

ORAL HISTORY OF JOHN W. NIELDS, JR.

Second Interview

March 20, 2018

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 Tuesday, March 20, 2018. This is the second interview.

MS. CAVANAGH: John, last time we met we were talking about your time clerking for Justice White. Are there any other cases that you'd like to discuss from your tenure in his chambers?

MR. NIELDS: Well I might talk first about the case of *Fisher* against the United States [425 U.S. 391 (1976)] which involved the question of whether the Fifth Amendment privilege against self-incrimination applied to somebody who receives a document subpoena and is asked to turn over documents that might incriminate him. I was very interested in the subject matter. But more about that later, maybe.

MS. CAVANAGH: Great.

MR. NIELDS: I had a law review article in a box for thirty years. Never had time to write it. And then when I represented Webb Hubbell that issue came up square, four square. And it's the only actual Supreme Court case I've argued. And I had more emotional energy into writing those briefs and arguing that case than I've had in almost anything else I've done. And the case was decided my way.

MS. CAVANAGH: We'll get to that eventually.

MR. NIELDS: And I'm now writing my law review article.

MS. CAVANAGH: Oh, great. Excellent.

MR. NIELDS: So that's one. Another one that comes to mind is the case of *Imbler* against *Pachtman* [424 U.S. 409 (1976)] in which the Court held that a prosecutor was absolutely immune from suit for a decision to prosecute. And Justice White concurred in that decision but wrote a pretty long and carefully analyzed opinion that said, but a prosecutor is not immune from suit for the failure to disclose exculpatory evidence to the defense, at least when the Supreme Court case has said that he or she should have done that. And I believed in that. And I don't think it's the law. I don't know that it's been rejected since but I'm pretty sure it has not been embraced by the Court.

MS. CAVANAGH: Right.

MR. NIELDS: And another case, and I want to say it's *Singleton* against somebody or somebody against *Singleton* but I may have the name wrong and we can figure it out later. [*Ingraham v. Wright*, 430 U.S. 651 (1977)]

MS. CAVANAGH: Sure.

MR. NIELDS: It's an Eighth Amendment case, cruel and unusual punishment, in which the Court held that the Eighth Amendment does not apply to public school punishment no matter how brutal. And their reasoning was it only applies in the criminal process. And Justice White wrote a dissent saying, all right, let me get this straight. You mean if you have a full trial, get convicted after a fair trial, and then you're punished and it's cruel and unusual, then the Eighth Amendment applies. If you don't ever have a trial, it's not even decided whether you did anything or not,

and the school teacher beats the bejesus out of you, which is what happened in that case, no matter how cruel and unusual, that's fine? Please.

MS. CAVANAGH: Is that still the law? I mean I guess you could have —

MR. NIELDS: I think so.

MS. CAVANAGH: — Section 1983.

MR. NIELDS: I think so. I think it might have been a Section 1983 suit —

MS. CAVANAGH: Interesting.

MR. NIELDS: — that gave rise to the decision. And many other cases I cared about and enjoyed working on. But anyway those were some that stick in my mind.

MS. CAVANAGH: That's great. That's great. So what was your plan after your clerkship? What were you thinking you wanted to do?

MR. NIELDS: Well my plan, as I think I may have mentioned to you, one of the reasons I decided to do the clerkship at a slightly advanced age and stage of my career was that I thought I wanted to, I thought a very high probability that I would like to teach and have an academic, intellectual life in the law, and students and so forth. And so when I got in the sort of middle of my third year clerking for Justice White I started interviewing at law schools. And I interviewed at several. I interviewed at Yale and Berkeley and NYU, Chicago, and got a couple of offers from those schools — not Yale, which disappointed Justice White, he having gone there. But then I can't even remember how this came up

but I somehow ran into Phil Lacovara whom I had known when I was chief appellate attorney in the Southern District, and he was the criminal deputy in the Solicitor General's office. And I guess I was looking at law firms too. And he was at Hughes Hubbard in DC and I interviewed with him and he said well I'm the special counsel for the Koreagate investigation and I need a chief counsel for the committee and how would you like to do it? And that was too tempting. And so I went to Justice White — I had to start before my clerkship ended in order to do that.

And I went and talked to Justice White and just asked him what I should do, should I forget this. And he very generously said you go do it. You want to do it, you go do it. And it was like April or May or something. It was probably mid-April when I left and my co-clerks have jabbed me ever since and I was told that the Justice's wife was not pleased with me.

MS. CAVANAGH: So you left them all in the lurch, you're saying. Was this 1977?

MR. NIELDS: 1977, let's see, four-five, five-six, six-seven, it was '77, late spring of '77. But I remember Justice White saying he came in, I think the other two clerks were there and said we've talked and we think we can handle the load, you go do it.

MS. CAVANAGH: And your co-clerks thought oh, no! Easy for him to say!

MR. NIELDS: They were totally okay with it. And they've remained very good friends of mine. One was John Spiegel who was a very good tennis player and

he and I used to play some but I wasn't quite in his league. We had fun doing it. We played as doubles partners in some tournaments here and have remained very good friends ever since.

MS. CAVANAGH: So Koreagate — you were chief counsel to the Committee on Standards of Official Conduct which was a House ethics committee?

MR. NIELDS: Precisely.

MS. CAVANAGH: Okay. Why don't you tell us a little bit about what Koreagate was all about.

MR. NIELDS: Okay. Well let me first start by just saying, Phil Lacovara was special counsel but he wasn't sort of on site, he was also practicing law and heading up the practice for the Washington office and he got into some sort of an argument with the Chairman — and it wouldn't have been hard to have gotten into an argument with the Chairman — I'll talk about him a little later. And he sort of got canned. And then Leon Jaworski came in to replace him and he was even more absent than Phil had been. And then eventually he resigned. And so for most of the crunch I was in charge, as chief counsel, I was in charge.

MS. CAVANAGH: Okay.

MR. NIELDS: And so the second thing I'd just like to say before I get into the substance is one of the most interesting and eye-opening things about it was watching Congress. I'd never been inside Congress. The Committee on Standards of Official Conduct had twelve members. They were, and always have been and always will be, 50% Democrat,

50% Republican. So six of each. In those days you couldn't tell one from another in terms of what you would expect on an investigation. And they, without mentioning any of the names that I'm going to — well anyway what I want to say is they ran the gamut from being as high-minded public servants as I've ever met to being somewhere in the middle to being very stupid and not remotely ethical.

MS. CAVANAGH: Was that surprising?

MR. NIELDS: It was surprising. The range of it was surprising. The whole investigation was something that the Committee didn't really want to do. And it was forced upon them by the press. And I'd sit through meetings and hear them debate things and your hair would stand on end. Like one guy said wait, we want to send a questionnaire out, we suggested a questionnaire go to every member of Congress to find out if — and I'm sorry, I'm getting ahead of myself because I haven't told you what the investigation was about — but needless to say it was taking money from the Korean government or representatives thereof in return for foreign aid, both military aid and financial aid under Public Law 480 to buy goods from the United States. And so like in one discussion one of the members said well, okay, I'm okay with the, we'll send out a questionnaire to everybody but I want the amount of money that we're asking to be changed from above \$100 to above \$125 because I was given a set of cuff links and they were \$125. That was the kind of conversation that you sometimes get.

But they never made a wrong decision. And the reason they never made a wrong decision was a mixture of, they were good people, and outside the room any decision they made that would be public would be looked at by the press and commented on by the press immediately. And that just held them in place. So it was a lesson in the importance of the electorate and the press in —

MS. CAVANAGH: Like a check on them.

MR. NIELDS: A good check on them, yeah. So the Koreagate investigation arose because there were rumors and allegations that the Korean government was paying money to members of Congress in return for foreign aid. And of course their military aid was extremely important both for them and for us. But the investigation ended up focusing pretty much on the Public Law 480-kind of aid which was, and I'll tell you the basic story of the case.

So the main player in Congress was Otto Passman. He was on the House Appropriations Committee and he was Chair of the Foreign Relations Subcommittee. And that subcommittee decided how much aid other countries would get from the U.S. And Otto Passman, I mean in those days seniority and committee chairs and subcommittee chairs were just hugely important. He could decide how much aid Korea was going to get. He also was from Louisiana, which as I learned is only marginally part of the United States of America. It had a very different culture. And Louisiana is a place where rice is grown. And Monroe,

Louisiana, which is where Otto Passman is from, his constituents were rice growers. And Korea did not have enough rice within its borders to feed its population so they needed to buy rice. And Otto Passman could extend them Public Law 480 loans in return for which they would buy rice from Otto Passman's constituents. And he also had the power to put into the law a provision that said every rice purchase had to go through a commission agent. And Korea would name the commission agent. But then Otto Passman would go over to Korea and tell them who to name and who he told them to name was Tongsun Park, the sort of Georgetown — he was Korean by birth but he'd spent a lot of time in the U.S. and he was a weird sort of socialite who was having a romance with Tandy Dickinson. And I may mention this again but —

MS. CAVANAGH: He's been described as a Georgetown party-giver.

