ORAL HISTORY OF JOHN W. NIELDS, JR.

First Interview
September 27, 2017

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Elizabeth Cavanagh and the interviewee is John W. Nields, Jr. The interview took place at Covington & Burling on Wednesday, September 27, 2017. This is the first interview.

MS. CAVANAGH: John, if it's okay, I'd like to start by talking to you about your parents and your early life and you can tell me a little bit about your father. Where he was born? What was his name?

MR. NIELDS: He was John W. Nields. Since I'm John W. Nields, Jr. And he was raised in Rye, New York. He was a lawyer. He worked at the firm of Cahill Gordon Reindel & Ohl until he was age 50 and at that point he decided he wanted to develop a course in law for undergraduates and be a teacher. He resigned from the practice of law and it was two years before he found a job teaching. So life was a little tense during that period of time. He got a job at Sarah Lawrence College which was - oh he lived in New York City. He practiced in New York City at Cahill Gordon. We lived in New York City. Sarah Lawrence is in Bronxville, New York, just a short commute and with the traffic going in the other direction, and he taught there for fifteen years and loved it.

MS. CAVANAGH: What did he teach?

MR. NIELDS: He taught his own courses. Originally, he started off teaching a course on the legal method - the way law is made in this country with a focus on judicial decisions in common law cases and watching things develop. He was only a part time teacher in the beginning and then he was invited

in as a full time faculty member and he taught civil liberties courses that could have been taught in law school and then he continued with his legal method course for people who didn't want to be lawyers but who wanted to understand something about how the legal system worked.

MS. CAVANAGH: What kind of law did he practice?

MR. NIELDS: He was a litigator. He did a lot of work for RCA. I remember the senior partner of the firm was John Cahill and he had a case that he was working on with Cahill and they - Cahill had an argument in the Supreme Court. It was on whose color television system was going to be adopted as the one that would be used for this country and my memory is - I can't remember who won. [*Radio Corp. of Am. v. United States*, 341 U.S. 412 (1951).] I do remember that RCA's system was the one that was eventually used. And I remember meeting Justice Robert Jackson on the train on the way down to Washington, D.C.

I didn't really know an awful lot about my father's cases and what he was doing. He didn't talk about them very much.

MS. CAVANAGH: Did you know he was unhappy with - I mean assume at some point he was unhappy with being a lawyer or not adequately happy?

MR. NIELDS: I guess he was not adequately happy. I was dimly aware of that until he decided he was going to stop and teach. I never really talked to him about why. I just never talked to him about why.

MS. CAVANAGH: How old were you when he did that?

MR. NIELDS: I would have been just about graduating from college. Because I remember I think it was during the period after he stopped practicing at Cahill Gordon and before he started teaching that I spent a - I had a summer job, after first year of law school, at Cahill Gordon.

MS. CAVANAGH: We'll get to where you went to school shortly. What about your father? Where did he go to college? Law school?

MR. NIELDS: He went to Yale College and Yale Law School. The story went that he decided he wanted to go to Harvard Law School since he had gone to Yale College and he went up to Cambridge and spent one night there and decided he didn't like it as much Yale and drove back to New Haven and went to Yale which I guess people could do in those days. You couldn't do it now. I think he went to Hotchkiss Boarding School which he didn't like but he did love college and law school and at one of those places he met my mother's brother and they became friends and then he met my mother and they got married. He was hard of hearing by the way. And when he went to look for jobs he didn't get any for quite a while. He was on the law review at Yale and smart and wise man. But he didn't hear well at all. He had had ear infections as a teenager. Many of them. And he frequently had his ear drums burst from the pressure of the infection, and so he had no ear drums. He had perfectly good hearing nerves and he finally got himself a hearing aid and then the next interview got a job.

MS. CAVANAGH: You mentioned Justice Jackson. Did you have any impression of him when you met him?

[break]

MR. NIELDS: Not much, then, but I became a huge admirer of him when I prepared and tried the FBI Black Bag Job case in 1980 - which I guess we will discuss later.

MS. CAVANAGH: You mentioned that your father was born in Rye, New York. Did he grow up in Rye or did he grow in New York City?

MR. NIELDS: He grew up in Rye and there was a brief period of time when his family moved to Cleveland, Ohio, I think when he was away at school. His family later came back to Rye. He went to Rye Country Day School, and he lived in Rye and grew up there.

MS. CAVANAGH: And then you mentioned that he lived in New York City ultimately when he was working. When he was older, did he live in New York City until the end of his life or did he move closer to Sarah Lawrence?

MR. NIELDS: No, no he lived in New York City until the end of his life. My parents had a house also in Long Island.

MS. CAVANAGH: I'm from Long Island.

MR. NIELDS: Are you? What part?

MS. CAVANAGH: I grew up in Commack which is near sort of Huntington/Smithtown area.

MR. NIELDS: Well, they lived in Cold Spring Harbor until I was 6 and then they lived in Huntington after that. Yes just south of the Jericho Turnpike.

MS. CAVANAGH: I was a candy striper at Huntington Hospital. Long ago. Enough about me. You mentioned that your father and your mother met through your mother's brother? Is that right?

MR. NIELDS: Yes.

MS. CAVANAGH: And when was that? What was there? Were they in school?

MR. NIELDS: I think my father was in law school. I'm pretty sure it was during law school. He graduated from law school in 1939 and they got married in 1939. And I think they knew each other for a year or two before they got married.

MS. CAVANAGH: Why don't you tell me a little bit about your mother. I have her name as Lila Hall Franklin Nields. Tell me about her. Where she was born?

MR. NIELDS: She was also born and raised in New York City. Her mother was from Bennington, Vermont and was one of the founders of Bennington College and my mother was in the second graduating class at Bennington College and believed in progressive education. She was, well you know she was my mother, so my objectivity is not great but she was nearly a saint. I mean she was - I never ever heard her raise her voice in anger in my life. And the only time she raised her voice at all was when she was skippering a sailboat talking to whoever it was that should have been pulling a rope and wasn't doing it. She was a lovely woman.

MS. CAVANAGH: Was she home with the kids?

MR. NIELDS: She was home. She did - she was on the Board of Bennington College. She was on the board of an organization called Goddard Riverside which was a low income housing organization in New York City and she raised her children.

MS. CAVANAGH: And did she live in Manhattan but it sounds like they moved and they had a house in Cold Spring Harbor and she outlived your father?

MR. NIELDS: She outlived my father, yes. He died of throat cancer, neck cancer. He smoked a lot and he died in 1981 at 66 years old. She died in 1995.

MS. CAVANAGH: So we will move to you now. When were you born? Where were you born?

MR. NIELDS: I was born in 1942 in New York City and raised in New York City and Cold Spring Harbor, Long Island.

MS. CAVANAGH: Tell me a little about New York City when you were young. Where you lived exactly?

MR. NIELDS: We lived on Madison Avenue and 89th Street and I went to the Dalton School which was a progressive school and I don't quite know what that means except that they were low on discipline and organization and people were very kind to each other and the teachers were good teachers. But for example they had a system where they gave out (this is after - from fifth grade on - I think) they gave out assignments - your homework assignments by the month so that you had a month to do - you would be given everything you were supposed to do by the end of the month and you had to do it all by the end of the month and of course

that was fine for people who were organized and diligent and could see the future but it was terrible for people like me who procrastinated all the time and I would do nothing until there were about five days left and then it was hopeless. It taught me failure in a good way.

MS. CAVANAGH: You turned out pretty well so that's encouraging. I have a sixteen year old son so I can imagine that very well.

MR. NIELDS: But the Dalton School was a block and a half from where I lived. It was between Park and Lexington on 89th Street and so I would walk to school from a very young age. I can't tell you for sure when but I'm guessing seven years old or so. And I went to Dalton from age 3 to age 13 and my best friend at Dalton starting at age 3 and continuing all the way through was a guy named Fitzhugh Seamus McManus Mullan. And he's still a friend. He lives now in D.C. In fact I just went to his 75th birthday party.

I didn't like school at the time, and yet I look back on it with very fond feelings. And had many good friends and we would play sports, Fitzhugh and I and some other people on the sidewalks of New York after school. We'd throw and play 2 on 2 touch football. Sometimes we'd go out to Central Park and hit fungoes and do running bases and played a game called Off the Point which you played with a pink rubber ball. It was a little smaller than a tennis ball that was very bouncy and you would take the molding on the side of apartment buildings that were usually about 2 and 1/2 maybe 3 feet off the ground, maybe 4, I'm not

sure. I was shorter then and you'd throw it against the sharp edge and if you hit the point - that was called the point - the sharp edge of the molding - you could make it bounce off the second or third story window on the building across the street and we had all kinds of rules about what would be a home run and what would be a single and a double and it had to do with how many times the ball bounced on the ground after it hit the wall and stuff like that. Anyway.

MS. CAVANAGH: You mentioned that you went to Dalton until you were thirteen and then what came after that?

MR. NIELDS: I went to Andover.

MS. CAVANAGH: Why did you go to Andover?

MR. NIELDS: Because that was what I thought I was supposed to do and what my parents had in mind for me. I looked at several different places and chose Andover and was just miserably homesick for like two or three weeks after it started and then got used to it, made friends.

MS. CAVANAGH: What sort of - were you involved in any activities at Andover?

MR. NIELDS: Let me just say one other thing for whatever it's worth. If I were to do it again I would not have gone to an all-male school which it was then and I would not have gone away to school.

