

## ORAL HISTORY OF JOHN W. NIELDS, JR.

### Fifth Interview July 10, 2018

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the D.C. Columbia Circuit. The interviewer is Elizabeth Cavanagh and the interviewee is John W. Nields, Jr. The interview took place on Tuesday, July 10, 2018. This is the fifth interview.

MS. CAVANAGH    So John, shortly after the conclusion of the Iran-Contra hearings you came to represent a class of homeless people. Maybe you can talk a little bit about that and how you got involved in that.

MR. NIELDS        So the story of the homeless case is the story of Mitch Snyder. I don't know if that's a familiar name to you. He had some sort of regular type job in New York City and he moved down to Washington, D.C. sometime in the mid 80's and he made it the mission of the rest of his life to care and look after the well-being of homeless people in Washington, D.C. Through his efforts a statute was passed by referendum that the city of Washington, D.C. would provide overnight shelter, decent humane overnight shelter, to all homeless people in the city who needed it.

A little bit more about Mitch. He was a driven, that's an understatement, man. And he was pursued by furies internally. As I say, he made homeless people in D.C. his mission. In order to do that better, he decided he needed to be a homeless person for 5 months, including in the winter time. I may be off by a month. He told me 2 things about that experience. One of them was that the pain of living on the streets, particularly in cold weather, is absolutely intense and that's why so many homeless people end up on drugs. The other thing he told me was that in

the entire period he was homeless nobody looked at him. I took him to mean nobody looked him in the eye. Nobody recognized him as a person. So I got involved through a colleague at Howrey named Lois Williams who became a very close friend. In fact, I just got an email from her son. She is no longer living. He and his wife gave birth to another grandchild. Literally, just before we started this morning.

Somebody on behalf of Mitch or it might have been Mitch, approached Lois about our taking a case to enforce the law that had been passed by a referendum. And Mitch's view was it had really never been enforced and the District had not been complying with it and this had gone on for long enough that something needed to be done. So they were looking for pro bono counsel to help them. Lois asked me if I would do it and we did it as a team with many other lawyers at Howrey working on it with us, young lawyers. All of them loved working on the case. The issue was that the District of Columbia was saying, well they had 2 or 3 shelters. First they claimed they were not full and second they claimed the reason they weren't full is that homeless people didn't want to be there. It was obvious there were homeless people sleeping on the streets in winter or under bridges. There was a lot, and people died every winter from it. So we first educated ourselves by going to the shelters. They were, as Judge Harriett Taylor later wrote in an opinion, hell holes. People were sleeping on the floor with rats biting on their ears in the middle of the night. Urine water spewing out of toilets that didn't work properly and soaking their

sleeping bags. And the shelters were all full, they were more than full. It was uncomfortably full when you went into them. But if anybody stayed away you can certainly understand why they would have. So we filed a lawsuit against the city to get injunctive relief requiring them to open more shelters and to improve the conditions. They were violating the law in two ways. They weren't providing overnight shelter to every person who needed it and they were also not providing any decent, humane shelter. We had a 5-day preliminary injunction hearing before Judge Harriett Taylor here in D.C. Superior Court, working very closely with Mitch Snyder and a woman named Veronica Daniels, she was a nun and she spent her life triaging homeless people around the city. And another woman named Janelle Goetcheus, who ran a hospital for homeless men called Christ House. They were as cheerful people as I have ever met in my life. They were spending their life with misery all around them. Really extraordinary. Mitch Snyder was not a cheerful person necessarily. So we had a 5-day hearing and the District was trying to cover over the evidence that we were presenting by doing something overnight that was supposedly fixing something and it only made things worse. Mitch would be out and several people working with him and for him would be monitoring what was happening in the real world and we'd all meet at 8 o'clock in the courthouse and then they would be my witnesses for the afternoon. And Judge Harriett Taylor granted our motion for preliminary injunction and it later got turned into a consent decree. The scheme was

that first they had to improve conditions; they had to put showers in, they had to make it clean. We divided the city into 5 segments as I recall it. If the shelters in that segment were full 3 nights in a row, they had to open another one and so on. It was, expand until you met the need in each of these 5 geographical sections of the city. We had to continually monitor and continually come back to court to bring contempt proceedings against the city for not doing what the consent decree said they had to do. So it was ongoing, and we formed very close relationships. There was a guy who worked for Mitch, the only name I knew him by was Little John, and he was not little. He was about 300 lbs and nearly 6 feet tall. We once had a softball game at a field next to my house for everybody who worked on the case and he came there and I'm thinking, how is he going to be able to play softball. He was fabulous. He was a super coordinated guy. We had a guy named Steve Easley who was at Howrey then and probably was most deeply involved in the case, besides Lois and me. He stuck with it right through to the bitter end. He formed a relationship with Little John. Little John drove a hypothermia van and he drove it around every evening and every morning to visit homeless people who were out on the streets and not cared for properly, and to gather information for our case. I think we were in and out of court for about a year. Then the city got tired of or annoyed at having to comply with the decree and they got the City Council to pass a law repealing the law passed by referendum on which the decree was based. And Lois had the thankless job of trying to argue,

which I thought we were going to win when it first happened, but then we did some research and there was law against us on this point. But we thought if the people have passed a law by referendum, their representatives cannot come and repeal that law except by referendum. The law was to the contrary. [*See Atchison v. Barry*, 585 A.2d 150 (D.C. 1991).] So the law was repealed and Mitch and we got together and said, the one thing that you could do is have the people pass a referendum again, that would override the law passed by the City Council. That required a significant amount of work and publicity and reaching voters. Mitch pretty much took that over, not by himself, but just as he had back in the mid-'80s when the first referendum was passed. And I remember about 3 weeks before that vote was going to be on some ballot, I was having trouble reaching him. For about 2 days, I couldn't. Then he was found in his room at CCNV, which was the homeless shelter. [I should have said, he got the city to give him CCNV, which is a huge homeless shelter on 2nd & D Streets, N.W. back in the mid-1980s, by going on a hunger strike. That was very well publicized, you'd see Mitch Snyder lying on the floor in the room not having eaten for a very long time and the city finally caved. He lived there.] And he'd hung himself. It had to do with a relationship that he had with a woman that was at first a groupie of his and then essentially his wife, although I don't think they were married. Anyway it was ugly and tragic. He was susceptible to misery and self-hatred.