MR. NIELDS: Georgetown party-giver, I'm sure he was that. And Georgetown was always connected to his name. And Tandy Dickinson would show up for depositions and other kinds of meetings we had with Tongsun Park. And they would fight like cats and dogs. I mean it was really quite — he was represented by Bill Hundley who was an old — I shouldn't say old — he was a long-time pillar of the white-collar defense world in DC and a lovely guy. And he would come in and tell me, I'm sorry but there's a big fight in the next room and I can't deal with it until it's over. Stuff like that. But the punchline is that Tongsun Park got \$9 million in commissions from Public Law 480 sales of rice to Korea and he gave

about half of it to Otto Passman. And he would record in his diary that he kept contemporaneously all of the gifts to Otto Passman.

MS. CAVANAGH: He kept records of it.

MR. NIELDS: He kept a notation in his contemporaneously maintained diary. So I mean Otto Passman was a major league criminal. And that was the guts of it when you got down to the bottom of everything. But there were undoubtedly some — and there was enough evidence of this so you didn't have any doubt about it — there was undoubtedly some money just being spread around — cash — in Congress by people from the Korean Embassy and there was lots of campaign contributions by Tongsun Park to various people and maybe some campaign contributions directly from the Korean government.

And so the bad news was that Otto Passman was no longer a sitting Congressman when our investigation was going forward. And that meant we had no jurisdiction over him. We held lengthy, nationally televised public hearings with Tongsun Park testifying and he was testifying because Congress again, not happily but absolutely forcefully, cutting off all aid to Korea until they sent Tongsun Park back to the United States so that he could testify — the Justice Department gave him immunity, and then he testified for them and he testified at live hearings. I questioned him.

MS. CAVANAGH: Was it controversial that he had immunity?

MR. NIELDS: Oh, a little bit, but not really. I mean people cared about what the Korean government was doing and they cared about what the Congress was doing, and he was the logical source of information and you wouldn't have gotten it otherwise.

And it was controversial I suppose that Congress cut off foreign aid to the Korean government, and surprising, but I mean I remember I'm 99% sure I met with Tip O'Neill at least — not like he was following my direction or even particularly chummy with me, and I'll get into that a little bit later — but he, it wouldn't have happened unless he wanted it to, and he wanted it to. He wanted to get to the bottom of it. Or he felt that he needed to do that in order to satisfy the press's appetite.

MS. CAVANAGH: So Tongsun Park testified at a House hearing in 1978 and you questioned him. Is that correct?

MR. NIELDS: Yeah, I mean I questioned him in executive session for three days and then later I questioned him in open session for most, the better part of a day I think.

MS. CAVANAGH: And he implicated other members of Congress.

MR. NIELDS: Yes. And he was — so far as I was concerned, and I think the Justice Department lawyers thought so too — he told the truth about who he paid and how much and more or less under what circumstances. He did not tell the truth about his relationship with the Korean government. He said everything he did, he did on his own. And that made life fun

because he was clearly lying and it was very easy to prove. One lovely little vignette is that — I can't remember what agency, what law enforcement agency did this, but they went into his house and they seized a document that was, I don't know, 5, 6, 7, 8 pages and it was clearly created by the Korean government and it was telling him what he should do, and what he should do was to make campaign contributions and spread other money around to United States Congressmen. And he claimed that he had no idea where that document came from and had nothing to do with it, and in the middle of my questioning of him in open session on national TV he started railing about the people illegally coming into his house and seizing the document. And after he stopped railing about that, and I had a chance to answer another question, I said, Mr. Park, we're not interested in how the document got out of your house. We want to know how it got in.

And there was a mathematical error in that document, an error of addition, some figures, I can't remember what, in the adding up of some campaign contribution money or something like that, and they had been added up incorrectly. Tongsun Park, as I said, claimed to have no connection to the document at all. I mean he claimed he had no knowledge of the document. But, it turned out that one time when he was flying from Washington to Seoul his plane landed in Anchorage, Alaska, some customs agents stopped him and searched him, I can't remember why they did that, and they copied a little slip of paper that he

had on his person and gave it back to him. And we got a hold of that and it had the same numbers with the same mathematical error in it.

MS. CAVANAGH: A smoking gun.

MR. NIELDS: Right. And just generally we had lots of correspondence between him and Otto Passman and others. I can't even remember where it all came from but it was just more fun than a barrel of monkeys, questioning him. All of it added up. You could see he was dealing with the KCIA and other people and he would just lie. Bill Hundley came to me and said, "I'm his lawyer for the purpose of who he paid in the United States. I don't know who his lawyer is for his relationship with the Seoul government, but it's not me."

MS. CAVANAGH: Well —

MR. NIELDS: So then the Committee filed disciplinary charges against four sitting Congressmen. They were, I think, Congressman Roybal; McFall, who I think was the majority whip or something — they were all Democrats — Patten, I can't remember his first name; was he Jimmy Patten?

MS. CAVANAGH: Edward.

MR. NIELDS: Edward, Ed Patten, Eddie Patten; and the guy who I mix up with the guy who had a movie made about him — Wilson.

MS. CAVANAGH: Charles Wilson.

MR. NIELDS: Charles Wilson, Charlie Wilson. And I should just, as an aside, I don't know why I say this but I have to say it, the whole thing was kind of a lark for us investigators. I mean I had six lawyers all of whom I had

hired, and I had six investigators. And we worked in the old FBI House Annex #2 which was the old FBI fingerprint building, and we had plenty of time to do our job. I mean, we did it for the better part of two years and, so we could do it completely thoroughly, we were sort of insulated, nobody was getting at us, and then all these crazy things were —

MS. CAVANAGH: We're good.

MR. NIELDS: Okay.

MS. CAVANAGH: I just like to check.

MR. NIELDS: All these crazy things, we find out all these crazy things that people were doing. And so why did I say that? So, okay so they'd never had disciplinary proceedings brought before. We thought of our job as being, let's see whether Congress can discipline itself. Let's see whether it's up to the task. And there was lots of pulling in, as I told you the Chair and several other members of the Congress just hated this investigation. I mean they were going against their buddies and inflicting real pain on them and —

MS. CAVANAGH: Was it partisan? Because you know I see those four are all Democrats.

MR. NIELDS: Not at all.

MS. CAVANAGH: Interesting.

MR. NIELDS: No, they were all Democrats because the Democrats were the majority party in Congress for years and so they were in control of everything. I think there was one Republican — Cornelius Gallagher, was he a Republican? He also had left Congress. I think he was a Democrat too.

But anyway neither Passman nor any of the people that we brought charges against were Republican. They were all Democrats. It wasn't partisan. I mean —

MS. CAVANAGH: Interesting.

MR. NIELDS: It was just a different era. Yeah, just a totally different era. So we had to cobble together a procedure for trying these people. And you couldn't get twelve Congressmen in a room. You sometimes couldn't even — we had a rule that we had to have a Congressperson present at every deposition that we took. And we took a lot of depositions. And a woman named Millicent Fenwick, who was, she was just marvelous and a little bit quirky — she was a sort of very aristocratic New Jersey, in fact you'll see there is one of the rest stops on the Jersey Turnpike says Fenwick. That's a relative of Millicent Fenwick's. She was just about six feet tall, she was wire-thin, very aristocratic bearing except she smoked a pipe.

MS. CAVANAGH: She cut quite a figure.

MR. NIELDS: It was a dainty pipe. And she —

MS. CAVANAGH: I didn't know there were dainty pipes!

MR. NIELDS: Yeah, there is. And she was a very elegant lady. And she was passionate about, I mean she thought this investigation was just enormously important and that rules should be obeyed and —

MS. CAVANAGH: Was she a member of Congress?

MR. NIELDS: Oh yeah, oh, oh, oh, oh yeah. She was the person that we would get to sit in on the deposition. She, like 70% of the depositions, Millicent Fenwick was the person. She was tireless, she worked until midnight every night, she would sit all day in these depositions and she knew everything about the case and all the facts and all the people and — I'm going to have to tell you an anecdote about her — but anyway frequently, even when it was her, the bells would go off, right? In Congress. I mean they had clocks and the clocks had lights, and you could hear boing! Boing! And two lights would go on, and a bell sound, that meant there was a vote. So your judge sitting for the deposition would walk out of the room, just walk out. And sometimes they didn't come back!

