Oral History of Carl Stern

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 Judy Feigin, and the interviewee is Carl Stern. The interview took place on the patio at Carl's home in Washington, D.C., on Thursday, November 5, 2020. This is the third interview.

MS. FEIGIN: Good afternoon. You've covered so many amazing cases, but we were talking about the ones in D.C. for starters. One group that we talked a bit about was the Iran Contra cases and what you thought about the coverage of them, if you could just give us some more insight.

MR. STERN: I have to tell you, I've always been a little bit irritated, if that's the word, or disappointed perhaps is a better word, that it received so little attention – then and in our history books. Oh sure, it was Ollie North and Fawn Hall – who smuggled documents out of the White House in her undergarments (laughter) – that attracted public attention, but as to the larger issues involved in that case, to my mind the conduct involved inflicted a bigger injury on our constitutional form of government than Watergate. Watergate dealt primarily with personal misconduct, albeit by a president and high officials, and included the resignation of a president, but Iran Contra, here you had the Reagan Administration secretly violating an explicit act of Congress, actually two acts, the two Boland amendments, which prohibited the Administration from providing arms and other support to the Nicaraguan Contras. Here the Administration, despite that absolutely explicit prohibition, went its own way selling arms to the Iranians and using those funds to secretly supply materials

to the Contras, undoing the very structural foundation of our government. If the government won't obey the law, who will?

MS. FEIGIN: Do you think the problem was that the public just didn't understand it? They really didn't know who the Contras were and so they couldn't fully grasp it? Why didn't this get traction?

MR. STERN: Well for one thing, President Reagan was enormously popular. They couldn't imagine him doing anything that was really subversive, if you will, and I think to some extent that made the public less alarmed about what had happened. And in some respects it was more abstract, involving Iranians and Nicaraguans and so on. Watergate, on the other hand, was right down at 1600 Pennsylvania Avenue. So that may have had something to do with it.

MS. FEIGIN: When we talk about Reagan and his role, he comes up a little bit in one of the Iran Contra trials.

MR. STERN: In the Poindexter trial.

MS. FEIGIN: And you covered that.

MR. STERN: I remember it most because it led to an unusual situation. Admiral John Poindexter was one of the four defendants in that case, Oliver North being another and two others. Richard Secord was another one. Then there was a businessman, Albert Hakim, if I recall correctly. So four defendants. But because it was likely that each one after being convicted would be called upon to testify on the other fellow's behalf, their fellow defendants, it was necessary to break that up into different trials. So Poindexter was tried separately, and his attorneys were attempting to make the argument that all of

this had been authorized by President Reagan. But by that time, President Reagan was living in California in retirement, and so the judge, Harold Greene, had to adjourn the proceeding here in Washington, D.C. and take everybody, kit and kaboodle, out to California to take the testimony of Ronald Reagan in a court in Los Angeles.

MS. FEIGIN: Did he have to do that? Couldn't Reagan have come here?

MR. STERN: No, because President Reagan was regarded as physically unable to undertake such an arduous journey. As it turned out, the trip really yielded nothing. President Reagan was questioned repeatedly about what he had authorized, and he responded that he didn't remember 124 times in the course of his testimony.

MS. FEIGIN: Or lack of testimony.

MR. STERN: Let's say it was not productive.

MS. FEIGIN: That was a special prosecutor case, right? Lawrence Walsh?

MR. STERN: Judge Walsh, Ed Walsh.

MS. FEIGIN: I think it was Lawrence Walsh?