Then the referendum lost by 2% or 3% short of the needed 2/3 majority, and almost surely would have passed if Mitch had been around to do the finishing touches of promoting it. That ended our case, except that the city had been in contempt of an order to put bathrooms into one of the shelters. I can't remember how this came about but it was the federal government was going to pay for the showers and the city could never get its act together and get it done. For about a year and a half they just didn't get it done. At the end we had a contempt hearing. They had been held in contempt over and over again.

S. CAVANAGH And fines are being imposed on the city?

MR. NIELDS Fines are mounting up. We hadn't brought the proceeding to make them pay them. But we did after the law went away. I could be wrong about this but I think I have it right. The final fine was \$4 million. That was put into a trust that was used to build, if I remember correctly, single unit, one-room residences with a kitchen and bathroom.

MS. CAVANAGH I have that 400 new units were constructed.

MR. NIELDS That's it. It was a productive case but disappointing to have it end, and tragic the way it ended.

MS. CAVANAGH You didn't argue the case right? You said Lois argued the case?

MR. NIELDS Well I argued many of the cases.

MS. CAVANAGH The D.C. Court of Appeals case?

MR. NIELDS She argued the D.C. Court of Appeals case where we were saying the City Council can't change the law. The precedents were uncomfortably clear

against us. And I think she did the heavy lifting on the contempt fines, and getting the new units constructed. So that's the story of the homeless case. The hearing, the 5 days of preliminary injunction evidence, was a very rewarding process. We had really good witnesses. We were working as a team both with the client world, so to speak, and with our own law firm. People were running around gathering things. It was exciting because it was in real time. It was testimony about what happened last night. There was other testimony that was prepared in advance of the hearing but there was an awful lot of the latter. We had a very good draw with the judge. Harriett Taylor was smart, competent, and her heart was well in the right place. We had been told that by people who knew her. I didn't know her. I had never met her before. But she was a wonderful woman. I will never forget her reading her opinion from the bench on a Saturday morning. When we got to the word "hell hole," we said, we might win this. And it was the only word that would adequately describe the horror.

MS. CAVANAGH Not an exaggeration.

MR. NIELDS Not an exaggeration at all. So that's pretty much it. As I say Lois became one of my closest friends. She stayed at Howrey for quite a long time. She became in charge of pro bono stuff at Howrey, was a trainer or teacher for young lawyers. She ran deposition seminars and oral argument and brief writing and so on and was very competent at it. And then she

eventually went to the Lawyers Committee for Civil Rights, where she stayed for several years, and then she went into the Peace Corps.

MS. CAVANAGH Wow.

MR. NIELDS And she was stationed in Lesotho, which is the landlocked country in the middle of South Africa. There may be another one too. She had a 2-year stint there. AIDS was rampant. It's very poor and it has the highest average altitude of any country in the world. That's one gutsy woman. Then she moved back here. She had some physical ailment, her knees or something like that. She had to come back a little bit early. She lived on the West Coast with her son Patrick, who just sent me the email.

MS. CAVANAGH Ok, that covers everything I know about that.

You subsequently were appointed to be Special Counsel for Rhode Island's commission to investigate the failure of Rhode Island's insured financial institutions. Maybe can you talk a little bit about that.

MR. NIELDS We called it the RISDIC investigation. I'm not sure if I can come up with what the acronym RISDIC, Rhode Island obviously, deposit insurance company corporation would have been the last three. Maybe state, Rhode Island State Deposit Insurance Corporation. [Rhode Island Shares and Security Depositors' Indemnity Corporation.] Here is what that's about. The state of Rhode Island had its own state banks, not federal banks. There were federal banks no doubtedly doing business in Rhode Island, but they had their own banking system. They called them credit unions, but they were savings banks really. They took in deposits and loaned

them out mostly for real estate development. They did not have any federal insurance. Sometime around the last month or two of 1990, I'm pretty sure I'm right about this, they became concerned that there was something not well about their banking system. The real estate market had gone down, which in other states had resulted in savings and loans failing. Maryland had a crisis 5 or 6 years earlier. RISDIC had limited reserves, so the credit unions went to the NCUA, which is the credit union equivalent of the federal agency that insures bank deposits (FDIC). The FDIC is for regular banks and the NCUA is the National Credit Union Administration and it insured credit unions. I'm not positive what the technical distinction is between the two. At least I don't know what the difference is between a credit union and a savings and loan. The NCUA came in and did an audit on all of the Rhode Island banks to see if they were solvent enough to insure. And the answer was no. One after another, they looked at all of the Rhode Island credit unions and there wasn't one they would insure. I can't remember exactly what the other things ... I think there was one credit union that had gone belly up. That was a small one. And it went belly up under just shocking circumstances. The guy who ran it literally walked off with half the money on deposit and fled to another country. I've forgotten his name; it may come to me. RISDIC was a private, it wasn't really state money that was in RISDIC, it was each credit union was required to put in some money into RISDIC to be used to insure if individual credit unions became insolvent. But if there

was something systemic going on, the RISDIC reserves were ridiculously inadequate. And this very small credit union, I think used up all of RISDIC's resources. The combination of all of those events prompted the governor to close all of Rhode Island's credit unions on the 1st or 2nd of January 1991. The huge majority of Rhode Island residents, something like two-thirds, had money in these credit unions and most of those had most of their money in them. They wake up Wednesday morning and they can't get to their money. They weren't allowed to withdraw it. A number of things happened, but one of them was Rhode Island put together this commission to investigate the causes of what had just happened. Somebody else was trying to figure out how to fix the problem if it could be fixed. And for 18 months nobody had access to their money. They finally got people back about 80 cents on the dollar, but with no interest during an almost a 2-year period where they were out of their money.

