrategies' Conference on Cable TV Alternatives

June 3-5, 1990  

April 28, 1989  
Panelist, *The Public Interest: Where Things Stand*, National Consumers Week Program, Federal Communications Commission

June 14, 1989  
Participant on panel discussing pros and cons of telephone company provision of cable television service. Summer Faculty Workshop at the Annenberg Washington program of Northwestern University

May 18, 1989  
Guest speaker on cable television regulation. Consumer Affairs Committee of the Antitrust, Trade Regulation and Consumer Affairs Section of the District of Columbia Bar

April 17, 1989  
Briefed congressional staff on the impact of the AT&T divestiture on consumers, Washington, D.C.

November 18, 1989  
*Telephone Issues for the States*, Conference sponsored by the Telecommunications Research and Action Center and the Consumer Federation of America, Washington, D.C.

April 11, 1988  

**Bar Memberships:**

District of Columbia Bar (admitted 1983)
California Bar (admitted 1981, currently on inactive status)
United States Supreme Court
United States Court of Appeals for the District of Columbia Circuit
United States Court of Appeals for the Ninth Circuit
United States Court of Appeals for the Third Circuit
United States Court of Appeals for the Sixth Circuit
Public Service Activities:

Steering Committee Member, Food Marketing Workgroup
Section on Mass Communications Law, Association of American Law Schools
  Chair (1995)
  Chair-Elect (1994)
  Secretary (1998-2002)
  Newsletter Editor (1997-2002)
Federal Communications Bar Association
  Co-Chair, Law Journal Committee (1989-90, 1996-99)
Minority Media Telecommunications Council
  Board of Directors (1994-2000)
  Advisory Board (2001 to present)

Awards and Honors:

Everett C. Parker Award 2005
Inducted into Minority & Media Telecommunications Council Hall of Fame 2004
Courthouse Is a Home Away From Home
For a Father, Son and Daughter Who Are Lawyers, A Chance to Share in Family Is Just Down the Hall

By Carol D. Leonnig
Washington Post Staff Writer

Each day, chances are good that Bill, Amy and Jon Jeffress will be applying their legal talents just a few doors down the hall from each other in the same stately office building near the U.S. Capitol.

But the father, daughter and son are not racking up billable hours at a white-shoe family firm. They are reporting for work at the E. Barrett Prettyman Courthouse, Washington's federal court.

On the sixth floor, father William H. Jeffress Jr., 61, one of Washington's most prominent defense attorneys, has been busy with pretrial hearings in a case that has rocked the White House. He represents I. Lewis "Scooter" Libby, Vice President Cheney's former chief of staff, who is accused of lying to investigators probing the leak of a CIA operative's name.

On the second floor, daughter Amy, 41, has been checking on narcotics cases she oversees for the U.S. Attorney's Office — including a trial involving a ring that is accused of peddling cocaine and heroin.

And in a magistrate courtroom down the hall, Jonathan, 35, has been representing poor people as a public defender. Last month, he defended a woman accused of creating phony checks and, more recently, a convicted felon charged with carrying a 9mm handgun as he drove through the city.

The family's workdays — and once in a while, their lunch breaks — overlap in the court's marble hallways.

See JEFFRESS, B7, Col. 1

Of Their Careers

■ William H. Jeffress Jr., 61
Partner, Baker Botts law firm
High: "I was representing a British solicitor who was indicted — they ultimately offered him a deal to plead guilty to a misdemeanor. He said no way. The jury acquitted him. He's still a good friend."
Low: "When you lose a case you thought you should have won . . . You lie awake at night thinking: 'What could I have done better?'"

■ Amy Jeffress, 41
Deputy chief of the organized crime and narcotics trafficking section, U.S. Attorney's Office
High: At the sentencing of a homicidal drug gang, "a mother whose son was killed by mistake — a 17-year-old going off to college who was killed in the middle of a drug beef — was the first to speak. She turned to the defendants and said: 'I want you all to know I forgive you. I don't want to keep hating you. I've given this to God.' Her words were incredibly powerful, and I remember them often."
Low: "I interviewed another mother of a homicide victim, who was shot when he was only 20. She said he had been getting in and out of trouble since the age of 13 and she had given up on him back then. Here I am trying to do justice by her son, and she had stopped caring. It felt a pit in my stomach."

■ Jonathan Jeffress, 35
Assistant federal public defender
High: "In my first jury trial, right before the jury came in, my client told me he thought I had done him justice."
Low: "When you can't convince a client to do something — whether to plead or go to trial — especially if you've already negotiated something very favorable for them."
Family Members Have ‘Covered the Bases’ of the Legal Profession

JEFRESS, From B1

"I don't think you can go into the courthouse now and not run into at least one and usually two or three of them," said A.J. Kramer, the fed­eral public defender in Washington and Jon's boss.

"It's really unusual for a family of lawyers to be in the same city, much less the same court," Kramer said. "You've really covered all the bases when you have one on prose­cution, one on defense and another doing all kinds of private practice." It makes for tender moments in a place that can be anything but.

One recent day, Amy, the federal prosecutor, spotted Jon, the public defender, while he was helping in a conference room with a client. The sister in Amy naturally walked over to kiss her brother on the cheek.

"Was that awkward for you?" she later asked him.

Jon smiled and shook his head. "I like seeing a lot of my dad and sister now," he said, then joked about his junior status in the family's legal hierarchy. "Plus, some of my clients appreciate that I know some pretty people in high places.

In many ways, the U.S. District Court is a kind of family home. Their personal stories are inter­twined with the court's history. Each learned the power of the law here and can trace career trajec­tories to the days they did in the building. Some of their most profound professional experiences are rooted in the oak-paneled conference rooms.

All three are former law clerks who returned to practice here. Bill Jeffress, a partner in the firm of Baker Botts, clerked for Judge Ger­ard A. Gesell, who presided over the court's history.

Every landmark cases, from Water­gate to the Pentagon Papers, are highlighted in Gesell's chambers when the judge laboriously ruled that the Washington Post could print the Pentagon Papers, a historical record of the Vietnam War that embarrassed the U.S. government.

When Amy was growing up, Gesell was her dad's mentor and "the my second grandfather," she recalled. Two decades later, when she graduated from Yale Law School — just like her father — Amy, too, went to clerk for Gesell.

After Gesell's death in 1993, Amy brushed her year of clerking with Judge Thomas H. Hogan, now chief judge of the court. Jon followed in Amy's footsteps, clerking for Hogan seven years later.

Jon spent several years as an as­sociate for the Williams & Connolly law firm but returned after me­ning with Gesell and Kramer that he would work for the Office of the Federal Public Defender. He said it was a natural fit because as a clerk, "I always looked headroom roof­ing for the defense." It was, but Nora's death was her mother's counsel through her life and death.

"I was a longtime social worker for Adoption Service Information Agency, but Amy knew that she's "probably quite a bit like her grand­mother and dog walker now," her daughter said. "I don't think you can go into the courthouse now and not run into at least one and usually two or three of them," Jon's boss said. "You've really covered all the bases when you have one on prosecution, one on defense and another doing all kinds of private practice." It makes for tender moments in a place that can be anything but.

The younger two lawyers got to know each other while working in offices across the hall at Main Mil­lion. Now Casey works with partner Baker Botts, sometimes showing up with her kids.

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