MR. STERN: Well, yes, Lawrence, but he's known as Ed. I can never forget him. He was a marvelous person. He also chaired the ABA committee that evaluates candidates for the federal bench, and I remember in 1969 when Justices Black and Harlan both left the Supreme Court, that the White House asked the committee to evaluate the potential nominations to the Supreme Court of Mildred Lillie and Herschel Friday. Each received a negative rating. In any event, I called Judge Walsh and said I know you're having a meeting to

decide what you want to do about these two candidates. Can I come up and hang around your office, and perhaps you'll be kind enough to tell me a few things that happened? He agreed. So he gave me his address, which was One Chase Manhattan Plaza in New York, and I remember asking "What suite?" and he said, "What suite?" He said "like the 42nd, the 43rd, and the 44th floors" [laughter]. I was thinking of law offices on a more modest scale [laughter]. Judge Walsh had been a judge as well as a former deputy attorney general; he had a somewhat larger office than I anticipated. The firm was Davis Polk. A very large firm. It's the sort of firm whose wood-paneled hallways have portraits of members of the firm who went on to become president of the United States. It's one of those firms.

MS. FEIGIN: They called them white shoe firms in those days.

MR. STERN: Right.

MS. FEIGIN: I think because in the early days, that's how they dressed, right? White shoes?

MR. STERN: I had loafers [laughter].

MS. FEIGIN: No, I mean way back.

MR. STERN: I know what you mean [laughter].

MS. FEIGIN: Is there anything else you want to add about Iran Contra?

MR. STERN: No.

MS. FEIGIN: Okay. We talked a little bit about Watergate but not much, so give us any further thoughts you have about that huge event.

MR. STERN: I already told you some of my memories of Watergate but we really didn't talk much about Judge Sirica as a person. He was sort of old-school tough. He had been a neighborhood prize fighter as a young man growing up. His hero was Jack Dempsey.

MS. FEIGIN: The prize fighter.

MR. STERN: Yes. Judge Sirica never went to college, but he was street smart. The one mistake you could make in appearing before him was to try to hide something from him. Both the White House supporters and the prosecutors wanted to move along quickly to resolve the matter at the beginning. This was the trial for the four Miami men and the three others, Gordon Liddy, Howard Hunt, and James McCord.

MS. FEIGIN: Just to make clear, they had broken into the DNC headquarters at the Watergate complex.

MR. STERN: They had a role in doing so. Yes. Their lawyers and the prosecutors were trying to explain the whole thing as sort of a rogue operation initiated by Gordon Liddy, but Sirica wouldn't buy it and constantly and publicly expressed his doubts. He put a lot of pressure on both the prosecutors and the defense attorneys. There were probably three critical moments, as it turned out. One, and I'll get to it in a moment, was the James McCord letter in March of 1973. The second would have been John Dean's testimony before the Senate Watergate Committee. And the third, of course, was when the Supreme Court ordered the president to turn over the White House tape recordings.

In any event, that first critical moment which led clearly, unmistakably, to the unraveling of Watergate was the McCord letter. He was a former CIA officer, the security chief at the Committee to Reelect the President, who was charged with operating the break in. Howard Hunt had pleaded guilty, but the others were convicted early in 1973, and Judge Sirica set sentencing for March 23rd. In the case of McCord, the sentence "Maximum John," as he was called, made clear he was contemplating was 25 years. Three days before the sentencing date, into the judge's office comes James McCord. Now what is he doing? He's not supposed to be walking into the judge's chambers.

MS. FEIGIN: Without a lawyer?

MR. STERN: Without a lawyer. All by himself. As I got the story from Richard Azarro, who was one of Sirica's two clerks, in walks McCord and says he wants to see the judge. Azarro thinks fast and says, "The judge is out to lunch." Unfortunately, at that moment, because he hears some commotion, Judge Sirica opens the door from his inner office and says, "What the hell is going on here?" McCord has this white envelope in his hand, which he gives to Judge Sirica. As Dick Azarro related it to me, the judge tried to maintain what he called his poker face, but inside, Judge Sirica later acknowledged, he was anything but calm. In the letter McCord revealed that he and the other defendants had been receiving help from the White House and that higher ups were involved. Judge Sirica remembers thinking "This is it. This is the break I've been hoping for." The judge notified the various counsel involved