So the Commission was chaired by a man named Jeff Teitz, who was 6'7" and not slender. He liked eating about as much as he liked anything. But he was very smart and a very well-respected state legislator. And then there were various other people on the commission. There were private lawyers who were just very smart people. There were public servants of one kind or another. It was deliberately diverse. It represented the population of Rhode Island and they needed a special counsel, and Jeff Teitz somehow knew a guy named Alan Baron and asked him if he would be interested in doing it. And he said yes but not alone, and he called me.

The reason we knew each other was that he had represented L. Patrick Gray in the FBI case that we talked about before. He was a class act. I'm almost sure I've got this together correctly, I was called once by the *Baltimore Sun* when Alan was up for something. I don't remember what it was, it wasn't anything terribly huge. But they were doing some kind of profile of Alan and I said some very complimentary things about him. I think he remembered that. So the two of us became co-special counsel to the RISDIC commission. We got teams of investigators and we each put 2 lawyers in addition to ourselves, two that were sort of working for Alan and 2 were sort of working for me. But we were all working together shoulder to shoulder. I think we had 6 lawyers and maybe 6 financial investigators. We were in business for about 18 months. Our job was to find out what had gone wrong and why and hold public hearings so that the people in Rhode Island would know what the hell happened to their money and their government. We held 16 weeks of televised hearings. Purely because Jeff Teitz's day did not begin until late morning and didn't end until after midnight (and I think maybe he had an additional reason, but I think that really was what started it), the hearings were from 7:00 p.m. to 11:00 p.m. when we were doing them, every night. And that meant almost everybody in Rhode Island was watching. It was prime time TV and there was nothing bigger going on ... something about the RISDIC disaster was on the front page of the *Providence Journal* just about every day for about 18 months. We would walk home at the end of

the hearings, home was to a Marriott hotel. And we'd walk to our offices in the Capitol in the morning and trucks would stop and drivers would lean out of the window and say "Go get 'em, hang them from the nearest tree." It was in some ways, it was a lark. The people in those credit unions in Rhode Island did not cover their tracks. They did some of the craziest things you could possibly imagine. The credit unions would lend a million dollars to a real estate developer taking the property to be developed as collateral. And if the property was appraised at a million dollars, guess how much they would loan? A million dollars. The theory was that the borrower was going to build out the undeveloped land and construct something on it and make some money and pay back the loan. The loan was due in let's say a year and at the end of the year there would have been absolutely nothing done. The borrower would have spent the money on something else. The credit union didn't want to write the loan off as a bad loan. So what would they do? They would get an appraiser who would appraise the property for \$3 million and then the credit union would loan \$3 million and take 1 million to pay back the old loan so that it had been paid off. That was fine, the borrower's got a good credit reputation, they had paid back their \$1 million loan. And then 2 years later the borrower had still not done anything. They would get another appraiser and the appraiser would appraise the property for \$5 million. They would then loan \$5 million, pay off the \$3 million with that. I'm getting my numbers just a tiny bit wrong. There was one where the

property was appraised 1 million, 3 million, 5 million, 9 million over a course of about 5 years, when the real estate market was going like that [gesturing downward]. Alan Baron put on this appraiser. We eventually decided we needed to call the appraiser, we need to find out what the hell is going on with these appraisers. He prepared this guy. I was an audience pretty much, and he was the audience for my witnesses. But he got to ask the appraiser, where did you get your appraisal certificate? He named the organization that certified him and said some great sounding name. Where did you take your courses? “I didn’t really go anywhere to take my courses.” What did you do, take the courses by mail? “Well, actually I didn’t take any courses.” Well how did you get your appraisal certificate? I think Alan interjected, was it one of those mail order things where you send in a check for \$35 and they gave you a nice little engraved certificate as an appraiser? He said “Yeah.” Then he asked him the following question: Is it true that a cat from Rhode Island was once certified as an appraiser? And the guy looked a little sheepish and said “Yeah, I heard that.” Somebody just to test the bona fides of this thing got a cat and gave it a name and applied for and received a certificate.

We began with some hearings early on that we could actually prepare for, and Jeff Teitz wanted us to do this. We suspected that there were a lot of insiders who pulled their money out before the January 1, 1991 date when the credit unions were closed — because they had advance knowledge that the banks were going to be closed. As you can

imagine, this was not a popular thing for them to have done. It was very easy to conduct the investigation. We got a list of insiders somehow. There were people at the RISDIC itself, the insurance company so to speak. And then at each credit union there were people high up. In fact, I think what we did is we got minutes of the board of directors' meetings that they had with the NCUA people, who had told them that they weren't going to be able to insure their credit union because it was insolvent. We got the minutes of those meetings. They were like smoking guns. They had been told. Everybody sitting in that room had been told, your bank is insolvent. This would be in the last week of December. It all happened in the last week in December when these NCUA people came in. We got a list of all the people at those meetings and then we took their names and asked some computerized system if they withdrew any of the money they had on deposit at these credit unions after the meeting, within the last 4 or 5 days of December. I can't remember how many but a huge number of people had done that. So then we called them in for depositions. They took early withdrawal penalties too, most of them. Every single one of them had a story. So we had a hearing. We called one of these people after the other and asked them... it was the simplest thing to do in the world and the easiest thing to do. Our records show that you're at a meeting with the NCUA where they told you they couldn't insure your credit union because it was insolvent and that happened on December 26. Then our record shows that on December 28 you withdrew all of the