MS. CAVANAGH: Why?

MR. NIELDS: I wasn't really happy there and it was a peculiar environment to have just boys and not girls. I was very shy pretty much all the way through at least up to starting at Andover and maybe during that time too, and I

would have done much better at home and with family around me and seeing people of both genders. But it was fine and I made friends there too and still see some of them today.

MS. CAVANAGH: Were you an athlete? Were you involved in . . .

MR. NIELDS: I was a slightly more than competent tennis player. So I played tennis at Andover and was kind of on the tennis team. I can't quite remember. I think I was just off the bottom of the six players who played most of the competitive matches but then tennis became an even more important part of my life and I got better after I got out of high school and college and got married.

MS. CAVANAGH: Stepping back for a moment, tell me a little bit about your siblings. Their names, their ages relative to you.

MR. NIELDS: So I was greeted into this world by my older sister Elizabeth. So that's one of my favorite names.

MS. CAVANAGH: It's a good name.

MR. NIELDS: Exactly. She was two years older than I and then I have a sister Laura who is six years younger than I am and then I have a sister Jenifer who is twelve years younger than I am. They are alive and well and are lovely people.

MS. CAVANAGH: Were you close with them as a child?

MR. NIELDS: I was extremely close to my sister Elizabeth. Extremely. We did everything together. She was very bossy at that part of my life but we have remained very, very close ever since. Laura and Jenifer were

enough younger than me so that the closeness developed over time, but I am very close to both of them today and see them frequently. My sister Jenifer developed Lyme disease that was misdiagnosed and she's a doctor. She's a psychiatrist. Her husband is a psychiatrist so she was at Yale Medical School doing various things during the time when she had this undiagnosed Lyme disease and it has affected her life. It hasn't ruined it at all but it's affected her life. She can't tolerate noise or light. She has neurological symptoms. It finally got diagnosed and treated with massive amounts of antibiotics but you can't get rid of it if you catch it too late.

MS. CAVANAGH: What can you tell me about Elizabeth?

MR. NIELDS: And I was enchanted by my sister Jenifer when she was born. I mean I was twelve years old. I was just besotted with her.

MS. CAVANAGH: What can you tell me about Elizabeth? Where does she live today?

MR. NIELDS: She lives in Otego, New York which is about an hour northeast of Binghamton. She is a potter and lives on a farm. I mean it's not a working farm. It's a pottery farm. You wander around it and you will see giant statues of things whose meaning was not always obvious, or people made out of huge - I mean I'm talking about taller than me that you find sort of in the field and in the trees and then she's - I mean our house is filled with her pottery - various kinds of things from coffee mugs to bowls to statues to what is the word for something that's about that wide and that high. A pillar but it's sort of pillar shaped.

MS. CAVANAGH: You put things on top of it.

MR. NIELDS: No it's not functional.

MS. CAVANAGH: It's not an urn.

MR. NIELDS: It's not functional. Almost everything that she has made ever - not everything - has an elephant in it someplace.

MS. CAVANAGH: I saw her website.

MR. NIELDS: Did you really? Did you see elephants on it?

MS. CAVANAGH: I don't remember elephants specifically. I will look.

MR. NIELDS: You'll see them. She's just a very special person.

MS. CAVANAGH: And how about Laura? Where does she live?

MR. NIELDS: She lives in Brooklyn. Brooklyn Heights. She's married to a man named Mark Page who was Budget Director for the City of New York under Bloomberg. They have five children. Each one - all wonderful - four boys and one girl. Just more fun to be with than you can imagine. She has at any given time at least four Jack Russell terriers. I don't know if you've seen a Jack Russell terrier but they are all crazy.

MS. CAVANAGH: Hard to control.

MR. NIELDS: She also has a house in Long Island. In fact she owns the house that my parents had in Huntington and also the house that her husband's parents owned in Cold Spring Harbor and I think she has plans to have almost every child live somewhere nearby to where she lives as she grows old. She's just wonderful and unbelievably competent and she is helping everybody all the time.

MS. CAVANAGH: What sort of things did you do together as a family when you were a child, in terms of vacations, for example.

MR. NIELDS: Well our principal vacations were in the Adirondack Mountains in upstate New York where we stayed in a place that my mother had gone to as a child and her mother had gone to as a teenager; it was just a bunch of cabins stuck in a clearing and some of them had hot running water and some didn't, and it housed about 40 people and several families would stay there and there's a community dining room where everybody ate breakfast and supper and there was a community living room up at the top of the camp where, which was its own building, but where people mostly sang after supper, and we went there as children and loved it. My father loved it, my mother loved, Elizabeth loved it, Jennifer loved it, and Laura loved it, and we would hike, that's basically what we did. We climbed mountains.

MS. CAVANAGH: I know that you continued that with your own children.

MR. NIELDS: I did continue that with my own children and they are now continuing it with their children.

MS. CAVANAGH: Nice. Very nice.

MR. NIELDS: Same place.

MS. CAVANAGH: That's very nice. We will talk more about that, when we talk about your children. Are there other family members that you want to talk about from when you were young - aunts or uncles or anyone else significant?

MR. NIELDS: Well yes, I guess, of course.

MS. CAVANAGH: Go ahead.

MR. NIELDS: I grew up with a number of second cousins. My grandmother and her brother each built houses in the same, very near to each other and then her brother's children built three of them — built houses also around there. So there were three families of second cousins and Elizabeth and I grew up with them from the day we were born.

MS. CAVANAGH: Where was that?

MR. NIELDS: That was in Cold Spring Harbor Long Island.

MS. CAVANAGH: Ok.

MR. NIELDS: Yeah. And my parents lived in a very tiny cottage, up until I was six, but even after they moved away to Huntington we spent huge, Elizabeth and I spent huge amounts of time with our cousins, and I had a favorite aunt — Aunt Joanna, Aunt Jo — and she was as important to me and then to my wife after we got married as I think anyone was in my life outside of my immediate family. Just a lovely woman who made everybody around her feel welcome and relaxed and she welcomed me and my sister into her house when we were teenagers and both very awkward and she made us feel not awkward and then she welcomed my wife. She was the first person I introduced my wife to.

MS. CAVANAGH: Any other relatives you want to tell me about right now?

MR. NIELDS: Yeah. (My Aunt Jo also welcomed my children into her house when we started having children.) Well I mean, my father had a sister, who loved to play tennis and was a very good athlete and she had a house, not a

fancy one, but one that was big enough to house us in Bar Harbor, Maine, and so Gail and I, (and she loved our kids), would go up to Bar Harbor, Maine and play in tennis tournaments there for a week or two in the summertime for about 10 years, and stay with her. We loved her very much and we could go up there and play. I could play men's singles, men's doubles, and mixed doubles, and my wife would play ladies' singles, ladies' doubles, and mixed doubles, and that was what we did together.

MS. CAVANAGH: That was Barbara Stearns?

MR. NIELDS: Barbara Stearns, wow, you really —

MS. CAVANAGH: I did a little research.

MR. NIELDS: She was Barbara Nields obviously and she married Sherman Stearns who was a great, I mean seriously great bridge player. He was one of what was known as the Four Aces — Oswald Jacoby's famous bridge team and when I knew him basically the way he made his living was he could go around playing bridge for three pennies a point whatever that means.

MS. CAVANAGH: You're not a bridge player?

MR. NIELDS: Well, yes I did play bridge and liked it quite a lot and so did my wife but we didn't play for money. We played for money once on our honeymoon and my wife hated it so much I think we lost the first rubber and the other team insisted on being paid right on the spot. It was like you'd played — it was in Bermuda. It was —

MS. CAVANAGH: That was it.

MR. NIELDS: That was it. So that's the only time I've ever played for money.

MS. CAVANAGH: Okay. Going to back to you at Andover, and at some point I guess you decided what college you were going to go to. How did you make that decision?

MR. NIELDS: It was, my father had gone to Yale, it was my first choice, I applied early admission, I got in, surprisingly because I was not a good student at Andover — I mean I wasn't bad but anyway I got in and I went.

MS. CAVANAGH: Tell me about your experience at Yale.

MR. NIELDS: Well it was, I was really somehow in a bad place when I started Yale. I did not apply myself. I did very poorly in the beginning and by the end I was at least on the dean's list but I really was a bad student. I mean I learned bad study habits at Dalton for reasons that I think I've already explained to you and I still had them when I was at Andover and I still had them until really until I got married. And I got married while I was still at Yale and Gail and I lived in a tiny little apartment one block away from Davenport College, which was the college I had been in at Yale. And I started to be a serious student, just barely started, but —

MS. CAVANAGH: Why? Did your wife encourage you or did you just realize you needed to focus here, or how did that transformation happen?

MR. NIELDS: Well, I don't think I know the answer to that for sure. I mean it did happen. I was very, very, very happy with being married and I was very

happy with my wife, and she with me I think. The social uncertainty was a cause of distraction I think in my first year, three years of college.

MS. CAVANAGH: So how old were you when you got married?

MR. NIELDS: Twenty.

MS. CAVANAGH: And how old was Gail?

MR. NIELDS: Nineteen.

MS. CAVANAGH: Interesting. Were there many students married at that time? No.

MR. NIELDS: No. We were definitely among the first. We weren't the only people. I wasn't the only person in my class at Yale who was married at that point but there were very few. We were the first people we knew among our friends to be married.

MS. CAVANAGH: Interesting.

MR. NIELDS: For both — that was true for both of us.