in the case of the existence of the letter, but he didn't reveal anything publicly. Comes the hearing on the 23rd, three days later, the sentencing hearing, and Judge Sirica starts off by saying "I have a preliminary matter to take up" and proceeds to read the letter. Well, he gets perhaps three quarters of the way through, and gradually there's been this pain building up in his chest, an excruciating pain, and he just manages to get to the end of the letter and he has to call a recess. He goes back into his chambers, and he stretches out on a couch trying to rest, and in fact, after about twenty minutes, the pain did subside, and Judge Sirica came back out to the courtroom, went back into session, and imposed the sentences. These were provisional sentences, being the canny judge that he was. He really threw the book at them. But with the understanding that they had a chance to be re-sentenced. In those days, I think the rule was if a judge imposed a provisional sentence he had 120 days to reduce it if the defendants provided valuable information to the prosecutors. So obviously Judge Sirica was dangling this as a carrot to get the defendants to speak up.

MS. FEIGIN: But it's pretty extraordinary because it's usually the prosecutor's office that does this.

MR. STERN: Yes. But the judge was running the show. Let's understand that. And the plain fact is it worked. Subsequently, the judge did reduce McCord's sentence. I interviewed Judge Sirica several times thereafter and I recall him saying that was the point in which "the dam had broken." Those were his

words. He came to believe that his action was the most important in revealing the story of Watergate.

MS. FEIGIN: Do you share that view?

MR. STERN: Well, there were other events. The cover-up could still have succeeded, were it not for the John Dean testimony or the Oval Office tape recordings.

I have some souvenirs of Watergate. One of them was a trial exhibit. It was a piece of White House stationery – a letter, note, memo, whatever you want to call it – that John Dean sent to Charles Colson, one of the President's advisors, while John Dean was still hanging on, in the fold. It's this large piece of paper, and at the top it says "The White House, Washington, D.C.", and it says, "To Charles Colson from John Dean", and on this entire sheet of white paper, there is only one sentence which reads, "What the hell do we do now?" [laughter]

MS. FEIGIN: [Gasp!] How did this come into your possession?

MR. STERN: It was an exhibit at trial. We all got copies. But I guess that's one I've retained. I have some other things. I have these various buttons. One of them says -- these buttons that you put on your coat or your dress -- one says "Sam Ervin for President."

MS. FEIGIN: We should say who Sam Ervin is for people who are reading this.

MR. STERN: Senator Ervin who chaired the Watergate Committee in the Senate. I've got another one that says "I believe my President, Mr. Nixon." That was a button being distributed by Rabbi Korff, if you remember that name, who was one of the fervent supporters of the President. In any event, those were the days of Watergate.

MS. FEIGIN: Did you cover the hearings as well?

MR. STERN: Oh yes. Of course. NBC had this relatively small staff, and I was a jack of all trades and operated out of, as I think I've told you earlier, out of a desk at the Justice Department, covering everything in the Federal Triangle. Those were interesting venues too. Part of my beat was the Subversive Activities Control Board. They were nice people, but they didn't have a great deal to do because the Supreme Court had pretty much eviscerated the Board's role.

In the early 1970s, in the early days of the Nixon administration, the Federal Trade Commission, next door to the Justice Department, had become the hot agency and was doing a lot of consumer protection work. It became the agency that young law school graduates would want to go to. However, there's no doubt that the White House was very displeased by some of the high profile steps the Federal Trade Commission was taking to constrain certain business practices. Miles Kirkpatrick was the chairman, a lawyer from Philadelphia. I remember I walked into the office of Joe Ball, the general counsel of the Federal Trade Commission. I wanted to find out whether in fact the White House was attempting to get the FTC to tone it down a little, and I asked Joe Ball if that was so, and he said "No, no, no." I said "You don't hear from them?" He said, "Oh yeah, maybe once in a while they'll call with a question." I said, "Oh? And what's the question?" He said, "Well, it's usually what the hell are you guys doing down there?" [laughter] So I had a lot of ground to cover.