money you had on deposit, which was \$300,000 and you took a \$50,000 early withdrawal penalty. Can you tell us why you withdrew the money then? If you listen to just one story maybe it could possibly be true. But it was ... you had to kind of avert your eyes as you listened to these people. And I remember our hearing room was very makeshift and we had a semi-circle of seats of the commission members and the lawyers and we had a cloth kind of behind us. Behind that was just like an empty room. During these hearings behind that were several human beings listening to the testimony, most of them government employees. The one I remember best was Sheldon Whitehouse, who is now Senator. He was then an assistant to Governor [Bruce] Sundlun. I'll tell you about the person I'm talking about. But after the testimony of one lawyer for RISDIC, I went back there, we took a break, and he was literally lying on the ground holding his stomach. When this guy was on I had to bite my lip until it bled a little bit to keep from laughing. But this guy, when I asked him why did you take your money out: "I needed to close on a real estate transaction." This was now June and it was in December that he had taken the money out. I said, well when was the closing? "Well ... it hasn't closed yet." When did the contract say that it was going to close? "Well ... we haven't signed a contract yet."

MS. CAVANAGH So none of them admitted it. None of them said ...

MR. NIELDS None of them said .... There was one guy who had taken a million dollars out, who we called up sometime after the hearing. We were not supposed

to be enforcers. There were another group of lawyers who were going to be suing people. But we said that we thought it would be helpful to you and everybody else if you returned the money, and he did. But most of the people didn't. Alan had somebody on and he was asked, weren't you interviewed by the *Providence Journal* and didn't you tell them that you did not make any withdrawal of your money? And he said yes. But you did, right? And he said no, no, it was not a "withdrawal," it was a "transaction." Okay, but before you did this transaction you had money in the bank? Yes. And after you did this transaction you had no money in the bank? Yes. Anyway I don't think I can do anything more for you.

MS. CAVANAGH Did the Commission draft a report or something?

MR. NIELDS Yes, it absolutely did. In fact I saw it on my bookshelf within the last 3 weeks. It's about that fat. An inch or more, an inch and a half. We wrote things up. But anybody listening to the hearing would know exactly why those banks failed. Nobody inside the banks wanted to declare a loan bad because there are available financial records, like there are for any banks that I know of, that tell you whether you are above or below water, and that depends on how many loans you've written off and what your cushion is. When things started going bad the last thing they wanted to do was write off loans and then get closed. They just kept doing what I said before, which is making loans to cover the last loans that were larger in amount and even in worse shape when they started than the previous loan was. We had some borrowers who came in. My favorite pair of

borrowers had borrowed \$10 million each from the Marquette Credit Union. They had fought like cats and dogs to keep the credit union from putting their wives as co-obligors on the repayment of the loan. I think they got them to take their wives off. I can't remember why the credit union agreed to it. Then they transferred all of their assets to their wives. When their real estate venture failed they told the Marquette Credit Union, we don't have any money, we can't pay back. They were there. Why did you transfer the money to your wife? "Estate planning." You can imagine how fun that cross-examination was.

MS. CAVANAGH So following the report, you probably made recommendations or something. But you weren't engaged subsequently in any of the lawsuits or ....

MR. NIELDS We were not remedial.

MS. CAVANAGH Legal changes.

MR. NIELDS We had the job of making transparent what had occurred.

MS. CAVANAGH Sounds like you did that. Very successfully.

MR. NIELDS We did that. Very successfully. It was hard because for that 16 months I was in Rhode Island for 3 days or 4 days a week. That wasn't my favorite place to be, but it was also really fun. And we did think that we achieved what we had been asked to do. So that's the story of that.

MS. CAVANAGH Good. I guess we can move on to your representation of Webster Hubbell, unless you have other cases you want to talk about that were sort of in between; I mean we are running together things time-wise.

MR. NIELDS            There are lots of cases in between these things. Oddly, I did a lot of false advertising cases for pharmaceutical companies. Those were small cases and they are fun because they're done all on preliminary injunctions and you get to try them in a one- or two-day period and then there is a decision. They are also very funny. I never was in front of a judge on a false advertising case where the judge didn't crack a joke in the first 30 seconds. What kind of "relief" are you looking for, counselor? That sort of thing. I did a lot of antitrust cases, big antitrust class actions. One against the FTC, that's a little bit later, arbitrations, I did a number of those, criminal appeals and some trials. But nothing, at least in this period, that is probably worth talking about in specifics.

MS. CAVANAGH        OK. So you defended Webster Hubbell against a series of indictments filed by the Independent Counsel who was investigating President Clinton at that time. Maybe you can talk a little bit about that and how you got involved in that.

MR. NIELDS            Well I got involved in it because there was ... let me step back and start from the beginning. There was not an Independent Counsel. Bob Fiske, who was a lawyer at Davis Polk when I was there, he was a U.S. Attorney in the Southern District of New York after I was there. I think he was Deputy or Associate Attorney General. He was an exquisite lawyer. You could not possibly find a better person to do whatever had to be done with Whitewater. I don't know who's going to read this so I can't say ... of course you already know. So there were these press articles about the

Clinton family and they had to do with the Madison Savings & Loan company, which Hilary Clinton's law firm did some work for. They had to do with this land investment known as Whitewater, I don't even remember what the problem was supposed to be. There ended up not being a problem. Looking into whether somebody had made a gift to her, which was something akin to a bribe or something that was improper for her to take or for her to take while she was married to the governor, which was her husband. The *New York Times*, in particular, but other press got interested in this and they were clamoring for the appointment of an Independent Counsel. Janet Reno, who was the Attorney General, resisted, resisted, resisted. And then finally, I think President Clinton asked her to appoint someone to get the press off his back, over the strong counsel of lawyers like the White House counsel. And Janet Reno didn't want to do it because she didn't think there was an evidentiary basis for it, and there wasn't in my view and I think in most people's view. Anyway Bob Fiske gets appointed. For some reason I want to say he was not appointed under the Independent Counsel statute. And I can't remember whether there was a period of time when the Independent Counsel statute wasn't in existence, when it lapsed or something like that. I'm confused about this. [President Clinton signed the Independent Counsel Reauthorization Act of 1994 the day that Fiske released an interim report, and Fiske was subsequently replaced by Kenneth Starr, who was

appointed Independent Counsel by the Special Division under the reauthorized statute.]