MS. CAVANAGH: What was your major at Yale?

MR. NIELDS: Political science.

MS. CAVANAGH: And did you enjoy your courses ultimately?

MR. NIELDS: Not that much. I just didn't work on them hard enough. I didn't — I just didn't love my studies.

MS. CAVANAGH: Were you involved in any activities at Yale — tennis, or —

MR. NIELDS: I remember — very few if any. I played tennis and I played, I remember playing in the freshmen squash tournament, which wasn't really my sport, and ending up -- and then most classes at Yale had the best squash players in the country or second best or whatever. We had a very lean

year and I ended up a runner up in the freshman squash tournament and I got a trophy that's like about that big, I think I still have it someplace.

MS. CAVANAGH: That's funny.

MR. NIELDS: So I mean I did continue to dabble in my racket sports but really not after the first year. There was too much else going on.

MS. CAVANAGH: What was New Haven like at that time? This is the early '60s. Politics were changing. You know, if you had any engagement in the kind of political events that were going on, or what the mood on the campus was at that time.

MR. NIELDS: I don't think it was a particularly hot political era in our country. Right after I graduated in 1964 and the Vietnam war was starting to ratchet up, everything changed. Everything changed.

MS. CAVANAGH: You must have been a senior when President Kennedy was killed.

MR. NIELDS: I was. And I can remember where I was, I can remember where I ate dinner, and that was just — I felt the cataclysmic nature of that event obviously as did my wife. But we had not been — I mean we found him an exciting and charismatic person but we had not really, either of us, become — talking about my wife now — gotten really involved in political kinds of issues. And my parents were not passionate about political issues except that they abhorred McCarthy. I mean they just abhorred him. So that much I sort of picked up. And there was a — and they were very — they cared, they got very interested in Alger Hiss and whether he was guilty or not guilty of — when he was tried for perjury,

so — and Alger Hiss's wife, I'm pretty sure I'm right about this — taught at Dalton. And his son, Tony Hiss, was president of the class ahead of me at Dalton. And this was after Alger Hiss had been convicted and so forth. So that was an event that made an impression on me and I didn't quite know where I came out on it but I knew that that was something that my parents cared about and consequently something I cared about and was interested in. McCarthy and the slightly-related issue of Alger Hiss.

MS. CAVANAGH: You mention that you remember where you were when you found out about President Kennedy. Do you want to talk about that a little bit?

MR. NIELDS: Well I can picture myself on I think it was Park Street and somebody coming up to me and saying President Kennedy's been shot. And then I can remember — one of our parents was in New Haven either when he was shot or before the end of the day that he was shot and I remember going and eating dinner at a restaurant, and I almost never ate at a restaurant, and picking up the atmosphere of upset, but that's about all I can remember.

MS. CAVANAGH: What did you do in the summers when you were in college? Did you have jobs in the summers? Did you stay in New Haven?

MR. NIELDS: I had jobs. I worked believe it or not for a construction company that was doing something in Islip, New York, I think, which is on the South Shore — you know where it is — the airport in Islip, which I flew into later. We were surveying, a friend of mine and I had the same job and so

that was one summer. I worked on a ranch in Utah, godforsaken job, but I'm very glad I did it but it was nowhere near anything. I flew to Salt Lake City and I got picked up by the father of another person that was doing the same job, and got driven four hours south to the Uinta Mountains and spent two months on a ranch hauling rocks off dirt and sandy soil and learning how to drive a tractor and back it up with a big wagon attached to it and getting up at 5 in the morning and getting eggs out from under the chickens that had just laid them — oh god, they were good. Tilly, there was a cook named Tilly that would make fried eggs for us in the morning. And I remember absolutely unpotable water that ran in the rivers. That's what I had to drink. Anyway — but it was a — there was nothing, we had no car, and if we'd had one the nearest town was two hours away by car.

MS. CAVANAGH: That was a long summer.

MR. NIELDS: It was a long summer. But I still have fond memories of it. Somebody else, there was another young boy our age who was local who did have a car who worked on a ranch and we took one trip in to Price, Utah, took us two hours to get there. We saw a movie and we got back at like 2 in the morning. And we saw *Rio Bravo*, almost sure. That's the only thing we did.

MS. CAVANAGH: Getting back to your wife, Gail Tenney, how old was she when you met and got married?

MR. NIELDS: Well there's a little bit of a back story to this which is that — Laura, who I've talked about, my sister, and Gail's younger sister, Sarah, were in the same class in kindergarten. And they became very good friends. They both liked to ride horses and they became very good friends. And decided that their older brother in Laura's case, and sister in Sarah's case, should get married someday.

MS. CAVANAGH: When did they decide that?

MR. NIELDS: Fairly early on, I think, like at age 6 or 7 or so. And we were not ready to be introduced yet. We hadn't reached puberty yet, I don't think. But we both loved tennis, we both loved Willie Mays, and were rabid New York Giant fans, we both played bridge, and I think that was probably it. I think that was the sum total of their reasoning.

MS. CAVANAGH: So when did you actually meet?

MR. NIELDS: Well I probably met Gail in terms of having seen her face maybe once when she came to pick Sarah up at her up, her sister Sarah up, at our house. But I really first met her at Putnam Camp when my parents had suggested that Sarah's parents stop by — oh I think Sarah was visiting Laura at Putnam Camp and her parents were coming from somewhere and my parents said well, spend the night and you can pick up Sarah on the way by and take her home. So Gail was there and I met her one evening or late one afternoon on the croquet course, which was not like any other croquet course in the history of the world. It was about as flat as a mountain range. But that didn't take quite, although I was attracted

to her but nothing really much happened until the next summer and then we played in a tennis weekend with each other, we went to a play at Stratford, Connecticut, and we went to hear the Kingston Trio, and then I got up all my courage and asked her to go to a baseball game, an exhibition baseball game between the San Francisco Giants and the New York Yankees. The first time Willie Mays had been in New York since the Giants and the Dodgers went to the West Coast in 1957. And for reasons I won't go into I had a pretty good idea she might say yes. And so we went there and —

MS. CAVANAGH: So when was that? Were you in college yet at that point?

MR. NIELDS: Oh yeah, I was at college. Oh yeah, that would, oh, I see, yeah, you're right, that would have been in between freshman and sophomore year.

MS. CAVANAGH: And where was Gail at that point? Was she in college?

MR. NIELDS: She was going into her senior year in high school.

MS. CAVANAGH: Where did she go to high school?

MR. NIELDS: At a place called the Brearley School in New York City.

MS. CAVANAGH: So tell me a little bit about Gail. Where did she go to college?

MR. NIELDS: Well we were married before she started college. No wait a minute, that's not right. No, that's not right. She was at the University of Connecticut. She didn't get into the colleges she thought she should have gotten into which she attributed not with any bad feeling to the fact that she was spending all of her last year in high school seeing me on weekends seeing me. But she didn't. And that was an upset to her. She

was able to transfer from UConn to Connecticut College for Women in the middle of her first year and then we must have gotten married after her first year at college. Anyway she went to Connecticut College for Women until I graduated from Yale which was after one year of our married life. And then I went to UPenn law school and she transferred to UPenn college.

MS. CAVANAGH: I see. So she was commuting basically from New Haven to Connecticut College. And it's where still is, right? Connecticut College is coed now.

MR. NIELDS: Yeah. In New London.

MS. CAVANAGH: So where did you get married? Tell me about your wedding.

MR. NIELDS: My wedding. So we got married in Greenwich, Connecticut. Her parents had a house there. They lived in the city but somewhere along the line they bought two tiny houses — I mean this is not like the Greenwich, Connecticut that you might think — one of them didn't even have heat. It had been an old post office and hadn't been used for anything I think. And then they had, the house they lived in was not much bigger than the other but it had heat and running water and it was a nice little — it was very small. There was a tiny living room and there were two tiny bedrooms on the upstairs floor and a bathroom. But Gail had gone to Sunday school at the Stanwich Congregational Church which was just down the road from where they lived and that's where we got married.

MS. CAVANAGH: Did you have a big wedding, a lot of people?

MR. NIELDS: I mean to me it was an enormous wedding but compared to what people do now it was tiny. I can't even tell you whether — I don't know how many people we had. Somewhere between 50 and 100 I think. I didn't think about numbers of people the way people do now. We had I don't know, seven bridesmaids and seven ushers and lots of cousins and lots of friends and it seems like it all went by too fast but it was a lovely time of both of our lives. We had a night before the wedding party in Long Island and then we had the wedding which was an afternoon wedding. It wasn't particularly fancy. Our grandmothers were both there and her grandmother's family grew up in Williamstown, Mass. My grandmother's family grew up in Bennington, Vermont, and they actually had known each other's families which we found out, we didn't know that. And we have this unbelievably wonderful picture of sometime after the wedding service, and the reception was at her house, her tiny little house in Greenwich, so it didn't take place IN the house, the reception wasn't in the house, you couldn't have done it in the house. It was outside and I don't know whether there was a tent. I can't remember that. It was a beautiful day, beautiful afternoon. Anyway our grandmothers were seated at a very small round metal table looking into each other's faces with rapt expressions. And then we went off to Kennedy Airport, might even have still been Idlewild, and we went to Bermuda.

MS. CAVANAGH: And played bridge.

MR. NIELDS: And played bridge.

MS. CAVANAGH: Tell me a little more about Gail. So after she graduated from University of Pennsylvania did she go to graduate school?