MS. CAVANAGH: That's frustrating!

MR. NIELDS: In fact we were taking the deposition of Melvin Laird who had been minority leader and also Secretary of Defense and we were taking his deposition and the bells went off and somebody ran off and I said I'm sorry, Mr. Laird, but I can't tell you when this is going to resume. So he got pretty impatient. And then he started up picking up the phone and calling every member of the Committee in their chambers. Finally he got one and he said, you get in here goddamn it, I'm not sitting around any longer. So we had our witness getting our member to sit in on the deposition.

One day we had a committee meeting, maybe it started at nine and it was maybe 20 before nine and I'm sitting, and it was like a room like this, like twelve seats around it, a little bigger than this, and browner, you know, brown walls, and Walter Flowers, who was then a Congressman from Alabama, and a perfectly good, I mean a good guy but a little bit of a good ole' boy, and he was sitting there reading his newspaper. And there had been an article about some [financial] practice that had just surfaced that Congresspeople were engaging in that was a big ethical issue. And Millicent walks in. And she is going off about this. She's just outraged. And Walter Flowers is sitting there reading his newspaper. He's got his back to her. And he says, half absently, Millicent, it's a good thing you're rich. No sooner had the words gotten out of his mouth than he knew he'd made a big mistake. She just landed on him. Oh, I'm sorry Millicent, oh, I'm sorry, so I was just you know, not that it made any —

MS. CAVANAGH: She was tough. She had to be.

MR. NIELDS: Yeah, she had to be. Yeah, but she was. So eventually we had to hold these trials and we just made up a rule that you couldn't take testimony without five members of the Committee being there and you couldn't have a decision until everybody had at least said that they'd read all of the transcripts that they'd been absent for. So we'd run around the halls between 8:30 and 9:30 am, you know we'd have told the defendant and the lawyers and the witnesses that they had to be there in time for the

trial. And sometimes we got five people by the time the trial started and sometimes we didn't. And it was election time. It was like October of 1978.

MS. CAVANAGH: It was not the priority for Congressmembers to be at your hearing.

MR. NIELDS: That's exactly right. And I never forget — so we had, in addition to Millicent Fenwick there was Lee Hamilton, Richardson Preyer, Thad Cochran, they were all just fine people and fine public servants. And there were others that were perfectly acceptable. And then I'm not going to name the ones at the other end of the spectrum but there were some pretty surprising people. But they always did the right thing. And Thad Cochran told us, I remember when we asked for approval to bring the charges, the Committee voted on them. Chairman Flynt hated it so much that he checked into the hospital the day we were, with laryngitis, and Tiger Teague had to chair the meeting for him, and they've approved the charges, unanimously as I recall with the exception of Patten and Thad Cochran dissented from the vote to, he just had a very strong instinct that the facts may look like they're there but this man [Eddie Patten] did not do anything wrong on purpose.

MS. CAVANAGH: So Patten was not censured.

MR. NIELDS: Well he was, we brought charges against him, had a trial, and I think they voted to acquit him. I think the Committee didn't vote him guilty of anything. I mean Thad Cochran basically, once the trial was had, you

know everybody came around to his way of looking at it. And again he was a Republican and Patten was a Democrat.

But we really, we had serious trials and serious evidence and serious deliberations and then we went down to the floor of Congress and goddamned if John J. Flynt, who was a good ole' boy from Georgia, didn't get up and do his job on the floor of the House to, I mean he summed up on all of these cases as to what terrible things that had been done and why they should be censured. And I think Roybal got a more severe censure than the other two did. I think he'd perjured, I think he'd lied about receiving contributions from Tongsun Park.

MS. CAVANAGH: Let me just step back for a second. John J. Flynt was the Standards Committee Chairman.

MR. NIELDS: Chairman.

MS. CAVANAGH: Okay. And so Roybal, Wilson and McFall were censured or reprimanded. Correct?

MR. NIELDS: Yes.

MS. CAVANAGH: Right, okay.

MR. NIELDS: By the House.

MS. CAVANAGH: By the House. Okay. And then there were, what other consequences were there for people involved like Passman —

MR. NIELDS: That's pretty — well, okay, I'll get to Passman — now I've come to that, but I'll just say one other thing, I mean I'll never forget this, god! I think Flynt had just given his speech about somebody and I think it

might have been Roybal, and I think I had taken his deposition without a lawyer present. I mean he didn't have a lawyer. I think that's what happened. And Elizabeth Holtzman collared me in an aisle on the floor of Congress and just screamed at me. I mean she was like — but it was just a passing episode but it was —

MS. CAVANAGH: Memorable.

MR. NIELDS: I'm in the political world now. And I thought I had a better grasp on the rules of the road than she did, but anyway, it was a memorable experience.

So then, the only official things we did was, well, we did a whole investigation, but to hold public hearings and then we had these four charges brought and trials of each of the four charges and it went down to the Floor. I mean I had no role on the Floor; I was just there. The Committee members took over at that point. And we wrote a report and published all of our materials. The big deal was the indictments of a guy named Hanna who had done something unbelievably minor and he had pled guilty and I think he went to jail very briefly as I recall but I think he went to jail.

MS. CAVANAGH: I have that he was sentenced to six to thirty months.

MR. NIELDS: Six to thirty?

MS. CAVANAGH: Yeah, but I don't know how long he served.

MR. NIELDS: Yeah, he probably served two or three or four, something like that. And I think they indicted Gallagher but I can't swear to that. They definitely

indicted, the Justice Department, the Public Integrity section indicted Passman.

And then comes a sorrowful story. So they indicted him for bribery which he had committed in the District of Columbia. And they filed the indictment in the District of Columbia. And then the Tax Division of the Justice Department knocked on somebody's door and said wait a minute, he didn't pay taxes on these bribes and we want a tax prosecution. Somebody said okay, so they filed a second indictment charging tax evasion. And Camille Gravel, who represented Otto Passman, went into court — I want to say it was Judge Richey but I really don't know for sure, don't remember for sure, and said these indictments clearly have to be consolidated, they all involve exactly the same facts, so I move to consolidate them. And Richey grants the motion Internal Revenue Code. And then he says, there's a provision of the ...that says a taxpayer has a right to be tried in the district of his residence. Boom, they're in Monroe, Louisiana.

MS. CAVANAGH: Friendlier jury.

MR. NIELDS: Well it's — for two different reasons. Number one, the chief prosecution witness was an Asian, Tongsun Park. And the defendant had done favors for virtually everybody in the jury pool. And they had a five-week trial and I think a 15-20 minute deliberation and he was acquitted. So.

MS. CAVANAGH: So that was it.

MR. NIELDS: That was it.

MS. CAVANAGH: Can you tell me a little bit about Kim Dong Jo, the former Korean ambassador? I think this is someone else who was involved. And I have an article where you were quoted as saying everyone here feels we didn't complete the investigation because we didn't get to Kim Dong Jo because Kim also had an immunity agreement, he had diplomatic immunity that protected him and couldn't be reached by law. Do you remember that, or no?

MR. NIELDS: I mean, it —

MS. CAVANAGH: You were quoted in the press a long time ago about this. So maybe that wasn't you who was personally involved in that aspect of it. It looks like —

MR. NIELDS: I would have been involved in it, I mean there's no way it would have happened without me — I remember the name Kim Dong Jo, I could not have told you who he was until you've just told me now. But I would be 100% sure that you can't prosecute the ambassador.

MS. CAVANAGH: Right.

MR. NIELDS: I mean because of diplomatic immunity.

MS. CAVANAGH: Right. I guess he was the former ambassador.

MR. NIELDS: Oh. Well was he in the U.S.? Well maybe he was an ambassador during the time of the behavior.

MS. CAVANAGH: Yeah. Apparently, I have in my notes he had agreed to answer written questions of cash payments he was suspected of making to members but he didn't really do that in a forthcoming way.

MR. NIELDS: You know it's funny; you'd think I would remember that. Who I remember vividly was Kim Hyong-uk. I don't know whether you ran across that name. He was the former head of the KCIA and he'd come to the United States of America, and he testified. I remember he testified in public session, I remember he came in with a cowboy hat and boots and he sat at a table skinnier than this and he sat like that and I remember questioning him from that vantage point. He didn't have anything terribly important to say but he filled in a few gaps. But one day he had an "interpreter," I think in quotes, named Kim Yung Gil, Kim Yung Gil, I'm pretty sure that was his name, and his fingers were like that, and I assumed he'd had an accident or something. And somebody explained to me later, and he eventually called himself Kim Hyung-uk's bodyguard. And I was told that you want a solid wall of finger-ends in order to inflict a crippling blow. But so Kim Yung Gil, I don't remember if he called me on the phone or collared me in a public place, but he said, "Kim Hyong-uk like to come talk to you. Private."