MS. FEIGIN: Okay, but to get back to Watergate for a moment, any other memories to share?

MR. STERN: I do have one other memory come to think of it. We mentioned the Senate Watergate hearings. Herman Talmadge was a senator from Georgia, and you may remember during the hearings he was questioning John Ehrlichman about his approval of break ins by the White House so-called "plumbers unit" to get dirt on political opponents. And Talmadge said to Ehrlichman, "Do you remember when we were in law school we learned about a principle from England about a man's home – that although the storm may enter, the rain may enter, the wind may blow through it, still the King of England cannot enter without the man's consent?" Ehrlichman replied "Well that's been pretty much eroded over the years has it not?" Talmadge replied, "Down in my part of the country, we still think it's pretty good law." And the audience in the Senate hearing room applauded.

MS. FEIGIN: Were you at the Supreme Court when the Watergate tapes decision came down?

MR. STERN: Oh sure. At that point, we were there every day just waiting. The case was heard on July 12th and decided on the 24th. On the day before the ruling, the 23rd of July, I received a phone call from a friend who worked in the clerk's office. I can say that now because the individual involved is long gone.

MS. FEIGIN: The Supreme Court's Clerk's office?

MR. STERN: Yes. And he said "Nixon loses eight-nothing." So what do I do with that? That was the biggest story of the year, right?

MS. FEIGIN: Absolutely.

MR. STERN: Well, except for the President's resignation. But what do I do with the tip? In those days, we had a two-source rule for information coming from someone who himself or herself had not been a participant. So what am I supposed to do at that

point? This is second-hand information. Can I pick up the phone and call the Chief Justice and say "Hey Chief, I understand it's eight-nothing"? No. I was on friendly terms with a few of the Justices, but would I be so unthinking, would I be so thoughtless, would I think so little of their character that I would expect them to violate the Court's code of secrecy and confirm that story for me? No. I couldn't do that, and so I didn't use the story. And on the 24th, the next day, it came down, eight-nothing. Nixon lost. But I hadn't used my beat on the story the day before, no matter how monumental. I don't mean to do a lot of handwringing here, but I don't know if today's journalists would follow that rule in this sort of hyper-frenetic journalism world in which we live today.

I remember I had one producer, a head producer, at NBC Nightly News who used to say "It ain't the priesthood." Well, I suppose that's true, but we have certain rules, or did in those days, that were not waivable, if there's such a word. Pilots don't land their planes until the control tower says the runway is clear. There are just certain rules you have to follow.

MS. FEIGIN: Let me go off a bit on a tangent. When you say you had a friendship with some of the Justices, are you comfortable saying which Justices?

MR. STERN: Yes. Probably Justice Brennan. He was everybody's favorite. He was a sweetheart. I went to see him at a nursing home in Virginia two days before he died, and he was as cheerful and full of life as ever.

MS. FEIGIN: For judges, there's sort of a bubble that they're in. Is there any problem with having a friendship with Justices? Is it hard? Is it appropriate? Is it awkward? How does it work?

MR. STERN: Reporters differ on that issue. I thought it was important to give them distance with respect to anything involving the Court itself. But it was almost impossible not to trade jokes with Justice Brennan [laughter]. Justices used to be wary of reporters. I remember when David Souter arrived in 1990, an appointee of George H. W. Bush, I sent him a nice note thinking he might be my guest at the Congressional Correspondents Dinner as part of his introduction to the rituals of Washington. I got back a Hamlet-like reply that ran a page and a half in which he pondered the propriety of Supreme Court justices socializing with reporters.

MS. FEIGIN: Did he accept?

MR. STERN: No. He didn't exactly say no, but we never corresponded again. I think I took the Clerk of the Court. In any event, it illustrates that the relationship can be awkward for the justices, too. I remember Justice Potter Stewart taking a bunch of us who covered the Court to lunch on 20th Street, but that was before the days when justices wrote books and did TV interviews and became public personalities. A lot of things have changed.