Anyway Bob Fiske began investigating Whitewater and other ancillary things that he bumped into during the course of investigating it. One of the things that he started investigating had to do with Webb Hubbell. Webb Hubbell had been in the Rose Law Firm, which is the same law firm that Hillary Clinton was in, and in fact he probably can best be described as her mentor in that firm. There was a very small litigation department made up of Webb, Vince Foster, and Hillary. He was as close as a person can be to being her mentor. When Clinton got elected President, he asked Webb Hubbell to come to Washington and take the position of Associate Attorney General, which is either tied for No. 2 in the Justice Department or it's No. 3, it sort of depends. There is an Attorney General and then below the Attorney General are the Deputy Attorney General and the Associate Attorney General. Sometimes in one administration one might be more important than the other. Anyway, they are the number 2 and 3 officials in the Justice Department. Webb came to D.C., I think, before there was an Attorney General or a Deputy. There were some peculiar articles written in the *Wall Street Journal*. I think they were titled, *Who is Webb Hubbell?* [See, e.g., *Who Is Webster Hubbell?*, Wall St. J., Mar. 2, 1993.] They were sardonic and he was a Little Rock hack in their minds, and maybe in some other peoples' minds. As various people high up in the government began to get their own lawyers, I got a

call from Neil Eggleston, who was White House counsel under Obama, his last White House counsel, and he was in the White House counsel's office then. He had done the Iran-Contra investigation with me, he was my deputy there. Then he came to Howrey, then he left Howrey to go into the White House counsel's office job. Anyway I get a call from him that Webb Hubbell needs a lawyer and I've recommended you to him. And I remember vividly seeing him come up the escalator to the reception area at Howrey. Ostensibly, he didn't need a lawyer but he seemed to want to have one. Anyway, there's a limit to what I can go into here so let me think this through. I can't remember whether I learned this from Bob Fiske's office, from Julie O'Sullivan, or whether I learned it from a lawyer for the Rose Law Firm or both, but there was an investigation brewing and gaining speed and momentum into Webb Hubbell's conduct at the Rose Law Firm. They had a system where you would charge law firm expenses on your personal credit card and then you'd bill the firm or you bill the clients, and if it was personal, you would pay it yourself. If it was a firm expense you would bill the firm and if it was a client expense you'd bill the client. The investigation was into whether he had used his credit card for personal purposes, which was proper, but then he had billed some of the personal charges to his clients or to his law firm. [Webb, much later, wrote a book about all this.] At some point during this period of time, Webb decided he needed to resign from his position in the Justice Department. So the first thing I want to say is that he was as far from a

political hack as you could get. He was revered, I mean revered, by everybody in the Justice Department from Janet Reno to the janitor. When he resigned, somebody put together a book of letters that was about that thick. This isn't normal, I don't care how much people may think you're great. It was from everybody at all levels of the Department. He was a quick study and he made prompt decisions and he made them decisively and he made them well. His political savvy was there, his legal savvy was there, and his judgment was there. And God bless people who can do this and do it well: he made decisions quickly. His door was open and he would get things resolved. Friendly, always friendly. He is one of the kindest, and he had an extraordinary record in Little Rock. He had been appointed Acting Chief Justice of the Arkansas Supreme Court. He had been elected mayor of Little Rock. He was the managing partner at the Rose Law Firm. He was the person who principally integrated a Little Rock country club that never had an African-American in it before, notwithstanding the many in the population. He did enormous amounts of public service kinds of works in addition to mayor and Acting Supreme Court Chief Justice. He was living beyond his means. There was nothing I could do for him. Really, I tried many things but there was really nothing that I could do. Even Ken Starr at his sentencing stood up, because I had talked about this book of letters that had been put together for his resignation ceremony, and said some other things at his sentencing proceeding on his behalf, and Ken Starr got up and he said, I don't

remember his exact words, but essentially said that this outpouring of letters can't be ignored and shouldn't be ignored in the sentencing process. The judge [U.S. District Court for the Eastern District of Arkansas Judge George Howard Jr.] said, he quoted the line from the Bible I think: "To whom much is given, much is required and you failed." He gave him 21 months sentence in jail. That was one of the more painful representations up to that point in time that I had ever been involved in. He'd also agreed to cooperate, which is part of why we got friendly remarks from Ken Starr at the sentencing proceeding. I won't get into the details. But the Clintons had done nothing wrong – at least that he knew about – and Ken Starr's staff was not happy with him. Webb served his sentence, and then the investigation of the Clintons and, as you will hear, of Webb Hubbell started up again.

MS. CAVANAGH As a side note to that, in light of current events, I wonder if you had any interaction with Brett Kavanaugh, who I believe was on that staff, and no relation to me.

MR. NIELDS I was going to say that is a very good last name but it has the wrong first letter in it and it has a u.

MS. CAVANAGH Exactly.

MR. NIELDS Very little. I met him. I can't remember exactly where but I knew somebody who looked like that who had the name of Brett Kavanaugh was around the investigation. It bounced around. There was a group of people who were grilling Webb who were absolutely convinced that the

Clintons were crooks and that Webb Hubbell absolutely had to know about it. Then they started investigating him for everything and anything that they could. They served a subpoena on him while he was in jail, that was all your financial records, all your tax records, all your records of any kind. I insisted that he not produce that unless they gave him a statutory grant of immunity, which they did. Then he produced, while he was in jail, he produced all these records. They had three or four different theories of what he must have done wrong. One was taking bribes from people who were paying him consulting fees and were friends of the Clintons. Well that didn't pan out. They had some other theory, I've forgotten what it was. That didn't pan out. Then they ended up indicting him for evasion of payment of taxes.