MS. CAVANAGH: And you're thinking where's your bodyguard?

MR. NIELDS: For some reason I was not scared of him.

MS. CAVANAGH: Good.

MR. NIELDS:

And to make a long story short, I finally said well okay. “We come see you in your office.” Okay. And I met him early in the morning, so like 7 o’clock in the morning I’m ushering them up to my office which was tiny and it had a little table, rectangular table, and they sit down and I’m saying, what do you want to talk about? “A subpoena.” What subpoena? “You subpoena for Kim Hyong-uk’s gambling records.” And then I’m just having a tickle in the back of my memory, oh, yeah, there was some newspaper allegation and one of the people on my staff had served a subpoena on a Las Vegas gambling establishment for records of Kim Hyong-uk’s gambling winnings. And I said well, okay what do you — “We’d like you withdraw subpoena. You ask Kim Hyong-uk now. He answer, you withdraw subpoena.” And I said, well, I don’t see how I can do that but if you want me to ask him questions now I will do that. Or maybe I think he pushed me to ask questions anyway. And I only had the dimmest recollection of what it is that I was supposed to be asking him about so I said, do you gamble? And so Kim Hyong-il says da-da-da, and Kim Hyong-uk says da-da-da-da-da, in Korean, and they turn to me, “Yah.” I said, do you gamble a lot? Da-da-da-da-da — “Yah.” I said, do you win more, or lose more? Do-do-do-do-do — “Lose more.” How much have you lost? And I think I might have asked it for last year or in the last year. Do-do-do-do-do — “Ah, Kim Hyong-uk ask how much you hear he lose?” And I was just taking a stab, I said a million dollars. Je-je-je-je-je — “Yah.” We did

not withdraw the subpoena and it did come back \$987,000 dollars he'd lost at one gambling establishment in one year.

MS. CAVANAGH: That's a lucky guess.

MR. NIELDS: It was a lucky guess. I mean I may have had it somewhere in the back of my head but it also told you how much money the head of the KCIA might have with him to take back to the U.S. and gamble with. He was then murdered.

MS. CAVANAGH: Really?

MR. NIELDS: Yeah. I think two or three years later.

MS. CAVANAGH: Some of the press reports mention that the Unification Church founder Sun Myung Moon might have also been involved?

MR. NIELDS: There was a whole other committee that was investigating Moon. I think they were in the same building that we were. And we played a softball game against them out on the Mall one night. But that's about as close as I got to Reverend Moon.

MS. CAVANAGH: Thought I'd ask.

MR. NIELDS: Oh, one other lovely story at least to me it's a lovely story — one of the things we had to do in that investigation was clear a whole lot of people in Congress whose names had been mentioned in the newspapers who had nothing to do with anything. And the press was completely on steroids. It was the first thing that had happened since Watergate and they were all terribly excited about it. And there was one article that says that up to a hundred members of Congress were involved in this

scheme, bribery. Now it could be that that's true and we just didn't find out about it. But I don't think so. And one of the people whose names, I think both the majority leader [James] Wright and Tip O'Neill had stories written about them. And one of our jobs was to sort of get to the bottom and clear the people that didn't deserve to have their names bandied about. And it fell upon me to take the deposition of Tip O'Neill. And I was contacted by his lawyer and the lawyer wanted him to be deposed in the lawyer's office in Potomac, Maryland, not office, living room, and I said fine, and I went out there and there was this one story about him which I just needed to ask about but it was embarrassing to me to have to ask him about this. It was story that he had been running around the streets of Seoul with pillow cases full of Korean money.

MS. CAVANAGH: Tip O'Neill.

MR. NIELDS: Tip O'Neill. Okay. And there boondoggles you know, that Congresspeople were taking, and so I went out there and I'm pretty sure it was just me and Tip O'Neill and his lawyer in the room and a court reporter. And there were some other things that I needed to ask him about. And I got through it, I think the whole thing took 45 minutes max. And I remember distinctly that he never looked at me until the very end. He was not going to recognize that some young whipper-snapper had a right to be forcing him to give a deposition. But he also knew he had to give it. And I had postponed asking about this question

but I finally said there've been reports that you were carrying — and nobody knew where the story came from, nobody knew where it came from. So anyway I confronted him with this story and then found out immediately where it came from — it came from him. And it was one of his favorite stories. He proceeded to tell it. He said well, me and Eddie Boland (who was another Boston, Massachusetts Congressman) go to a gambling establishment and they took us to a gambling establishment and we started gambling. And I remember I says to Eddie, "hey Eddie, I keep winning. How come we keep winning? He said, I don't know, Tip. I keep winning too. I don't know how." And then he says at the end of the evening that they go up to the window and they had won so much won, that was the currency, that they were handed four pillowcases full of won. They couldn't even hand it through the window, you know, they had to take it around and he gave it to them through a door. And he says "so we walk outside and we hail a taxicab, and I says Eddie, what are we going to do with these won? I don't know, Tip, what are we going — I don't know. So we get in a taxicab. And we get in a conversation with the taxi driver and we asked him about his life, where he lived and he told us that he lived da-da-da, and he's been working all his life and he and his wife hope one day they can buy a house." There's a small house a little bit outside the city. And he drives Tip and Eddie Boland past the house and points it out to them. And Tip says, "I looked at Eddie and Eddie looked at me, I says

to the cab driver, how much does the house cost? And he says, da-da-da-da a million won. I says to Eddie, Eddie, how much won we got in these pillowcases? You know, just about that amount. So we said, here! You take the won! Buy yourself the house. And then he took us to our hotel.”

MS. CAVANAGH: What a great story.

MR. NIELDS: Wasn't it great? By the way, won, which they knew, couldn't be taken out of the country. It was a blocked currency. You couldn't take it with you. I mean that's why, I'm sorry, that's what I should have said when he's explaining —

MS. CAVANAGH: Wasn't that generous.

MR. NIELDS: Yeah, what do we do with this won? There's nothing we can do with it. We can't take it with us. So anyway that was —

MS. CAVANAGH: That's a great story. So he made eye contact at that point, when he told the story.

MR. NIELDS: Exactly. Exactly.

MS. CAVANAGH: You saw more of the famous Tip O'Neill personality then.

MR. NIELDS: Exactly. And then he dealt very courteously with me from then on and when we were talking about larger strategy issues.

So I think that's about all I'm worth on Koreagate. Unless you have other questions.

MS. CAVANAGH: Yeah, I'm looking. You know some of the commentary at the time suggests that this whole scandal, this Koreagate, didn't really have many

long-term consequences particularly post-Watergate, in comparison with Watergate. And I guess I'm wondering what your reaction is to that in terms of what you thought in terms of the outcome as well as your thoughts about the difficulty or not difficulty of getting Congress to sort of investigate itself. You had mentioned that as an issue of whether or not that was possible or efficient. I'm curious what your reaction is at that time.

MR. NIELDS: Well, I maybe shouldn't have had this thought but I told you in a way it was a lark. Put Otto Passman to one side just for the moment. This was mainly something the Korean government was doing on our soil. It didn't, campaign contributions hadn't been reported and there was clearly an influence peddling, bribing thing going on but really it was Otto Passman. I mean Edwin Edwards, I forgot to talk about him, but it was really Otto Passman. And since he was both out of Congress and then acquitted because of the Justice Department bungling there was no big crescendo at the end of the case. I do think, I mean I'm not sure Congress can take credit for being vigilant about its internal ethics enforcement, but I think that was the first time that they got used to the idea that, yeah, we really need to do this. And they have done it, not that infrequently in the years since. So I thought it served a purpose but compared to some other things that I've done the consequences were — I mean it was really fun to do and it was a good group of people to work with on the investigation and it was just enormously educational about

Congress. These plastic figures were not plastic at all, and they differentiated one from another enormously.

MS. CAVANAGH: And it gives me fuel for asking you more questions about the comparison later when you worked for Congress again. So we'll hold off on that. How did you decide what you were going to do after that? What was your next step?

MR. NIELDS: Law firm.

MS. CAVANAGH: Mm-hmm.

MR. NIELDS: And I interviewed in New York and in DC and —

MS. CAVANAGH: Now why did you decide to do that? Because you had thought about teaching.

MR. NIELDS: Oh. Sorry, what I'm thinking about is did I interview for law schools again? I don't think I did. Not sure.

MS. CAVANAGH: In 1979?

MR. NIELDS: I'm pretty sure I didn't.