MR. NIELDS: Yes, she got a master's degree at Bryn Mawr and then came back to New York and so she was, so I graduated from law school in — our first child was born before she got her master's degree. Must have been. Yeah, because she didn't get, she was commuting to Bryn Mawr somehow or another one day a week after we'd moved back to New York. So she already had a child and then we had a second child two years after that. And she was not working outside the house. She was getting her degree for one year and then for one or two years she wasn't working and I remember thinking that was a bad plan and she then got a job teaching at the Hewitt School in New York City. I can't remember exactly how many years of child-raising but I think it was fairly soon, I think it was like three or four years into our time in New York. And then I dragged her kicking and screaming down to Washington DC to do my clerkship with Justice White which I thought was going to be very temporary and we'd be back to New York and living a normal life.

MS. CAVANAGH: And that was it.

MR. NIELDS: We'd been here ten days and she told me we're never going back.

MS. CAVANAGH: She said that because she thought you wouldn't go back or did she like it here?

MR. NIELDS: She loved it here.

MS. CAVANAGH: Oh, good.

MR. NIELDS: She loved it here. I think being surrounded by an awful lot of my family was a little bit suffocating and she had also never lived a suburban life where you had a supermarket five minutes away from your house and you could —

MS. CAVANAGH: A parking lot.

MR. NIELDS: — yes, and getting out of the madness of New York City and the crowds and everything. Anyway so then our daughters went to the Potomac School, all three of them, although one of them was just born when we moved down. But the other two went to the Potomac School right away and Gail got a job teaching part-time at the Potomac School the very next year, and taught there for 35 years.

MS. CAVANAGH: And that's in McLean?

MR. NIELDS: And that's in McLean, Virginia. She was able to teach one course the first year until Abigail, our youngest child, went away to preschool. Then she taught two courses so she could still pick Abigail up at noon, until Abigail got far enough so that she was at school in the afternoon and then Gail went to a full load. Potomac had only nine grades when we started there. So she taught ninth grade. And then our children would — our theory was that they shouldn't be in a class where their classmates were being taught by Gail and so we transferred each one of them to Madeira after 8th grade, into 9th. Then the Potomac School opened a high school and Gail ended up teaching almost all of her time

there as an 11th and 12th grade teacher of history. History was her field and she specialized eventually in American history and particularly African American history.

MS. CAVANAGH: And is she retired now?

MR. NIELDS: She's retired. She's been retired for a while. She's writing a book. She's writing an historical novel.

MS. CAVANAGH: Does she let you read it?

MR. NIELDS: Yes, I've read, yes, and I love it. I read the first draft cover to cover, as she was writing it. Then she's done a second draft which she gave me to read in chapters but it moved too slowly given that I already knew the plot. And so I asked her to give me the whole draft when she finishes. She's just finished it but she's still giving it to me in pieces but —

MS. CAVANAGH: Well we'll get back to your kids later because I do want to talk about that but going back to, you graduated from college in 1964. You obviously decided to go law school. Would you tell me about that decision and why you decided to go where you went?

MR. NIELDS: Just as I've already described, that I backed into college and boarding school because that's just what I believed I was supposed to do, and I backed into law school for the same reason. And my father was a lawyer and I just assumed I was going to be a lawyer too. But the difference was I loved it from day one. I loved it. I went to the University of Pennsylvania because it was the best school that I got into. I didn't get into Yale — pretty sure I applied to Yale and I'm pretty sure I didn't

apply to Harvard. And I can't remember now for sure. I got into like NYU and maybe I got in at Berkeley and Penn. I think those are the two that I got into that were somewhere near thought of as good law schools. And not knowing much more about them than that. And boy did I luck out. Penn was first of all a small law school. It had 170 people per class. And it had absolutely, there was no negative competition among classmates at all. And they had a regime there where you had an hour of classes at the beginning of the day, an hour off, an hour of classes, an hour off, an hour of classes, and then lunch, and then maybe I've lost an hour or I miscounted the classes but the point is they staggered your classes so that you had an hour off in between them, and strongly encouraged people to form study groups made up of three, four, or five people and meet with them in the hours in between to talk about what you'd just studied or what you were about to study in the next class. And I made my best friends almost of my life very quickly, very luckily. They were all very smart and we became extraordinarily close friends and all respected each other's views and talked about the things we were studying and just speaking for me but I think for all of them I knew this was really important to me.

NIELDS cont'd

First of all it was important to me because I actually was going to live a life and I was going to have to have a job and I was going to have to do it well and it would actually matter to whether I had a good life or not, and we also believed — and that was an era where even though I'm

not positive I agreed with all of the fairly extravagant advances in the law that the Warren Court was making I basically was for everything they did but sometimes I wasn't quite sure I knew how they got there. But exciting things were happening in the law and courts were doing really important things and consequently lawyers were doing really important things and we were going to get to be part of that. And so we got very excited about our profession and our studies. And it was a life-changing experience.

MS. CAVANAGH: So you worked hard right away from the beginning of law school?

MR. NIELDS: I worked hard right away.

MS. CAVANAGH: Any particular classes or professors you want to mention? Or classmates?

MR. NIELDS: Well, classmates — I just had, the people in that study group that I worked in will always be my friends and every time I see them it's like we haven't even skipped a beat. I had dinner with Bill Rosoff and Artie Newbold this last Saturday night in New York City. We all got together. And we do that periodically. And Barry Unger and Ira Brind and Sharon Kaplan — those were the people that were either always in my study group or sometimes in it. And we were close friends through law school and ever since.

But I feel like there's a thread that I — oh you asked me about law professors. Well, Anthony Amsterdam was at Penn Law School and I took at least one course from him. I feel like I might have taken two. I

did not take the basic criminal law course from him but I did take Advanced Criminal Procedure from him. And he was just extraordinarily good and clear. And he was enough Socratic method so that your brain worked hard but he wasn't at the far end of Socratic method. There was a professor there named Paul Mishkin who I think ended up revising the Hart and Wechsler book on federal courts and he enthralled us. He enthralled me. Everything seemed so deep and complex and rich and I believed in the Socratic method. I really liked it a lot because it absolutely — I mean I hated college where you were trying to learn what some other person whom you didn't really like and didn't particularly agree with what they thought, and you were supposed to be brilliant at knowing what they thought about something. Now we were spending our time trying to figure out what we thought about something. And the Socratic method helps in that process.

Nields cont'd

Paul Bender was another, I took just Civil Procedure with him but I remember studying Erie Railroad Company against Tompkins [304 U.S. 64 (1938)] and everybody thought that the problem with the pre-Erie rule was all the different — I think it was — I'm sorry. This was terribly profound to me at the time. I think it was that you would get inconsistent results in the same case depending on whether you were in federal court or state courts.

That's me that's making that noise. And I apologize for it. I'll turn this off.

MS. CAVANAGH: No, that's fine.

MR. NIELDS: And I remember Paul Bender saying I think there's something a little more going on in this case than that. Right? And it was, you know, what in the world power do federal courts have to make state law? You know in cases where Congress isn't allowed to legislate and the states are, why are we making federal common law? Anyway, I remember thinking that that was very profound. And there were other professors that I remember very fondly. Leo Levin was one of them. And I'm forgetting, I mean if I sat here I'd reel off a bunch of others.

MS. CAVANAGH: Were you involved in law review or moot court?

MR. NIELDS: I was not involved in law review. I missed it in the first year by a tiny amount and then I missed it in the second year by a tiny amount. And I'm still suffering from bad work habits. But I was up near the very top of the class by the last year.

MS. CAVANAGH: And how did you decide what you wanted to do after law school? Did you know in the middle of law school, you knew what you wanted to do? No?

MR. NIELDS: Again I assumed I'm going to a big firm in New York. Again, I'm still going backwards. Backing into —

MS. CAVANAGH: And you mentioned that one of the summers in law school you worked at Cahill Gordon.

MR. NIELDS: Yes, and then another one I worked at, Patterson Belknap, Webb & Tyler.

MS. CAVANAGH: Working litigation? Or —

MR. NIELDS: Oh, I don't think I had any — I mean I was doing legal research for whoever. It probably was mostly litigation. I think it was mostly litigation. Neither summer was particularly consequential. I didn't learn a lot and I didn't — I think I did good work and I think that people I worked for thought I did good work but I remember being given one assignment, read every parol evidence case decided in New York State in the last 50 years.

MS. CAVANAGH: So you enjoyed that.

MR. NIELDS: That was fun?! Anyway so I did the interview thing and ended up at Davis Polk and I'm still going as I said sort of backwards. They had a rotation system so that you spent 3 months in litigation, 3 months in trusts and estates, three months in corporate and then 3 months in tax or something like that. And I at least figured out that I hated corporate work, just hated it. It was like take a long document from the last deal and change the names and the dates and make sure you don't miss anything.

MS. CAVANAGH: So you didn't like that.

MR. NIELDS: It was horrible.

I had actually an interesting case when I was doing the trusts and estates. It had to do with the cy-près doctrine and it actually was getting argued in court and I went to court with a guy who was arguing it. And I think it went our way. And I liked litigation. But I chose, at the end of

the year of rotations, to work in the tax department because the work I did there, it used your brain more than any of the other types of work I did. It was very rich intellectual work or brain work. "Intellectual" is too good a word to use for tax but while basic tax course in law school was boring, the corporate tax work that they were doing at Davis Polk was not boring. And it was very conceptual. And I was good at it. And about three quarters of the way through my second year there I said to myself, two things — one is I think this is using about this much of me as a human being — the top half of my brain — and not much else. And I don't think I like that. And the other thing was that I had three friends who went to the US Attorney's office and each one of them loved their work. And I liked my work but I didn't love it.