MS. CAVANAGH And his wife, right?

MR. NIELDS Not just his wife. They indicted him and his wife and two tax professionals that had helped his wife pro bono with the family finances while Webb was in jail and couldn't do it. Virtually nobody gets indicted for not *paying* their taxes. These were taxes that he owed because of the fact that he had pleaded guilty to embezzling and he hadn't paid any taxes on the embezzled funds. So at the end of the criminal case he owed a huge amount back to the Rose Law Firm and he owed a huge amount in taxes. Then after he sits in jail for a while, they indict him for failure to pay his taxes. They indicted him for *evasion* of paying his taxes, which

only happens if you do something fraudulent like hide assets in a Swiss bank account.

MS. CAVANAGH Concealing income.

MR. NIELDS Concealed income or something like that. But they were not indicting him for failure to *report* his income. It wasn't tax evasion. It was failure to pay the taxes that he owed because of the prior case and didn't have any money to pay it back with.

MS. CAVANAGH Were they actually trying to exert pressure on him to turn on the Clintons?

MR. NIELDS That's what it was about. And then they indicted him a third time for God knows what. It had to do with the Madison Guaranty and I never could figure out what the theory of criminality was that arose out of Madison Guaranty or the Rose Law Firm's representation of Madison Guaranty. It was just never defined; it was a haze and a maze. We'll get to this part of it in a minute. The second indictment we got dismissed by the trial judge because he had been granted immunity.

MS. CAVANAGH Judge [James] Robertson [U.S. District Court for the District of Columbia].

MR. NIELDS Judge Robertson. The government admitted that the way they had gotten to the indictment, after trying to use his documents to convict him of bribery, which they couldn't, and something else, which they couldn't, they then decided to pursue this ridiculous tax evasion of payment and they admitted that they used the documents that he produced under immunity in order to get the indictment. But they had some theory, and

the Justice Department had pursued this theory actively, and most of the defense bar was just agreeing to it, that so long as you didn't tell the jury how you got the documents, that they were produced by the human being that you are using them against, you could just go ahead and use the documents. Well there was screwy language in a case and a screwy footnote in a case, which has become affectionately known as *Doe I*, that strongly supported that idea. [See *United States v. Doe*, 465 U.S. 605 (1984).] It infuriated me the day it was written. God bless Justice Scalia when he was a judge in D.C. Circuit, he wrote an opinion that essentially, he didn't write it about this but he wrote a couple of sentences that made it clear, he wasn't buying this doctrine at all. It had to do with how does the Fifth Amendment apply to document subpoenas, in what way does it apply. Justice White had written the key opinion the year I clerked for him. [See *Fisher v. U.S.*, 425 U.S. 391 (1976).] So I was aware of the doctrine and I was unhappy that it was being perverted and I made sure I made my record when they wanted his documents. Other lawyers were just taking a letter that the Justice Department writes, that DOJ won't ever use the fact that *you* produced the documents; but DOJ *will* use the *documents* against you. It was really dopey. But they all believed in it. They totally believed in it. I said, you're not sending me a letter when I have one idea of what the immunity means and you have another idea. We're not doing it by agreement. You're going to have to get an immunity order from the court compelling him to produce it. So anyway

Judge Robertson dismissed it. [*See U.S. v. Hubbell*, 11 F. Supp. 2d 25 (D.D.C. 1998).] They then filed a third indictment.

MS. CAVANAGH So just to go back. District Judge Robertson dismissed the charges for the second indictment, that was affirmed on appeal?

MR. NIELDS The Court of Appeals wrote an opinion agreeing with most of what Judge Robertson said, but also saying that if the government could make some sort of a showing that they knew about all of the documents before they subpoenaed them that then it wouldn't violate the Fifth Amendment and then the indictment could go forward. [*See U.S. v. Hubbell*, 167 F.3d 552 (D.C. Cir. 1999).] But it was very obvious to the Independent Counsel and to me that there wasn't any way they'd ever be able to meet the standard that the D.C. Circuit had written.

MS. CAVANAGH One of our devices is recording but the backup one seems not to be. One of them is fine, one of them is not but this is the one I use. I don't want to spend a lot of time figuring it out. Let me just do a new one. We're good.

MR. NIELDS But you've also made me clarify in my mind. What the D.C. Circuit did to Judge Robertson's opinion throwing out the indictment was to send the case back for further proceedings. But from the opinion they wrote, which largely accepted our view of life, it was clear and clear to everybody on both sides that they were not going to be able to ... when the thing was sent back they weren't going to be able to meet the burden that they would have to meet to be able to go forward with the case. And then he gets indicted a third time for something having to do with Madison Savings &

Loan. It was a tortured indictment. But I was concerned that I might end up being a witness and I can't remember why anymore. But there was some issue that I might end up being a witness. So Pete Romatowski, who was then at Crowell & Moring, a very fine white collar criminal defense lawyer, former Assistant U.S. Attorney in the Southern District of New York, whose daughters were students of my wife, agreed to take it over; we worked on it together but he was prepared to be the person who had to stand up in court in case I couldn't. That case meandered a little bit. Then the time came when I thought I ought to try to ... let me back up a little bit. The thing that he'd actually been guilty of was a pretty miserable thing to go through for everybody, including me and him and his wife and family. We thought it was at least over and then it turned out it was not over. And the period of time during which he was still being investigated or prosecuted for these other non-crimes had lasted longer than the original case had. It's hard to explain this unless you lived it, but it felt like it wasn't ever going to end. There's no way he can begin his life again. No way I could begin my life again. It was obsessing. It didn't make my firm very happy either, as you can imagine. Anyway we decided the time had come to see if we could get things resolved. The Independent Counsel had gotten hung juries in two recent cases. People were getting uncomfortable with how long everything was going on and how relentless it all was. Even talking about getting rid of the Independent Counsel law. And so I called up Ken Starr, whom I knew

from clerking days, and said I think we should talk. He said I agree. We ended up ... they were very interesting conversations that I think I probably won't go into but I had to fend off a few things and I did so, I thought, pretty well. We ended up with a plea deal that he would plead guilty to something and get no jail, no probation, no fine, and a promise in writing as part of the plea deal that the Independent Counsel would never investigate him for anything else for the rest of his life.