MS. CAVANAGH: I think, just not to get ahead of myself but I think I have in my notes that toward the end of your time with the Iran Contra hearings you had considered going to teach. Or maybe Gail had been quoted as saying you were interested in teaching. I have in my next stop here that you went to Howrey and Simon.

MR. NIELDS: I definitely went to Howrey and Simon next. And I think the only story to tell is that I interviewed in New York but my wife clearly did not want to go back. And if it had been the, if I had gotten like this kind of

job in New York, nothing in DC, I mean we might have gone back but she really didn't want to go back. [I did consider teaching once again sometime in the 1980s but Gail was strongly against leaving D.C.]

MS. CAVANAGH: She was teaching —

MR. NIELDS: She was teaching.

MS. CAVANAGH: When the kids were in school —

MR. NIELDS: The kids were all in school and she was really enjoying teaching and she was really enjoying teaching and she was really good at it and it would have been very disruptive. I don't — so anyway I was — and Howrey came up fairly late in the — do we have to do some more?

MS. CAVANAGH: We're good. Just like to check and make sure it's alive.

MR. NIELDS: Sort of late in my interviewing process and it was a law firm that did nothing but litigation and it clearly had lots of trial lawyers in it, not just litigators, and it seemed energetic and it appealed to me and I took a job there. I was not, I did not, the other firms had offered me partnerships I think. I'm not sure. I think so. And Howrey didn't want to offer me a partnership and I said, I'll tell you what, I said — they said, we don't know you. I said, I want you, and unless you do this I'm not coming — I didn't say it rudely but I want you to vote me a partnership effective next January — this was March — and if you don't like me you can revoke it. But I want inertia to be on my side. They said, well that's pretty interesting. I like the way you bargain. We'll do that. So that's what happened.

Except that what really happened is I think it was, we went off, Gail and I took a vacation, it must have been with our kids, to Puerto Rico I think, and I got back and the next day I'm going to work at Howrey and the phone rings at 7 in the morning. It's Paul Michel who had headed up the Justice Department's Korea investigation, so I'd gotten to know him. He was then a special assistant or a deputy or something to Ben Civiletti, who was then head of the Criminal Division, and he basically asked me would I be interested in doing the FBI case.

MS. CAVANAGH: So you were not at Howrey for long before you were doing that.

MR. NIELDS: Yeah. I mean I actually was a Howrey employee — the Justice Department was one of my clients and Howrey got paid \$100 an hour or something like that or maybe even less, I don't recall for sure. But I — and I had at least one other case that came into me the very first day that I actually did, I mean, and didn't shirk it. But for the next 20 months, well 18, 19, no, the next —

MS. CAVANAGH: I have 20.

MR. NIELDS: Twenty. The next 20 months I was working seven days a week, 15-16 hours a day.

MS. CAVANAGH: Were you at DOJ or were you working from your office at Howrey? Or both?

MR. NIELDS: I mean I was occasionally in my office at Howrey to do this other matter that I was, that I had, but no, I was at DOJ and we started off in a building called Federal Triangle where you rode up and down the

elevators with huge bags of garbage in the morning and in the evening. I mean it was not —

MS. CAVANAGH: Not as nice as Howrey.

MR. NIELDS: Not as nice. Then I moved over to main Justice and then as the trial approached we got space in the courthouse. But I was there, and the reason there was so much work was “graymail.” I don’t know if you know what that means.

MS. CAVANAGH: I don’t.

MR. NIELDS: Okay, so the defendants sought massive discovery into documents that were highly classified.

MS. CAVANAGH: The defendants, are we talking about Mark Felt and Edward Miller? Okay because we’ll talk background about that in a minute.

MR. NIELDS: Oh, okay, sorry.

MS. CAVANAGH: Just so you know. Go ahead, yes. Graymail. You can —

MR. NIELDS: Oh yeah, you mean a larger background.

MS. CAVANAGH: Yeah, I mean larger background.

MR. NIELDS: Yes. Yes, yes, yes. Yes.

MS. CAVANAGH: I know what you are talking about, but for posterity.

MR. NIELDS: Well maybe I need to just at least give you, give this record a brief background. So they had, when I got the call from Paul Michel, the second and third, formerly second and third ranking officials of the FBI, one the deputy director, Mark Felt, and the other the head of the intelligence division, which was Ed Miller, had been indicted for

authorizing secret warrantless probable cause-less searches into people's homes and when they went in they copied all manner of very personal documents and then disseminated them around the Bureau and recorded them, recorded those searches in FBI files in a misleading way to any outsider, the documents said we contacted an "anonymous source" at the home of blah-blah-blah, that was code for we broke in or we picked a lock or we bribed the landlord. And they — nevermind, that's a description of what the, the memoranda by Felt and Miller authorizing the break-ins said, and they were also put in the FBI's "do-not-file" file. So that they —

MS. CAVANAGH: Why were they doing that? What was their motivation?

MR. NIELDS: You mean what were they after?

MS. CAVANAGH: What were they looking for?

MR. NIELDS: They were looking for the Weathermen fugitives that had been indicted for setting off bombs in government buildings and setting off bombs in businesses, I mean they were sort of the domestic terrorists of the day. And the FBI was humiliated because they couldn't find any of these fugitives. And so they were looking for clues to their whereabouts and they broke in, or they sneaked into and searched homes of friends and relatives of the Weathermen fugitives. So that's basically what that was about.

And as part of their defense they wanted to show two things — one was that the Weathermen were agents of foreign powers because that

was relevant, at least marginally relevant to the question of whether what they did was clearly unlawful and whether they believed it to be unlawful; and the second was they wanted evidence that showed that the U.S. government at higher levels than themselves had engaged in or authorized the FBI to engage in similar behavior. And all of that information and anything they wanted to read in order to try to find that kind of information was likely to be classified. And when I first took over the job from the person who left because this looked like a thankless and maybe fruitless effort to prosecute given the problems with getting the evidence to the defense to which they might be entitled, the classified evidence to which they might be entitled, I was basically told you're going to have to persuade the judge that they're not entitled to any of this. And they're not even entitled to get it and read it but they're certainly not entitled to use it in an open trial. Or else we're probably not going to be able to prosecute the case. So that process took an enormous amount of time and energy. And I'll tell you more about that in a minute but the other side of the coin was by the time I had finished going through all of that I knew the case so well that I could thank the defendants for giving me all this time to — and I also started to understand how important the case was because of the amount of energy that the intelligence community was putting to trying to stop it from going forward.

MS. CAVANAGH: This was not a lark.

MR. NIELDS: This was not a lark.

MS. CAVANAGH: So when did you get involved? Were you involved in the investigation?

MR. NIELDS: No.

MS. CAVANAGH: Okay.

MR. NIELDS: When the investigation began I think in the wake of the Church and Pike committees — those were two Congressional committees, one for Senate and one House, I think, into the intelligence activities — and I think the Civil Rights Division, it may have been the Criminal Division. I think it was the Civil Rights Division that was kind of investigating and they found evidence of bag jobs which is what these things are called, done by the New York office of the FBI, and indicted some lower down agents. And there was a hue and cry about how unfair this was and so forth.

MS. CAVANAGH: Unfair because they were lower level agents and it was clearly coming from higher up?

MR. NIELDS: I think so. I mean I wasn't there. To the degree that, I'm telling you what Frank Martin, who worked on the case with me and had worked on it from the beginning, told me basically, but. And there was a guy named John Kearney who was just universally loved and admired who had, he was, in the New York office, and so people were upset about him being named and I'm not 100% sure that some of these were not real bag jobs but were instead simply placing microphones inside, and for years, hearing was not regarded as being a search. So the Fourth

Amendment did not apply to wiretaps or even the microphone that picks up sounds of voices, until *Katz* against the United States [389 U.S. 347] which the Supreme Court decided in 1967, they finally overruled *Olmstead* [*v. United States*, 277 U.S. 438 (1928)], which over Brandeis's dissent had said hearing is not searching. And so there was legitimate confusion about how the Fourth Amendment applied to microphones which the FBI thought sort of that it was okay to sneak into somebody's house as long as you didn't search and seize anything and did nothing more than leave a mike behind, and then the hearing was not a search, so nothing bad had happened.

But anyway I'm sorry. What did you just ask?

MS. CAVANAGH: I had asked if you were involved in the investigation.

MR. NIELDS: Oh, okay.

MS. CAVANAGH: So you came in —

MR. NIELDS: Okay. So, at some point those indictments were all dropped and somebody, and I think it was a guy named Bill Gardner who was, he was certainly head of the task force that was investigating whatever they were investigating, and he found — no, so somebody, so there was a civil case brought by the Socialist Workers Party. And they uncovered in their suit something referred to as COINTELPRO which, counter-intelligence . . . or whatever that pro stands for.