MS. CAVANAGH: Before we leave Davis Polk, do you have anything to say about what the working environment at a big firm was at that time compared to more recently in terms of billable hours or pro bono work?

MR. NIELDS: I suspect I was close to clueless about the way the firm actually worked and operated. I mean I knew Hazard Gillespie who was a big deal partner there because I knew his son and grew up with him and played tennis with him. I think probably he talked to me for ten minutes one day or something. But I'm sure I didn't really understand exactly what the pressures were and so forth. But I'm very sure it was not then nearly as bad as it is now in a major New York law firm. In the summertimes I caught my 5:47 train out of Brooklyn to Long Island almost every day.

Now I was probably in the trust and estates or the tax, it's a little bit like being a dermatologist if you're a doctor, right. You don't have too many emergencies. But I did litigation work and it may be that I missed the point and that if I had wanted to succeed in that environment I should have been working harder. Although I don't think that's true. They really liked me in the tax department. They liked the work I did. But I went home for supper. I mean I would sometimes work late and then go home for supper but I never ate downtown. Well maybe I did once or twice.

MS. CAVANAGH: Where were you living while you were working at Davis Polk?

MR. NIELDS: We were living at 401 East 81st Street so I took the Lexington Avenue subway up to 86th Street and then walked down to 81st and 1st. And then I think when I was at Davis Polk that's where I was living. I think we lived there for both years I was at Davis Polk. Then I'd get home and wake up our daughter and make her play with me and put her back to bed.

MS. CAVANAGH: Just to step back for a moment, we talked a little bit about when you were in college that the political environment hadn't changed very much on campus, and I'm wondering if that was different by the time you were in law school. And you graduated from law school in 1967 and I'm wondering what your experience of that was on a campus in the Northeast with Vietnam ramping up.

MR. NIELDS: You're talking about what the law school experience was like.

MS. CAVANAGH: Yes, yes.

MR. NIELDS: Well so here how it all hits me. I think both of us were young, immature, and probably more so than most. And I walked into law school without — I didn't know anything about the Vietnam War or what was happening there or anything. I mean I paid attention to politics, I mean I liked what Lyndon Johnson was doing but didn't trust him further than I could throw him. I mean every time I heard him on television I said that man is lying to me. And I loved Kennedy and I loved his wit, I just loved to listen to him talk. And I liked his Peace Corps and all the things that flow out of that quote from his inaugural address, ask not, and so forth.

But I sat next to Artie Newbold every single day in class. We had seating assignments. We were a class divided into two sections and everybody sat in the very same seat for the entire year. And Artie Newbold became a very good friend and he taught me and my wife all the politics that we knew at that point, and explained to us that, and I may be conflating and collapsing years, but the Vietnam War became a really important thing to me for also reasons that I can't explain; it wasn't so much I don't want to go fighting this war, it was that this is a really terrible mistake that the country is making. There's no right or wrong side in this war and there is no reason for us to be involved in it. And I just was watching — have you watched the Ken Burns?

MS. CAVANAGH: We're in the middle of it. We're a couple episodes behind but I'm learning so much from it that I didn't know.

MR. NIELDS: I'm learning stuff that I forgot or didn't know but -

MS. CAVANAGH: It's very upsetting.

MR. NIELDS: — it's all familiar. Oh, it's just really wrenching emotionally.

MS. CAVANAGH: A waste.

MR. NIELDS: Wasted, just —

MS. CAVANAGH: So much wasted everything.

MR. NIELDS: Oh god. Oh god.

MS. CAVANAGH: Yeah.

MR. NIELDS: And conventional wisdom was so far off, god. But I came to that conclusion back in 1965, I guess I started law school the end of '64 so my feelings about it got stronger and stronger and stronger as each year went by. And they continued to get stronger and stronger. But that's sort of the extent of it. In other words that's what was roiling me was the Vietnam War. And I suppose that race, I was watching the race too but I had not yet gotten to the point that I cared deeply about that, I'm afraid to say. I had quite a few African-American classmates at Dalton. It was slightly unusual in that sense for a private school but I had friends and quite a few classmates. I don't know whether it's 3 or 5 but in a class of 40 that's —

So I had an instinctive — I couldn't understand why people would develop a prejudice against — that far, at least that much of it I was in

the right place on but I didn't think of it as something I wanted to spend my time fixing. And I didn't realize what was going on, either. I had no idea there were lynchings and I didn't know what the South was like. My mistake.

So anyway the Vietnam War became very important to me during law school and continued to be important to me after that. We campaigned for Gene McCarthy a lot in the '68 election I guess it was, the '68 primary season.

MS. CAVANAGH: What was your draft status? You were married, so —

MR. NIELDS: I was, I may have this a little mixed up, but I had either an exemption because I was married, exemption because I was a student, or exemption because I was a father.

MS. CAVANAGH: Right. That makes sense.

MR. NIELDS: And so it was sort of like it never touched me. Again I missed some intensity and I just ended up avoiding the moral problems on all sides. There's a moral issue about whether you're going to be, for your own preservation you want to avoid something and there's a moral issue about whether you want to participate in something you don't believe in —

MS. CAVANAGH: Sure.

MR. NIELDS: — that involves killing people. And I don't know which episode you watched last night, but I watched last night a person who went to Canada.

MS. CAVANAGH: I didn't see that yet.

MR. NIELDS: Okay. Well he talks about both sides of it. Did I run away? Or did I do the bravest thing that I ever did in my life? I mean he potentially sacrificed his life in order to not be in the war. I remember David Rogers, a reporter for the Wall Street Journal who I got to know during the Iran-Contra affair when all these issues boiled up again in some way, shape, or form, who his solution to the moral dilemma was I'll go as a medic. Which he did.

MS. CAVANAGH: There was a story about a medic on one of the episodes that I saw.

MR. NIELDS: And there's a story, there's at least medics involved in the one I saw last night.

MS. CAVANAGH: Interesting. It's an excellent show. It's an excellent documentary.

MR. NIELDS: Oh, god, it's an excellent —

MS. CAVANAGH: I agree.

MR. NIELDS: I don't know where they came up with —

MS. CAVANAGH: Yeah.

MR. NIELDS: So anyway where does that take us? Did I answer your question?

MS. CAVANAGH: You did. You did. You did. I was going to move on to the bar exam. Did you study for the bar exam? You took the New York bar, I assume?

MR. NIELDS: I studied for the bar exam. Our daughter was born, she was due in the end of May and I got deathly sick with just flu or something like that. And I thought my wife was going to give birth while I was — either I would contaminate my daughter, I wouldn't be able to go to the hospital

and help her and I believe I cured myself in 24 hours. Now it may have just been a 24 hour thing but I had like a raging fever and I drank like 4 gallons of orange juice because I'd heard that you get rid of a fever, you want to just run the system through it.

MS. CAVANAGH: Right.

MR. NIELDS: Anyway she didn't come for two more weeks or whatever after the due date. And then my memory of the summer was that the bar review course was the most miserable thing that I ever did in my life. We took Nerissa to Long Island right after her birth and so I would go into New York by train which is no picnic, I don't think the trains were air conditioned in those days, and I go to some big hotel where sometimes the air conditioning worked and sometimes it didn't. One time actually the ceiling fell through and they had to quit and move us out for a day or something. And what we were studying was meaningless. Completely meaningless. I mean it didn't tax your intelligence and it didn't teach you things that were actually important for you to know as a practitioner. It taught you minutia that you might get asked by the minutia-prone bar examiners and I went to four weeks of these classes. There were six weeks altogether, but four weeks for substantive and two for procedure. So at the end of substantive we had a practice exam and it was multiple choice, no excuse me, it was true/false, alright? A hundred questions. Just to see how much we'd learned. And I took the practice exam. I'll let you guess how many I got right.

MS. CAVANAGH: All of them? None of them? Not many.

MR. NIELDS: Fifty. Which in a true/false exam is what you get if you shut your eyes and answer all true or all false just by random. I had learned —

MS. CAVANAGH: Nothing.

MR. NIELDS: — nothing. And then I went in two more weeks and I took the bar exam and I didn't mind the idea of flunking because I didn't think it said anything about my abilities or anything, but I couldn't stand the idea of taking another bar review course so I called up my friend, Bill Brown, from Andover actually who had moved to New York and was taking the bar exam, the night before the exam, and he gave me a question which I had no clue to the answer to, and he walked me through the answer. It was totally technical but he walked me through the answer. And god damned if that exact question wasn't on the bar exam the next day.

MS. CAVANAGH: That was lucky.

MR. NIELDS: And I don't know what my grade was but I got a call in the middle of the night from my friend Billy Gray who had a friend who worked for the Wall Street Journal or the New York Times, I think it was the New York Times, which publishes the people who pass the bar in New York, and he said, the results are going to be — at 2 in the morning he called me — he said the results are going to be in the Times tomorrow, pause, and you passed. I said, oh!!

MS. CAVANAGH: It's a relief. Was that while you were at Davis Polk still?

MR. NIELDS: That was before Davis Polk had started. Well yes, the call at 2 in the morning was after I started at Davis Polk. Yes, I took the bar course the summer after law school and before I started at Davis Polk.

MS. CAVANAGH: I got it.

MR. NIELDS: Yeah.