MS. CAVANAGH Although I have that he was sentenced to a year probation in exchange for the prosecutor dropping all the charges against his wife, his lawyer, his accountant and an agreement not to bring further charges. Maybe that's not right.

MR. NIELDS I don't think it's right.

MS. CAVANAGH OK. But the key here was no charges ever again, right?

MR. NIELDS No charges ever again was, that was the thing that I don't think has ever been in any plea deal before.

MS. CAVANAGH That's amazing.

MR. NIELDS Dropping charges against everybody else was the one that was essential.

MS. CAVANAGH That was important to him.

MR. NIELDS He wouldn't have done it otherwise. He felt bad enough about the mess he got himself in, but for totally innocent third parties to get into this mess because of him, was something he wasn't going to let happen.

MS. CAVANAGH Did Ken Starr claim this as kind of a victory?

MR. NIELDS No, I don't think so. I mean who knows.

MS. CAVANAGH Failure to disclose to federal regulators, a potential conflict of interest in an unrelated savings and loan lawsuit from 10 years earlier.

MR. NIELDS But another part of the plea agreement, which they wanted me to throw in, was that he would plead guilty to a misdemeanor tax charge on the tax case. And their purpose was they wanted to get the Court of Appeals decision on the immunity issue reviewed by the Supreme Court because they thought that they were going to win. And they didn't want to leave bad law out there for the Justice Department. And I'm thinking, you just made my day. Webb liked it too and so we said fine. But it means that if you lose the appeal then that plea gets wiped out. That conviction goes away.

MS. CAVANAGH And that's what happened.

MR. NIELDS That's what happened, and the Supreme Court ruled for us 8 to 1. [*See U.S. v. Hubbell*, 530 U.S. 27 (2000).]

MS. CAVANAGH Chief Justice Rehnquist dissented, right?

MR. NIELDS Chief Justice Rehnquist dissented.

MS. CAVANAGH Did you have much interaction with David Kendall, who was the Clinton's personal lawyer at that time?

MR. NIELDS Well I certainly had some. I don't remember talking to him about Webb until after the first plea.

MS. CAVANAGH Some of the news reports suggested that he tried to distance his clients from Webb Hubbell.

MR. NIELDS I don't remember. Do you know what that meant?

MS. CAVANAGH I don't. I guess to whatever extent that Webb Hubbell was getting into some sort of legal trouble, the Clintons had nothing to do with that.

MR. NIELDS Well that certainly would have been Webb's view.

MS. CAVANAGH Right, about the particular charges.

MR. NIELDS Yes. I don't remember thinking ... I suspect that the Clintons were under instruction not to communicate directly with Webb about anything. There were some other ... There was an episode in which I was driving down the road somewhere on the way to work or on the way back and I flipped on the radio for some reason, I don't usually listen to it. I heard a conversation between Webb Hubbell and me on the radio, which they taped while he was in prison.

MS. CAVANAGH Really?

MR. NIELDS Yes. But then there were some other ones that Webb had with somebody else, somebody who was in the Clintons' sphere. They had been turned over to a congressional committee. Congressman Burton, does that ring a bell? There were two Burtons. I think Dan Burton was his name. He was very very far to the right. I think he subpoenaed from the Justice Department prison-taped conversations and he then released cropped versions of them. They seemed to have terrible implications to them and it turned out that somebody in the House, I think it was Republican at this time, but I knew somebody on the staff of the Democratic minority and they got the full versions and exposed that the conversations meant the

exact opposite of what they seemed to mean when Burton released it. I think he fired that guy, David Bossie, who is now in the news again.

MS. CAVANAGH You talked a little bit before about how you became opposed to the Independent Counsel statute. I don't know if you have anything you want to add to that now?

MR. NIELDS Yeah. Well I felt very, very, very strongly that the Independent Counsel statute had been turned into the opposite of what it was intended to be. It was designed to make sure that higher ups, big and important people, were treated the same under the law as everybody else. We're all equal under the law. And the Independent Counsel statute was enacted to make that happen and be true, and instead it created a world in which the exact opposite was true. People were getting investigated and indicted for crimes that ordinary citizens would never be prosecuted for. They wouldn't even be investigated for them and if they had been investigated they wouldn't have been prosecuted. They were overreaches and every Independent Counsel was staying on their prey for five years or thereabouts. The Iran-Contra Independent Counsel, they had several iterations of them, I think there were new ones to replace the old ones, and then they ended up indicting Cap Weinberger two days before the statute of limitations ran. The Whitewater thing was just a catastrophe in that regard. There never should have been a "Whitewater" investigation to begin with. The treatment of Webb Hubbell was like Exhibit A of what's wrong with the Independent Counsel statute. A normal Justice

Department never would have been investigating Webb Hubbell a second and a third time. I also believe that the press, which was largely responsible for this happening to the Independent Counsel statute, because once they had Watergate, that made them famous in a way they never had been before. They didn't understand the criminal justice system. They don't know what separates actual prosecutable crime from what doesn't. There's all kinds of technical things that you can stitch together and make a case out of. They were just wild theories, wild legal theories or legal theories that you could actually speak coherent sentences in favor of, but that no normal Justice Department would ever think of prosecuting anybody for. And so our justice system was being co-opted by the political world.

MS. CAVANAGH Do you have a similar reaction with respect to the Special Counsel investigations that are going on now, in terms of overreaching?