MS. CAVANAGH: Counter Intelligence Program.

MR. NIELDS: Program?

MS. CAVANAGH: Starting in 1956.

MR. NIELDS: Yeah, which the FBI was engaged in. And it was more of really trying to harass and limit and impede what they saw as a leftist and non-patriotic organization. But a young FBI agent who was making discovery in that case stumbled across the memos in the New York office that recorded, “we contacted an anonymous source” — that were in a do-not-file file and it said we contacted an anonymous source at such and such a house, security was guaranteed, and blah-blah-blah. And that started what ended up being the Felt-Miller case. And Bill Gardner, I think it was him in person, came upon in another do-not-file file in the FBI headquarters, he came across the memoranda where Ed Miller and Mark Felt had approved the bag jobs in New York and some others in New Jersey.

MS. CAVANAGH: And what about L. Patrick Gray?

MR. NIELDS: L. Patrick Gray was the acting head of the FBI. The bag jobs were done in 1972 and '73 so it was in the Nixon era, and L. Patrick Gray — I don't know why he would have been — I guess Hoover had died, Hoover and Clyde Tolson died, or else Hoover died and Clyde Tolson resigned, retired, and they were the head of the FBI, the director and the deputy director. And so L. Patrick Gray was made acting director. I guess he was supposedly going to be appointed director. And he was also indicted and I think what I'm about to say had already started to happen before I came in, but there were people on the investigation who

had misgivings about having indicted L. Patrick Gray. And they ended up thinking that he had probably not known about the bag jobs done on U.S. citizens. And at most he may have known about a bag job done on a foreign terrorist organization. And that whether that was lawful or not it was not prosecutable. It was not clear enough that it was illegal to be prosecutable. And so I think Gray's case had been severed but not dismissed when I took over the Felt-Miller. So the Felt-Miller case was headed for trial assuming we could solve our graymail problems, and L. Patrick Gray was waiting on the sidelines and I reviewed all of the evidence regarding L. Patrick Gray and reached a fairly clear decision in my own mind that he should not be prosecuted. We did not drop the case, however, until we had had an opportunity to hear from Mark Felt at the trial since he could have key information which *nobody had ever had a chance to get from him* because he couldn't be put in the grand jury while he was a defendant in his own case.

So that's the — again, where are you?

MS. CAVANAGH: So Felt didn't implicate —

MR. NIELDS: No.

MS. CAVANAGH: — Gray.

MR. NIELDS: No.

MS. CAVANAGH: Well I guess you could tell us a little bit about your impression of Mark Felt and Edward Miller and their testimony.

MR. NIELDS: Well let me tell you more about this graymail, okay?

MS. CAVANAGH: Sure.

MR. NIELDS: It took really up until — so I came in in March and we were solving graymail problems all the way through the middle of the next summer. And it was nip and tuck. What happened was we had very compelling arguments that there was no issue that went to legality of what they had done. That the Weathermen, there was a case called U.S. against U.S. District Court [407 U.S. 297 (1972)], affectionately known as the Keith Case, decided in June of 1972, that held for the first time that you could not conduct a warrantless national security wiretap of a domestic subversive.

MS. CAVANAGH: Is that the same case as — I have it in my notes as the Plamondon case? I don't know what that is.

MR. NIELDS: I don't know what that is.

MS. CAVANAGH: I'll look it up.

MR. NIELDS: It might be.

MS. CAVANAGH: I'll look.

MR. NIELDS: That might be the name of — the case went up to the Supreme Court —

MS. CAVANAGH: 1972?

MR. NIELDS: — with the name of the judge — Judge Keith — that decided it as the party.

MS. CAVANAGH: Okay.

MR. NIELDS: And so it could be that there was an actual human being named Plamondon who was in it. [Lawrence Plamondon had been charged.]

But the government had argued, the Justice Department had followed a procedure of having national security wiretaps on U.S. citizens, not foreign agents, but who were subversive and a threat to the government, on personal case by case approval of the Attorney General. And the Supreme Court decided, to the Justice Department's amazement, 8-0 I think. Could have been 9-0 but I think, something runs in my mind that Rehnquist recused himself or something like that, that it was unconstitutional to do a warrantless wiretap in a national security/domestic case. They left open the question of whether you could do a wiretap on a foreign agent. And the Justice Department hadn't argued you could do a *search* without a warrant in a domestic "security" case, i.e., that you could break into somebody's home, they had only argued, they said this [wiretapping] is a much lower intrusion than searching inside somebody's home or entering somebody's home. So, and then [right after the Supreme Court decided the *Keith* case, the FBI wrote an internal memo initialed by Mark Felt and Ed Miller that they had just reviewed all of their information about the Weathermen and they were not foreign agents and so they were cutting off the wiretaps on them — and then they [Felt and Miller] authorized a bag job — a real physical search — on one of the Weathermen whose wiretap they'd cut off, after that. We had internal memos, or an internal memo, from J. Edgar Hoover in 1966 when he figured out that the public wasn't going to stand for these bag jobs anymore, in which he told the whole

FBI “no more of these techniques may be used.” Then Ed Miller and Mark Felt after Hoover died decided they wanted to start them up again. And the Supreme Court case law just didn’t give a hole for where the FBI could argue that the law was unclear about whether you could do a warrantless, and particularly a warrantless and probable cause-less search, into someone’s home. And so we put that all in briefs to the judge and asked him to rule that they weren’t entitled to all this stuff. And the judge was Judge William B. Bryant. He was the first African-American Chief Judge of a district in the country. And he was Chief Judge when we tried the case.

MS. CAVANAGH: I remember him.

MR. NIELDS: What’s that?

MS. CAVANAGH: When I clerked for Judge Oberdorfer he was senior and he was still in the courthouse.

MR. NIELDS: He is my one adult-life hero.

MS. CAVANAGH: Judge Oberdorfer really admired him.

MR. NIELDS: Oh, god, he was an extraordinary person. He had a wonderful sense of humor. He was kind and empathetic and he loved a good fight, and he had — it was like, his love of justice was like, it was in his body. I mean you could — his body would react to good things that were happening in the courtroom and bad things that were happening in the courtroom. And I, he wrote this opinion saying you know, I’m going to let the defendants have a defense. Not legally — but I’m going to let them get

the evidence that they want to use in whatever defense they're going to make. And after first thinking that well, maybe we're not going to be able to try this case, and then we were first thinking slightly grumpily that he hadn't accepted my arguments and then worrying about whether I would ever get to try the case, I concluded and more and more emphatically in my own mind, that he was absolutely right and that this case was a peanut case if they don't get to put all of their defense and we don't get a jury to decide it based on everything.

So we set about in a painstaking — there was no CIPA. Do you know what CIPA? Well eventually Congress passed a Classified Information Procedures Act which was designed to find a way through the graymail. Graymail means blackmail but it's not that bad a thing but it's where you try, you say to the prosecution if you don't give me all the evidence I'm entitled to and let me use it at a trial then you can't prosecute this case. And that's clearly the law. I mean it was a law then. And so we had to, there was no Classified Information Procedures Act and we had to sort of make one up. They were working on it in Congress but we had to kind of cobble together something that was fair and there were like 200,000 classified documents that we had to solve all of them or effectively all of them. And so we would redact classified information and revealing sources and methods of intelligence gathering out of the document. If you couldn't do that we would sometimes take a paragraph of the document that had something hot in it in terms of

disclosing a source or method, and summarize the information and offer it to the defense in place of that paragraph. We sometime would agree to stipulate the facts that were more harmful to us than the document or at least equally harmful to us, and so on and so on and so on and so on. And that was all fine. But we don't, you know nobody's got the rest of their lives to work on this case and the judge was extraordinarily patient.

MS. CAVANAGH: Is this why there were all these postponements of trial?

MR. NIELDS: Oh yeah. That's all of the — and it was nip and tuck whether we were going to — and part of it was psychologically persuading the defendants that we were going to solve the problems. And once we got them there they would then focus. Instead of trying to make it about 200,000 documents they would focus eventually on the 50 that they actually would use if they had them available. Because they wouldn't want to, you know, not have, they needed to prepare their case at the same time as all of this stuff was going on. And I did one thing that I am very glad I did, well I did two things.

The first was I decided to take away from them any claim that they didn't know what they were facing. So I wrote a document that outlined our entire direct case with every document I was going to use and a summary, in effect, not a long summary but a summary of what every witness was going to testify to, and said to the defendants, this is what you're dealing with, tell me what documents you need and focus for god's sake to deal with this case.