MS. CAVANAGH: And then did you ever have to take another bar exam?

MR. NIELDS: No. No, there was reciprocity in DC and that's the only other place I've gotten barred.

MS. CAVANAGH: You could waive in, right?

MR. NIELDS: You could waive in or whatever.

MS. CAVANAGH: Fill out all those forms.

MR. NIELDS: Yeah.

MS. CAVANAGH: Okay. That's funny.

MR. NIELDS: Now I knew somebody, particularly the second division which I think was Brooklyn, appellate division, second department — sorry, that's the technical term, appellate division, second department — all of the New York appellate divisions had onerous — after you passed the bar you still had to do like a month of work to fill out the application. Then you had to get an affidavit from everybody who ever knew you in your life. And I know — which I did, I did it and I got admitted to the bar. It might have taken 2 years before I did it. I knew somebody at Davis Polk who got made partner after six years, which was a record speed, and he had to go shame-facedly to whoever told him he'd just been made

partner and say I haven't gotten, I'm not a member of the bar. And you could get by when you were not either a partner or going to court. Anyway that didn't happen to me. But it could easily happen.

So I'm sorry, I'd forgotten your question.

MS. CAVANAGH: That was my question. So then I think we're at the end of your time at Davis Polk and you decided to go to be an assistant US attorney for the Southern District of New York in 1969. Does that sound right? Tell me about that job.

MR. NIELDS: That's the best job in the world. I mean, it's the best job in the world. First of all, the camaraderie in the office is just wonderful. And almost everybody there is coming 2 years out of law school. There are exceptions, law clerks could come one year out of law school, and some people came later, like five or six or seven years out of law school, even. But the overwhelming majority was like my age and my stage of development, at least when they began. And most people stay only 3 years, so there's rapid turnover, you become a senior person in the office after two years, and everybody is helping everybody else because they've been there. And you sit in on other people's trials, for their first or second trial, somebody would be sitting with you, and later on you would be sitting with somebody else, going over their witness sheets and their opening statements, and how they're going to get their exhibits in, and stuff like that, and then sitting there and helping them through the process. But what makes all the difference in the world is you are

responsible for all of your cases, you; you are responsible for presenting them to the grand jury, getting them indicted, and trying them, and preparing them for trial. And after a while, you're doing it by yourself, but if something interesting comes up that presents a problem that somebody else may have had, you're wandering around the halls and poking your head into this person's room or that person's room, you find out the people whose judgment you respect; you can go to the head of the criminal division or the assistant head of the division also for advice, which I did frequently. But you are responsible for all your own work. And you feel as if you are a truly important human being in the world, I mean you work for the United States government, you're in federal court, that the liberty of the person you are prosecuting is at issue. And then the cases get, as you go along in the office, you get more and more complicated cases, more and more important cases, and some even exciting investigations, that you are using the grand jury to get to the bottom of, and the mix of companionship and camaraderie and the fact that you are learning skills by doing, not by being taught, but by doing, it's just an unmatchable combination. My wife didn't like it. I came home at 10 o'clock every night for a year.

MS. CAVANAGH: I was going to ask, you probably weren't getting home for dinner anymore.

MR. NIELDS: No, I — well I never ate downtown. I would get home and eat my dinner at 10 o'clock.

MS. CAVANAGH: Alone.

MR. NIELDS: What?

MS. CAVANAGH: Alone.

MR. NIELDS: Well, I think she kept me company but she wasn't eating with me I'm sure. And I'd waken up my children same as before at Davis Polk. But it was matchless. And the judges were good. You are appearing in front of good judges. A couple not so hot. I'll tell you some funny stories about it but you're in a good courthouse and frequently you're up against a pretty good lawyer on the other side, although there are a lot of legal aid — and some of them were pretty good too. But it's the back benchers, the old men who were taking assigned cases, some of them were good too. But I remember one who — there's an ethical rule that you're not allowed to put your client on the witness stand if they told you that they're guilty and they're going to deny their guilt. And most defense lawyers find a way to advise the client of what the issues are when they tell you if they tell you, but he had somebody that he was — I don't think he followed this ethical rule exactly, I think he made up his own. But if he had somebody that it was 100% clear that person was guilty but he wanted to take the stand, he would put the person on the witness stand and he would pick up the indictment and he would say, "Did you, on or about" — and then he would — "June first, 1927 and thereafter" — and then read, "unlawfully, willfully and knowingly" and da-da-da — and the person would say no, and he would sit down and he would say

no further questions, Your Honor. And then let the government cross-examine. Anyway it was a — I don't know whether you want me to go on but I did three years of trial work with progressively more complicated cases. I didn't stop doing cases and trial work in the trial court but I had a knack for appeals and I had done a lot either because they happened in my cases or because other people didn't want them and I'd say I'll be happy to take that. And so I was made Assistant Chief Appellate Attorney and then Chief Appellate Attorney for a year and that job was not only revising everybody's briefs and arguing cases of particular importance, and moot courting every person and sitting next to them during the argument, but you were also kind of the office lawyer. And that was kind of fun. I mean people would come in, how do I get this thing into evidence tomorrow? I'm afraid that the judge won't let me get this into evidence. And I had learned by then that a lot of people in my role would say oh you can't, that's inadmissible. Right? Well evidence is mostly art, well it's about half art and half science. And it's almost always true that if you have a really important piece of evidence there's a way to get it in. Our legal system does not keep out really important pieces of evidence. There are a lot of rules that sometimes may seem as though they might but they don't.

Anyway I had a lot of fun telling people how to get their god damn stuff into evidence.

MS. CAVANAGH: Did you have a preference between the trial court work and the appellate work? It's different. Some people are attracted to one over the other, of course.

MR. NIELDS: I loved them both. I probably had a little bit more of a knack for the appellate but in my career, the trying a case is really hard because you have got to work really hard and all manner of things can go wrong and if you don't have your ducks in a row, if you don't know your case really well, if you haven't prepared your witnesses really well, if you haven't organized your documents, well I don't know why I'm talking to you about this.

MS. CAVANAGH: You're not talking to me.

MR. NIELDS: I'm talking to that —

MS. CAVANAGH: You're talking to the future.

MR. NIELDS: Yeah, that's right. You're going to, you may lose the case that you should have won and so you can never do enough and you have high anxiety because there's so much unpredictability about what may happen. Although my experience is when I'm scared to death at a court of appeals argument or I'm scared to death at a trial the fear and uncertainty just almost 100% disappears the moment you start. It's because you actually know that the amount of things that can go bad is really not that high, not many, and it's not really that likely they're going to go bad. But anyway the trial work is more vivid and more memorable. The cases that I've tried well I treasure those experiences more than

anything I ever did in the court of appeals. But I think I probably am better at being an appellate lawyer than a trial lawyer.

MS. CAVANAGH: Any particular cases you want to talk about or that you remember or kinds of cases that you worked on?

MR. NIELDS: In the US Attorney's office?

MS. CAVANAGH: Yeah.

MR. NIELDS: I don't think any of these is sufficiently entertaining. Very early in my time at the US Attorney's office — it was very early, it was like maybe the third case I tried — it was, and I'm not going to do a good enough job, it's just probably a failed effort but anyway I'll just quickly touch some of the high points. It was a gambling case. And it was based on largely circumstantial evidence because the people who were taking the bets never met the bettor and they had a system where the bettor would call a number that was at a house that nobody lived in. But there was an open line — they had two telephones in that house, one of which rang and the other of which was open to a line to the bet-taker's house. And if it rang twice and the person hung up, which is what they were told to do to place the bet, they would then call the person back but how the hell did they know how to do that? I can't remember. But anyway it was that kind of a thing. There was even, at the end of the day there was something that activated a turntable that pulled a piece of wood out from under the telephone that was in the cradle but not depressing the hang up buttons, so not hanging up and it would drop down and hang up the

phone. And that way there was no open line any longer in existence that anybody could come in and check on. Anyway it was that kind of a thing. And they had raided both places — I've forgotten who investigated those cases, probably the Secret Service or Postal Inspectors. I can't remember. Anyway they raided both places simultaneously and discovered, which doesn't make any sense either, but discovered wagering slips and so they had.

Anyway and I had to put this all together AND there was a major suppression issue that I navigated correctly and well in front of a very liberal judge. I think that they, I think they got a search warrant based upon probable cause to believe the crime of failure to *register* as a gambler was being committed—and that's why they broke in and the failure to register as a gambler was later held not to be a crime because it required you to admit to a crime if you registered so it violated the Fifth Amendment's privilege against self-incrimination. I think it was Marchetti and Grosso I think, was it US against Marchetti? US against Grosso. [*Marchetti v. United States*, 390 U.S. 39 (1968); *Gross v. United States*, 390 U.S. 62 (1968).] But a gambling case as it said no, this regime requires people who are in a criminal enterprise to tell you that they're in one and therefore you can't make it a crime not to register as a gambler. Alright?