MR. NIELDS Well I would only say this, it's a concern. Having said that, I have no reason to think that what is being done now is anything but absolutely legitimate. There is no question but that we needed an investigation of the Russians interfering in our elections and that normally, it should happen here too, should include figuring out who was a part of that. I don't have the slightest reason to think that Mueller is engaging in behavior any different from what would be done in a non-political environment, other than he's probably got more personnel working on it than if it were not political. But here the political issue is some foreign country messing with

our elections. That's not partisan political, that's just political and legal. But since you are pressing me on this, I don't think I told you this story before. There was a press person. I'd had several meetings with Ken Starr begging him not to file the tax case on all manner of different grounds.

MS. CAVANAGH That was the second indictment?

MR. NIELDS The second indictment. I didn't think I was being successful but I was hoping that I had. There was a reporter who knew that I represented Webb Hubbell and talked to me from time to time and gave me information more than he ever got any. I got a call from him at 10:00 one morning. He said, I think they are going to announce the indictment of your client at two in the afternoon or something like that, which was deeply distressing to me, it angered me. He said I think I can call you fifteen minutes before they're going to come out and announce it. And I said I'll be grateful if you would do that. In a fury I drafted a statement that I wanted to give the press. I got the call from the press guy and I jumped in a taxi cab or, I don't think I ran, I think I jumped in a taxi cab and went down to the courthouse. The Independent Counsel's people and their press guy were walking out the front steps and there was a bank of microphones. There were like fifty microphones and there were speakers and there were press sitting down lower on the steps of the courthouse. I circled around behind them and listened to the Independent Counsel standing about twenty feet behind them, just listening to them, and then

they finished. As soon as they walked out I walked right up behind them and introduced myself and spoke my mind. I'm pretty sure this is exactly what I read and what I distributed.

MS. CAVANAGH Do you want me to read that into the recording? Into this record?

MR. NIELDS I mean this record.

MS. CAVANAGH We can include documents and that's something we'll need to talk about at the end because I don't know what they want exactly, but I have to figure that out. But they definitely want to include some kind of key documents. You can read it if you want.

MR. NIELDS Well I don't want to make you do that.

MS. CAVANAGH Then you read it.

MR. NIELDS You want me to read it. It was fun to deliver I must say. This is just after they moved and I read this. "This is another bad day for the Office of Independent Counsel. For the last eighteen months the Independent Counsel has investigated Webb Hubbell for many different things hoping to find something to prosecute him for again. At the end of it all they have reached out very probably beyond the limits of their jurisdiction and brought a rare type of tax charge against him. It is a tax charge that we are convinced would never have been brought against an ordinary citizen by the United States Department of Justice. They have brought this charge not only against Webb in order to get at him, they have brought these charges against his wife Suzy and two tax professionals she turned to for advice while Webb was in jail. Tax professionals who worked for free

solely out of the goodness of their hearts to help a family in distress. All four are innocent of the charges. You see the crime of evasion of payment occurs only when a taxpayer commits some sort of fraud or concealment intended to prevent the IRS from collecting a tax, like putting assets in another person's name or putting money in a numbered Swiss account. That did not happen here. The Independent Counsel's decision to bring this case cannot be explained by what these people did. There must be some other reason. This is the second time they have prosecuted Webb Hubbell. The first time, justice was done. He pleaded guilty to serious fraud and tax charges. He was in prison for eighteen months, he was disbarred, and he acknowledged a debt of a million dollars to the Rose Law Firm and the IRS. The Office of Independent Counsel brought Webb Hubbell to his knees. He has now paid his debt to society. He has confessed, he has been punished, and his family has been brought to financial ruin. And now that he is struggling to get up off his knees and rebuild his life, the Independent Counsel wants to shove him back down and prosecute him again. This time not for stealing but for failing to pay the enormous tax debt he owes because of the first prosecution. This time they have gone too far. It is the first and most sacred rule of criminal law enforcement that a prosecutor should investigate crimes, not people. A good prosecutor does not target a particular person and then investigate to see if that person committed any crime. A prosecutor investigates possible crimes and tries to determine who did them. This is unfortunately not the

only recent example where the powers of the criminal justice system have been used to hunt a public or political figure where those same powers would never have been used to investigate an ordinary citizen. It has become an all too common form of sport, but it is a recent form of sport and it has got to stop. It does discredit to our criminal justice system and to our country. In this country everyone is supposed to be equal under the law. We have Independent Counsel precisely to be sure that justice will be evenhanded, that a decision to investigate or prosecute a person will be unaffected by who that person is, and yet it is Independent Counsel who seem to single out particular people for special treatment under our laws. It is a terrible irony that they have become the cause of the very problem they were created to correct.”

After sitting on my hands for three years or so, I really enjoyed saying that, especially with a ready-made audience invited by the Independent Counsel.

MS. CAVANAGH Did they ask you questions? Did they follow up with questions?

MR. NIELDS I can't remember. I think I stepped away.

MS. CAVANAGH I'm going to let you have your lunch soon, but I did want to ask you if you stayed in touch with Webb Hubbell. I read that he had a liver transplant and he writes novels.

MR. NIELDS He writes novels and they are damn good.

MS. CAVANAGH Really, are they like legal thrillers?

MR. NIELDS            Yes, he writes about things that he knows. He writes about lawyers, politicians, and Little Rock, Arkansas. And there is a scene in his first novel that's as good as any scene I've ever read in any book. It's just ... what's the right word for it.... It's on fire. I've read his second book and I have his third but I haven't read it yet. Finally he's found something that he's good at, that he likes to do.

MS. CAVANAGH      He lives in Arkansas?

MR. NIELDS            No. He lives in Charlotte, North Carolina, where one of his daughters is practicing law. He stayed here in D.C. for a long time.

MS. CAVANAGH      We can wrap it up. Do you have anything to add for today? I feel like we have a whole other meeting. I don't think we can finish today.

MR. NIELDS            I think that's probably right.

MS. CAVANAGH      Did you want to add anything else today?

MR. NIELDS            No, I'm fine.

MS. CAVANAGH      Good. We'll shut it down.