And the second thing I did was that the judge had already made a ruling shortly before I got there that a particular group of documents about the Weathermen couldn't be used and it was proper that they not be used. And they had the most useful (to the defense) information about the Weatherman of anything that I had seen. And I would, the defense lawyers had file cabinets with locks on them, they all had clearances so they could see the documents and then for really highly classified documents they had to come into the Justice Department and go to what we call the Vault and then they could look at those documents in the Vault. And the judge would see the documents completely unredacted. And they were upset and annoyed — and this particular group of documents that they had been denied, they, I remember a couple of times them mentioning this is really not fair, and I went back and I remember talking to Frank Martin and I said you know, I think they're right. And even though we've already won this I want you to find a way that we can persuade the intelligence agencies that they need to give this up. And what we were doing was not fighting with the defense lawyers so much after Judge Bryant ruled; we were fighting with the intelligence agencies. And they would tell you everything was classified and couldn't possibly be used, partly because they had legitimate national security concerns and partly because they didn't want the case to go forward. And it took like months before we were even remotely knowledgeable enough and savvy enough to be able

to see the holes in what the intelligence committee was telling us
So Frank works on it for two days, he comes back, said all of this stuff
came out in the Pike and Church hearings back in 1975. It's good to go.
So I told that to the defense lawyers and told it to Judge Bryant because
he had ruled that it wasn't usable by the defense, and I said we've
looked into this and we think it is incorrect on our part and that this
should be made available. And that sort of switched the mood. I mean
they, I think the defense lawyers stopped thinking we were using this as
an excuse to deny them evidence and the judge I think got the
impression that we were serious and we were going to try this case.

MS. CAVANAGH: Did you discuss, were there ever plea discussions?

MR. NIELDS: Um-um.

MS. CAVANAGH: No.

MR. NIELDS: Oh, I can't remember, somebody may have offered or broached pleading
to a misdemeanor. There was a misdemeanor on the books. And we
thought that was not this case. It was not designed for this case. It was
designed for something — and this was the FBI doing something that it
knew was illegal, it didn't know that it was wrong in some sense, I mean
they got medals but they knew that neither the public nor the courts
would tolerate it if they found out about it. And so they kept it secret
and falsified their internal documents. And it was stupid. I mean one of
the things about this was they had no probable cause and never found
anything.

MS. CAVANAGH: You mean they didn't find anything against the Weather Underground as a result of the —

MR. NIELDS: They didn't find a single clue and they didn't find their whereabouts and they didn't find any evidence against them. I mean these were innocent human beings whose houses they were going into and reading all their personal information and it was sort of funny, one of the guys they did a bag job on was named Leonard Machtinger, he was a partner at a medium-sized New York law firm, and a reputable one, and his brother was Howard Machtinger and he was a Weatherman who had done some bad things. And they broke into his house and they found some cards which they photographed. And they had some funny writing on them which they thought might be code. And they sent it to the FBI crypto-analysis group and when the trial actually happened and Leonard Machtinger came down, and he must have known, we must have given him copies of what had been taken from his house, and he brought down the actual cards and the cards were cards that he had because he was learning Hebrew. And the weird crypto-analysis, you know the thing that needed crypto-analysis, was Hebrew. And it didn't look like regular writing. But if you want to know what it meant all you had to turn it over.

MS. CAVANAGH: It's like a flash card.

MR. NIELDS: It was a flash card! So the FBI seizes all this stuff and sends it all to its lab. All they had to do was turn it over if they wanted to know what it said.

MS. CAVANAGH: But the law enforcement community, was it supportive of Felt and Miller?

MR. NIELDS: Mm-hmm. Yeah, very strongly. And the FBI was assigned to our case and that was a very interesting dynamic. By the time we were going to trial there was just one guy and one supervisor. But they were definitely, wow — they were definitely hoping that they could help get the case thrown out or withdrawn. But reluctantly they would do the dirty work about piling up documents, getting the redactions done, and, sorry but while I'm on this, and then I'll get off this graymail thing completely — we got, somewhere toward the middle of the summer before trial, and there was one outstanding issue of some size that went all the way to the White House, to the President for a decision. The defendants wanted to do something, use some piece of information, and our, the intelligence agencies were really strongly against it, and so it was all right, do we drop the case or do we go forward? And it was a Presidential decision and Lloyd Cutler was the White House counsel and he eventually said, we will — we had a meeting and he looked me in the eye and he said, the judge had ruled that they were entitled to it. That's where we were. And Cutler said to me, you — we're going to go forward with the case. The President wants to go forward with the case.

But we want you to go back and make a motion to reconsider before Judge Bryant. And I'm like, this judge is bleeding justice and he has agonized over this and he's made this ruling. I really don't want to go back. I don't remember if I said that to Lloyd Cutler or Bob Keuch who was the kind of DOJ guy who was kind of looking over my shoulder. I think maybe I just said to Bob Keuch — I nodded to Cutler and then I said Bob we're not going to do that. And he said oh yes you are.

And so I went back to court and I made orally what for me was an acutely painful request for the judge to reconsider. And after I had made it, and I think he knew it was acutely painful, I walked back to the table in the courtroom and sat down and Frank Martin says, [*whispering*] "He thinks you're going to drop the case if he doesn't rule for you." And I look up at him. And I was doing it — it was painful but what was painful was that I was even asking him. I was like expecting him to rule no, of course I'm going to stick to my guns and fine, Judge, let's go to trial. And I look up at him and he's sitting there like that [head back and eyes shut]. And I said to myself I'm not going to mislead this man. So I went up and I said, "Your Honor, we do press our motion but if you deny it we will try this case."

"Denied!"

MS. CAVANAGH: Was anyone upset with you for signaling your —

MR. NIELDS: Well, nobody was there. Nobody was there.

MS. CAVANAGH: Okay.

MR. NIELDS: Nobody was there but me, but—

MS. CAVANAGH: You made that a lot easier for him. For Judge Bryant.

MR. NIELDS: Oh, no, I mean once I saw what, I mean, I—

MS. CAVANAGH: Sure. Oh my goodness.

MR. NIELDS: And then they never did, the defendants never did what they were threatening to do.

MS. CAVANAGH: Really?

MR. NIELDS: And, nor would I have done it in their — it mean it actually would have caused at least a slight real problem. Now there was a lot of baloney problems but it would have caused at least a slight problem and it would have benefitted them hardly at all.

MS. CAVANAGH: Do you want to talk about the trial a little bit? Former President Nixon appeared as a witness? Is that right?

MR. NIELDS: Yes, yes. So the first thing you need to know about the trial is, it lasted about a little short of two months. And from almost the first witness we were, it was almost a no holds barred trial. The defendants opened the door as wide as they could have opened it to permit us to explore both factual and legal issues in front of the jury. I was reading Supreme Court cases to witness after witness. They called a guy named Bob Blakey who had written the federal wiretap statute and they got him to testify that he believes that the searches were lawful, national security searches. I can't remember what his theory was, but I had been told by Frank Martin that "Blakey might be the only guy who knows more about

the Fourth Amendment than you do.” So I took great pleasure in cross-examining him. And the ethos as well as the logos were with me and when I got done cross-examining him — it’s one of my proudest moments in court — I sat down. The defense lawyer got up and said, “now Mr. Blakey, it is still your opinion that these were lawful searches.” And he said, “Yes. I shudder when I say it, but yes.”

MS. CAVANAGH: But there was a lot of testimony like that, right?

MR. NIELDS: There was a ton of testimony. I mean the first witness was Bill Gardner who had found the Felt and Miller authorizations to do the bag jobs. And they went after him in various kinds of ways and I started showing him Supreme Court cases. And reading them to him. And Justice Jackson’s opinions are just lovely, I mean, you know he had just come back from the Nuremberg trials and he wrote in a Supreme Court opinion regarding the Fourth Amendment, “I protest, these are not mere second-class rights, but belong in the catalogue of fundamental freedoms.” And the jury got a full education on what the Fourth Amendment was about. Even “the poorest man may in his cottage, bid defiance to all the forces of the Crown” made an appearance several times through my questioning. That’s the quote from William Pitt which Sam Ervin was wont to use in the Watergate hearings, I guess when they were dealing with the burglars, the plumbers, excuse me. The plumbers.

MS. CAVANAGH: But what did the defense argue? What was basically their position? I mean I guess some of the witnesses, right, claimed that they hadn't authorized any of the break-ins. But my impression from reading about it is there was a lot of testimony along the lines of, these kinds of black bag actions were commonplace.