But, I had a clever argument that I made to Judge Lasker that so long as the police officers, the point of suppressing evidence is

deterrence and you can't have deterrence when you're operating consistent with existing law and then the Supreme Court changes the law after that. And so these guys were operating in good faith [when they did the search], and you shouldn't suppress the evidence. It is sufficient to enforce the Fifth Amendment rule to say, nobody can use violation of that statute to get a search warrant anytime in the future. So the judge bought that so anyway I tried that case. But in the middle of the trial the other side got up, defense lawyer got up and said, Judge, he keeps calling these things wagering slips. That's a conclusion. We don't concede they're wagering slips. They're just pieces of paper with numbers written on them. And the agents are calling them wagering slips. And so is the prosecutor. Judge Lasker says yeah, I think that's right Mr. Nields, I'll direct you not to call, and tell your witnesses too, not to call them wagering slips. And I got up like within 15 minutes later and at one point in my examination I said, "and what did you do with the wagering slips then?" And I literally went "Oop!" and clapped my hand over my mouth [laughter] in front of the jury and the judge. It probably saved me because the judge could see, really I would not have behaved that foolishly if I had done it on purpose. Anyway.

MS. CAVANAGH: That's funny.

MR. NIELDS: I had a lot of mail fraud cases, business fraud cases. And I remember one in particular and it also is a horrible Ponzi scheme kind of thing. The story I want to tell you about is going to take too much time, it's not

quite fun enough. But I had a lot of mail fraud cases that were quite interesting.

MS. CAVANAGH: So why did you decide to leave that job? You stayed there for five years.

MR. NIELDS: Okay five years.

MS. CAVANAGH: And then you went to work for Justice White.

MR. NIELDS: Well, so I had been three years as a trial, one year as Chief Appellate Attorney and then I was head of the Civil Division for a year, a job for which I had no qualifications whatsoever. But the new US Attorney wanted me to do it so I did. But the point is I had already spent two years more at the US Attorney's office than I had originally planned to do. I had thought of it as a three year stint but then I liked being the Chief Appellate Attorney. That job I was qualified for. I did that job well. And then I was head of the Civil Division. But the precipitating event was I get a call from Silvio Mollo who was the only person who had been in the US Attorney's office for more than a term of one US Attorney — he'd been there since 1939 I think — and he was the number two person in the office — I get a call from him and he said — and he was a crusty old guy — called me up to his office and said, how would you like to clerk for Justice White? I said what? What's that about? Well, he said Congress has made a couple of positions available at the Supreme Court for more experienced law clerks and Justice White wants to take one and he wants me to recommend somebody. I think my name had already been given to Justice White. And I never knew for

sure what happened but I knew that Justice White was a friend of Bob Morgenthau's from his days as Deputy Attorney General under Bobby Kennedy. And I suspect that his first call was to Morgenthau and Morgenthau said I'll call Mollo and find out who would be the best person at the US Attorney's office. I'm making this up. I have no idea. But that's the only decent explanation I have. But anyway to make a long story short I got in touch with Justice White or he with me, I can't remember which, and I went down and met with him and decided to do it largely because you're looking as though we're running —

MS. CAVANAGH: No, I don't want to keep you too long.

MR. NIELDS: I'm fine.

MS. CAVANAGH: If we want to finish — let's talk about Justice White and we'll stop at the end of that.

MR. NIELDS: Fine.

MS. CAVANAGH: That will be perfect.

MR. NIELDS: Okay. That's great.

MS. CAVANAGH: I was hoping we would get that far today. So that's great.

MR. NIELDS: Okay, good. So anyway I agreed to come down and be a law clerk for three years which is what he wanted. And I had thought I might want to enter a life of teaching.

MS. CAVANAGH: Okay.

MR. NIELDS: And I thought being a law clerk for Justice White would give me a credential that would make it easier to find a good teaching job and I

also thought that it would give me a chance to decide whether sort of an intellectual kind of life would be satisfying to me.

MS. CAVANAGH: Did Justice White hire other longer-term clerks like that over the years? I wasn't aware of that until I saw your story.

MR. NIELDS: There were three positions made available. And Powell just took the money and hired an extra clerk.

MS. CAVANAGH: For one year.

MR. NIELDS: A one-year clerk. Yeah. So he had four clerks. Everybody else had three. So White took the money and hired me. And the Chief Justice took the money and hired a guy named Ken Ripple who later became I think Chief Judge of the Seventh Circuit Court of Appeals. The Chief Justice I should have said. So after me, Justice White reached out to the US Attorney's office in New York again and hired a one-year clerk who had been out of law school for about the same amount of time as I had, in other words somebody who had had comparable experience in the US Attorney's office. And he hired two-year clerks after that but in terms of filling the special position that Congress had made available I think he used the money once with me and once with Jeff Glekel from the US Attorney's office, and not again.

MS. CAVANAGH: And what was your — did you do similar work that the one-year or two-year clerks would have done?

MR. NIELDS: Almost identical. There was one year when he had me kind of do over something that someone else had done. I mean re-do it. Which was not a

good thing. I mean he wasn't happy about it, I wasn't happy about it. But pretty much I did exactly the same thing as other clerks. Although the other thing that I did that was different was that between my first and second year — and other justices had two-year clerks from time to time right out of law school or right out of another clerkship; that was not unheard of — but I had a huge amount of time after the justices finished up one term on June 30th and went off to their homelands which they almost all did, I had a huge amount of time to read and think about and write about the cases that were going to get argued in the beginning of the next term. And both times, but I think even more — well I'm not sure, I used that and I think I was useful to him in a way that I couldn't have been if I had only been a one-year law clerk.

MS. CAVANAGH: What was your experience working with these other clerks who for the most part were probably overconfident and under-experienced relative to you? Was there a camaraderie among the clerks in the same way that there would have been?

MR. NIELDS: Totally. It was a pleasure to work with the other clerks in Justice White's chambers. Several of them are still very good friends of mine. And I was relieved when I arrived, the first person I meet is Larry Simms, who — the first thing he said to me, perfectly friendly but he said, don't be a "ripple" and I'm saying what's a ripple? And he said that's the Chief's senior law clerk. And I said well I don't know what he is but I promise not to be like him.

MS. CAVANAGH: I'll try!

MR. NIELDS: But Larry then confessed to be only one year younger than I was. He had spent some time in the Navy or something like that. So we were chronological contemporaries and immediately became very good friends and his wife very good friends with both Gail and me. And the other clerk was Jim Malysiak. He was delightful and we —- it was totally collegial and the same was true with all the other clerks. And it was particularly true for the chambers that were in the pool, the cert pool. Because we would write memos — so there were 15 clerks in the cert pool because there were five Justices in the cert pool then.

MS. CAVANAGH: There were only 5 in the cert pool?

MR. NIELDS: Yeah, only five then.

MS. CAVANAGH: I clerked for Justice Stevens.

MR. NIELDS: Ah!

MS. CAVANAGH: In the '97 term. And by then he was the only one who was not in the cert pool. So it was very different probably.

MR. NIELDS: Yeah. But analogous in the sense that every 15th case you write the memo and every third case you are reading somebody's memo from another chambers. And so I'm commenting to Justice White on a memo that somebody for Stewart has written or somebody for Powell has written, and they're reading my stuff and commenting on it. So you become familiar with the work and the thinking of the other 60% roughly speaking of the rest of the law clerks. And we would have

breakfast together and we would have lunch together. Not the exact same people but we'd have lunch and breakfast with. And then we'd wander into each other's chambers. And the justices didn't talk to each other. I don't know how it was when you clerked. But one of the most striking things about being a law clerk is the justices [aren't] collaborating. Right? They're just little islands. Occasionally there would be a collaboration.

MS. CAVANAGH: I was going to say occasionally.

MR. NIELDS: But most of the time not. I think all of them got frustrated at thinking they had the smartest answer to some case and selling it to the other justice and getting no reaction, getting no take. And so it wasn't fun for them and they had better things to do. The law clerks talked to each other quite a lot. I spent a lot of time in other — and sometimes I played, once I played a game of chess without a chessboard over the telephone with somebody.

MS. CAVANAGH: How do you do that?

MR. NIELDS: I don't know. The only time I ever did it. I'm not sure how or if we really did it. We were friendly in many different ways and certainly professionally.

MS. CAVANAGH: Did you also have interactions with the clerks who clerked for justices who were not in the cert pool? Because I know that for us, we were often curious. We could actually see the cert pool memos because they

were online and you could actually — we would say you could take a dive in the cert pool, which was helpful sometime for us —

MR. NIELDS: Interesting.

MS. CAVANAGH: — because there would only be one other person who would be working on what you were working on. It was just you and the person who's writing for the pool. So I wonder if it worked that way or because it was even maybe it was more divided.

MR. NIELDS: Wasn't that divided. I talked to Marshall's clerks all the time. I talked to — Douglas's clerks I didn't talk to I don't think. He was kind of getting senile that year.

MS. CAVANAGH: Douglas?

MR. NIELDS: Eventually [had to] be removed. I don't remember being particularly friendly with any of them. Who were the other non— why am I not able to come up with —

MS. CAVANAGH: Yeah, I don't know.

MR. NIELDS: Blackman was in the pool, Rehnquist was in the pool, the Chief was in the pool, White was in the pool, oh maybe Stewart wasn't in the pool. Powell was in the pool. So Stewart wasn't in the pool. He was right next door, I talked to them all the time. Talked to the Marshall clerks all the time. I talked to the Brennan clerks — Brennan was not in the pool. I talked to the Brennen clerks quite a bit. One of them, the Justice read his own certs. I mean he didn't have any clerk help at all in the cert.

MS. CAVANAGH: Really? Interesting.

MR. NIELDS: It might have been Douglas. It might have been Brennan.

MS. CAVANAGH: What was it like working for Justice White? Tell me about Justice White.

MR. NIELDS: Well, so —

MS. CAVANAGH: He was senior when I clerked. And he had one clerk while I was clerking and his clerk worked in our chambers for Justice Stevens. And also did some work for Justice White who would occasionally do a speech or something like that.