MR. NIELDS: There was a lot of that. I mean there were, obviously the Weathermen are a major focus for the defendants and the terrible things that they did and they were just trying to do their job and enforce the law and prosecute the guilty and that they believe, they put on a bogus defense, I mean bogus in the sense it was so contradicted by what they had done at the time but they had an expert come in and take all of the classified information about the Weathermen and testify that in his opinion they were agents of foreign powers. And there was, it's not completely made up. They had Weathermen meeting with foreign powers, or enemies, but they were not, they were us. They were Americans who were mad at the American government. They were not somebody else's. They tried to make these techniques i.e., bag jobs seem as commonplace as they possibly could.

Sorry, I've lost my —

Oh, so there was one witness they called who was a little bit scary. Their defense was, we didn't think we were doing anything wrong. We thought we were doing good, not bad. And they had one guy who was — I'd never seen him before, I mean he'd just, almost all the witnesses

were cold unless they'd been in the grand jury, but there were a lot of them that I'd never seen before. This guy gets up there and he's all business. I mean he is all business. He has got no ambiguity in his mind at all about what he'd done and he starts talking about the bag jobs that he's done and here's how we did this, and I'm listening to him and I'm first thinking, you know, this is not, I don't like the way this guy — because the agents who'd been inside people's homes you could tell it felt more like burglary to them than it felt like law enforcement. It just felt — and I think that's why we won the case as much — I mean that's a huge reason why we won the case. It felt like burglary. Once you had those guys inside other people's houses and looking at their personal stuff and turning their bed clothes over and copying all their documents, but, so this guy is like just all business. And then suddenly something occurred to me toward the end of his testimony. And when he stopped, and I'm pretty sure I didn't move from my chair, I just stood up and said, were you inside people's homes when you did this? "Oh, no!!" It was like that. It was like oh no! Thank you. No further questions.

MS. CAVANAGH: Nothing that terrible.

MR. NIELDS: Exactly. I mean it was all body language and tone of voice but it was like he —

MS. CAVANAGH: That's funny.

MR. NIELDS: It was —

MS. CAVANAGH: Did you cross-examine Nixon?

MR. NIELDS:

Well I called Nixon. I called Nixon, Mitchell, Kleindienst, Katzenbach, and Ramsey Clark. And I did it in my rebuttal case. So the case ends, they were the ones who put Nixon and all these other people into the mix pre-trial, and they, I thought this was just grandstanding. I mean what the hell did Nixon have to do with this case? But I realized as the case was ending that there was a lingering feeling in the air that the people above these folks in the government were not against what they were doing. And I actually believed, I had some ambivalence about this case myself when I first took it. I remember my father said I'm not sure you're on the right side of this case. And it isn't, was this right conduct or wrong conduct? It was wrong conduct. It was unlawful. But you know it's sort of like, well, why didn't somebody just take away their pensions or give them a demotion. Why is this in federal court? And I came to understand in the process of going through the trial and the importance of relying on Supreme Court precedent brought home to me that the only place this kind of behavior was going to get condemned is in a court. And that there was no one above them who was going to rap their knuckles — or maybe they would just rap their knuckles and nothing more. And so that was one thing. And the other thing was, it was deadly that I left unanswered whether these two guys were indeed the highest people in the U.S. government responsible for what they'd done.

So I — and believe me I agonized about this. I mean I sweated over it and, because I knew that Nixon at least and probably all of them, and Katzenbach was in some ways the worst because he — I'll tell you about him in a minute, but anyway all of them except Ramsey Clark were going to testify that they thought what these guys did was lawful.

MS. CAVANAGH: Lawful.

MR. NIELDS: Lawful. All of them. And when I finally made up my mind I suddenly felt okay again. And so when these people were all done, and Nixon was the, no I guess Katzenbach was the last, but Nixon was certainly a crescendo, I asked him about seven or eight questions on direct and established that he had approved the Houston plan which contained surreptitious entry in it, and had a week later withdrawn his approval of the Huston Plan because Mitchell came to him and said the public's never going to stand for this if they find out what you did. And he said that from the witness stand. And I asked him then did you ever authorize or know about any of the bag jobs in this case and he said no. And I got essentially the same testimony from others. Then I sat down and he was cross-examined for a couple of hours and rushed into the defendants' arms and sort of said everything that they wanted him to say. And I stood up and said, what is the body in this country that gets the final say on what the Constitution means? And he said, the Supreme Court. And I said and if the President and the Supreme Court disagree about a question of constitutional interpretation, who wins? And he

said, the Supreme Court. And I knew he was going to say that because he had said it during Watergate. Right? And the jury knew by that time what the Supreme Court had said about all of this stuff. They knew when Nixon was talking that he was saying something that was completely contradictory to what they'd heard the Supreme Court was saying.

MS. CAVANAGH: So the jury found them guilty?

MR. NIELDS: The jury found them guilty.

MS. CAVANAGH: Now they were ordered to pay a fine instead of go to prison. Tell me about that.

MR. NIELDS: I thought that was just fine.

MS. CAVANAGH: You did.

MR. NIELDS: Yeah. I mean I thought the principle of it was just enormously important. I thought that they were, although they were the highest people responsible for what happened and they did start it up after Hoover had figured out that this was no longer an okay thing to do, it was government, it was the government that had overstepped. It was the FBI that had overstepped more than it was these two human beings. I mean they were carrying forward a tradition that had lasted a long time, and they thought, they were mixed up in their heads about whether they were keeping this secret because somehow or another they were engaged in classified intelligence work or whether it was because they knew they were violating the law and if people found out they would be in trouble.

I just felt their guilt, their personal guilt was mitigated by the fact that they lived a life where they got awards for doing bag jobs, you know, behind the wall of secrecy. Anyway I didn't —

MS. CAVANAGH: Interesting parallels later with Oliver North. We'll talk about that later. So there was an appeal, they appealed the verdict, but they were pardoned?

MR. NIELDS: They were pardoned, which was an outrage. I mean it was —

MS. CAVANAGH: President Reagan pardoned them.

MR. NIELDS: President Reagan pardoned them. He did not follow the pardon process at all. He didn't read the record. He knew nothing about the facts of the case. And he pardoned them announcing that they were innocent.

MS. CAVANAGH: Typically, just for background, typically when the President considers a pardon the President talks to prosecutors, consults with prosecutors.

MR. NIELDS: Well, probably what's typical is that there's a pardon attorney whose job it is to vet every application for a pardon, and that involves finding out what the prosecutors think, what the evidence was, what the mitigating factors are, and then does a careful report. But the prosecutors clearly are expected to be a major voice in the decision. And then the President gets that and I don't know exactly who he talks to or she talks to. But it always involves a careful process that results in written paper summarizing the results of that process. And then and only then does the President come in and make a decision. And here it was just totally political.

MS. CAVANAGH: Was there public reaction to it, or was the public moved on at that point to —

MR. NIELDS: Well, I had a very strong reaction to it on television.

MS. CAVANAGH: I read about it.

MR. NIELDS: And I think one of my colleagues wrote an op-ed piece, but no, there wasn't a terribly strong reaction to it, I guess.

MS. CAVANAGH: We should probably wrap up for today in a minute.

MR. NIELDS: Yeah, my god, we're going to both die of starvation. And it's also going to snow.

MS. CAVANAGH: That's true, that's true. It is going to snow. I do want to ask you one more question related to that that we just talked about. What was it like having sort of media attention on you? And I know it was probably not at the level of what we're going to talk about later. But was there a lot of press scrutiny of you, were you, was that invasive? What was it like?

MR. NIELDS: There wasn't any, it was a trivial amount of attention. I remember my opening statement of which I'm quite proud, I think I established I was the patriot and they weren't, and I think that's what I needed to do, and so I read happily about that [my opening statement in the press]. And I do also remember that Fred Graham got on TV after I'd called Nixon and said it was a desperation move by the prosecution and they clearly think they're going to lose the case. And I'm walking down the street thinking I just won the case doing that.

MS. CAVANAGH: Did the press circle back to you later when it came out that Mark Felt was Deep Throat?

MR. NIELDS: I wrote some sort of an op-ed piece —

MS. CAVANAGH: I didn't see that.

MR. NIELDS: I'm pretty sure I did right at about that time. I think I got calls from the press, I'm pretty sure I did. In my mind it was just a mild disappointment that Deep Throat turned out to be somebody who was not engaged in some horrible sort of high-minded moral conflict between duty to person and duty to country. It was just Mark Felt. He was mad that he hadn't been made FBI director. And I knew that he might be — I mean I knew he was one of the people that had been talked about as a possible Deep Throat.

MS. CAVANAGH: Okay. I think we'll finish it up for today.

MR. NIELDS: Good. Good, good, good, good. I'm sorry, I was very long-winded but you're pushing —

MS. CAVANAGH: No, it's great. Just make sure we stopped.