MR. NIELDS: Well he did Court of Appeals cases too, didn't he?

MS. CAVANAGH: He did. He did. He didn't have that many. His clerk was very overworked because he was working for both.

MR. NIELDS: Fascinating.

MS. CAVANAGH: But I never met him.

MR. NIELDS: Never met Justice White?

MS. CAVANAGH: No.

MR. NIELDS: So first of all he's a very kind man and I want to tell you a story about that. He was a very kind man. He's also very little revelation of self. And he's also, you know about his sports abilities. I'm told that he finished second in his class at Yale Law School and led the National Football League [rushing] in the same year.

MS. CAVANAGH: That's amazing.

MR. NIELDS: I mean it's possible it's not true but something close to it for sure is. He would take a combative approach to legal discourse quite a lot of the

time. Not always but quite a lot of the time. But was great fun. He would come into the clerks' room and sit down in a chair and start batting stuff around on two or three of the cases that were up for argument. Sometimes he didn't do that. But it was a little disconcerting, he was a little more distant and certainly a little more distant emotionally than I had anticipated. But he'd invite us over to his house and he'd take us out to lunch from time to time. It wasn't like he wasn't friendly. And I just have to tell you this story. But there were people who experienced him as gruff and blunt and combative which there is an aspect of that in him but it's not the way to think about him at all as a human being.

My first year there, there was an equal protection clause case arising under the Social Security Act. And there were tons of those back in those days, '74, mid-'70s and earlier. They were starting to get tired of them. And the New York State Attorney General was arguing some — I guess I've forgotten how the Social Security Act worked. There must have been some piece of it that the states got to legislate about. There was some tiny discrimination claim, equal protection clause. And there is a woman who is arguing the case and she has a packet of 8 by 14 inch yellow lined paper like about that thick. And you can see it. And she's written — I'm sitting in the audience. Or maybe I'm sitting in the place where clerks sit. I think it must have been where the clerks sit. So you can see that she has written in ink every line of this very thick stack of cases. Fairly large writing. And she's reading her argument. And

she's very nervous. And it is almost certainly her first time ever arguing in front of the Supreme Court. It might even be her first time ever arguing anywhere. And I don't know, five minutes into her argument Justice Rehnquist leans down and says, are you familiar with Rule 44.1 of the Supreme Court Rules? No, Your Honor, I mean yes, Your Honor. — in which we frown on lawyers who read oral argument? And I'm thinking oh, god. And she says, Oh, I'm not reading my argument. And he said, maybe he said something like I'd appreciate it if you not — and she said I'm not reading. Well she clearly was reading it and she clearly is not possibly going to be able to continue to speak unless she continues to read her argument. Justice White leans down and says, don't worry about it. The Solicitor General's Office is in here reading their oral arguments all the time.

MS. CAVANAGH: Aw, that was nice. Did that help her?

MR. NIELDS: I don't think it was a fun day for her no matter how you slice the bologna but —

MS. CAVANAGH: That was kind.

MR. NIELDS: — and that gave her permission to actually continue to do her argument. I mean that's Justice White. He's not effusive, he doesn't share his emotions with you, but that's what's down inside there. So I guess I can tell you this. I will decide later whether I have to erase this from the transcript. So I get a procedural due process case, Goss against Lopez I'm pretty sure it was. [*Goss v. Lopez*, 419 U.S. 565 (1975).] And I think

Justice White got the opinion and it was a 5-4 vote in conference. And he asked me to write the opinion. It was a little tricky. It was in schools, it was — do the procedural due process rules apply to public school discipline? And he probably told me what their holding was but I'm not positive. I'm sure it was that the due process clause applies to the disciplinary act but just what process is due is a different question. So I get this opinion and I worked on it hard and diligently and as quickly as I could, and I don't remember whether it was a week or ten days or whatever but I got a draft and I was anticipating that he would read it and mark it up you know in great detail and give me the draft and then call me in and we'd talk about it and then I'd do another one for him and then he would work that over, and then sit down and talk to me about that, and then maybe whatever he does next with it. Right? And I'm on tenterhooks, right? This is my first major — and the week goes by and another week goes by, I think — maybe it was five days, three days went by and another three days, I don't know, but it felt like it was like forever, and I'm just feeling sick. Something awful must have . . . . Finally I just couldn't stand it anymore and I knocked on his door, poked my head in and I said I just wanted to make sure you got that draft of Goss against Lopez. Oh, he said, oh yeah, it's at the printer.

[omitted material]

MS. CAVANAGH: Did he play sports with his clerks?

MR. NIELDS: He did. His sport obviously, one of them, was basketball.

MS. CAVANAGH: The Highest Court in the Land.

MR. NIELDS: Highest Court in the Land. And somebody told me he was MVP at the NIT, NIT used to be a serious basketball tournament.

MS. CAVANAGH: Yes.

MR. NIELDS: The NCAA now is that. I don't even know if there is an NIT anymore.

MS. CAVANAGH: There was. When I was in college I think there was an NIT tournament. I was in college a while ago. I don't know about now.

MR. NIELDS: So anyway he played basketball but he had played it in an era when nobody knew what a jump shot was. And he could not jump. Now of course he was 59 years old when I first started playing basketball with him. But you could tell that jumping was not his principle skill — but he played 2 on 2 with his clerks. And we had 3 clerks so— and it was a dangerous sport to play if you were on the other team from him. I can remember trying to drive around and watch, and he put out an arm like that, just put out an arm, and I ran into it. It was like running into a tree limb.

MS. CAVANAGH: He didn't go easy on you.

MR. NIELDS: What?

MS. CAVANAGH: He didn't go easy on his clerks.

MR. NIELDS: No. John Spiegel, who was a really good athlete, way better athlete than me, and was also bigger and taller, ended up trying to drive around him and ended up with him and his glasses on the ground and the glasses

were broken. And Justice White did not apologize. It was like, what did you do that for?

But then he also played with me because he knew somehow that I had played racquet sports. He would rig the basketball court up as a tennis court except not really. The tennis net that he rigged up was much lower than a real tennis court and the game he played was with dead tennis balls and platform tennis racquets which are made of solid wood with the little holes in them. And he and I would play that game for — we'd go up there and spend an hour playing that game. Whacking the ball back and forth.

MS. CAVANAGH: Did you keep in touch with him after you finished your clerkship?

MR. NIELDS: Yes and no. We had reunions every year. He would call me up very occasionally to come over and eat lunch or can you come over in a minute to come over and chat, something might have come up that I was connected to and he was interested in and he wanted to know. I think — my memory is all conflated and I'm mixing things together I'm almost sure, but he called me, I'm pretty sure he called me one time after I had taken on this special prosecutor, special counsel job on the FBI case, and told me, he asked — I'm mixing two things up. One, he was trying to find out how Congress worked, either in Koreagate or Iran-Contra I don't remember which. How was Congress functioning? And the other I swear I remember him calling me up and gently suggesting I might have made a mistake by taking on the FBI assignment. I don't remember

being upset by it and I would have been more upset if he'd really done that so I'm a little confused. But he also, John Spiegel sent him my opening statement and summations in that case, and when I took the Iran-Contra job I find out that he is Mary McGrory — do you know who she was —

MS. CAVANAGH: Who is that? You should say that.

MR. NIELDS: You mean McGrory? She's a reporter. She's very well-known at the time and she had articles and followed the Iran-Contra affair.

MS. CAVANAGH: Was she at the Washington Post, or —

MR. NIELDS: I think she was at the Post, yeah.

MS. CAVANAGH: Yeah.

MR. NIELDS: And I found out that he had given her my work so he can't have been too mad at me about it.

So I'll just tell you this story because I like it. But I may erase it. Alright?

MS. CAVANAGH: That's fine.

MR. NIELDS: So Larry Simms has a birthday party and invites Justice White at a time when speaking was hard for him. Nothing else was off but speech was a problem. And Larry told me that he invited the Justice and that there was this issue which I knew about. And so he asked me to keep an eye on him at the party when I went to the party. So I spent virtually the whole party sitting in a nice little place with Justice White and one or two other people coming by and talking. And somehow the conversation gets

around to sports. And it gets around to baseball, you know when people are batting around stories of, baseball stories, and then somehow Ted Williams comes up in some context or another and somebody tells us a story about Ted Williams. And Justice White, you can see he wants to say something. He's getting animated and something tickled in the back of my head from clerking days, I said wait I think I know what you're talking about, what story you want to tell. It's about when Ted Williams was batting .399 on the last day of the 1941 baseball season. And his manager said — he was batting 399.6 — and so if he sits Ted Williams down he will have a .400 batting average for the season which is a huge deal for baseball. And Ted Williams said, no way. He played both ends of a double header, went 6 for 8 and batted .406 for the season. He loved that story. And I am sure Justice White would never ever desert his team in order to preserve his own individual glory.

MS. CAVANAGH: Wow, that's amazing. That's an amazing story. And that was the story he was thinking of? So he was thrilled, I'm sure, that you remembered that that's what it was. That's really nice. That's a great memory. Well you know maybe we'll call it there and next time we can talk a little bit about why you decided to leave that job, how that worked and what came next. I think we'll be headed toward Koreagate at that point.

MR. NIELDS: That's the next stop in the whole story.

MS. CAVANAGH: That's my next stop. This is great. So that's the end of our first meeting and I'm going to turn off our tape.