MS. FEIGIN: What were some of the other changes?

MR. STERN: When I started covering the Court the bench was straight. One of the innovations that Warren Burger introduced was to make it so that it curved in on either end so that the justices on the ends wouldn't have to strain to hear.

In those early days there were pneumatic tubes. As the justices would begin reading their assigned decisions, the Clerk would distribute them to members of the press corps, principally the wire services and afternoon

papers, who had small desks near the front of the bench equipped with pneumatic tubes that led to booths in the basement where colleagues were waiting. As soon as a justice began reading a decision, the reporter in the courtroom would send it speeding to the basement – down the pneumatic tube, swish – and the colleague below would begin filing the story by teletype while the justice was still reading the opinion. It was all part of the competition to report fast and first.

MS. FEIGIN: So you weren't in the courtroom when the justice was reading the opinion?

MR. STERN: No, I was, because I was too junior to have a pneumatic tube and a colleague down below. AP, UPI, Reuters, a few others were, and the afternoon *Washington Star* had their own person. The pneumatic tubes were sealed and the booths in the basement were abandoned years ago when the "Burger bench" was installed.

In any event, I can recall there came a point a few years later when they were refurbishing the pressroom and reporters like myself were reassigned to those empty basement cubicles. The pneumatic tubes were still there. I opened the desk in this cubicle which hadn't been used for many years. Blowing the dust off the desk, I reached into the drawer and pulled out a decision. It was a decision written by Justice Douglas in the 1942 Term, and it was four pages, and it was typed on onionskin, as we called carbon copies. Those were different times. When I came to the Court in 1967, each Justice had one clerk; today I believe it's four.

MS. FEIGIN: And the Chief has five.

MR. STERN: The Chief then had two. I happen to know that because one of his clerks was Charles Wilson, who sat behind me in journalism school and went on to law school thereafter. But you're right. Today the Chief has five. And in a sense, it's too bad. Justice Brandeis was asked once, this was back in the 1930s, "What makes the Supreme Court great?" He said "Because we do our own work here." Think about that. I've thought about it a lot over the years and I always try to do my own work. I never had a research assistant. When I was a professor, I never used an assistant for classes, et cetera. There's no substitute for doing your own work.

MS. FEIGIN: So when you talk about the Supreme Court, where now each justice, except for the Chief, has four, you feel they do a little less on their own? They're taking fewer cases and they have more clerks.

MR. STERN: Yes. There's a justice who supposedly paid so little attention that when his clerks provided him with two options for a decision, sort of an "A" version and a "B" version, he sent both to the printer [laughter]. At least that's the story. I wasn't there, so I won't vouch for that.

The Court in those days was covered differently. I did the conference list every week, the forty or fifty cases, perhaps several hundred at the beginning of the Term, that had accumulated during the summer, that the Court might dispose of the following Monday in its Order List. The list contained only names of cases, no descriptions. You wouldn't know which were important unless you had looked up the cases and knew what they were about. These days, I'm sorry to say, because of the economics of the news business, news

agencies depend on the wire services to know what's newsworthy. News operations, especially the TV networks, are more likely to rely on affiliates to supply information and interviews about a case, rather than having their own reporters spend two or three days in some town where the case arose. That can make a difference.

One case sticks in my mind as an example. There was a case from Grand Rapids, Michigan, a parochial aid case. It's a school district where only about half of the students were enrolled in public schools. It's got a very heavy parochial school population, and as a result, even though the school board attempted year after year to get new and increased funding, its efforts at the polls would fail because so many parents had no stake, so to speak, in the public schools and were reluctant to pay more taxes if they weren't going to get any benefit from it. So increasingly the school board became desperate. It made a deal. The deal was that if the parochial schools would support these ballot issues to provide more funding for the schools, that the school board would cut them in on it, would give them a piece of the pie. The school board agreed to send public school teachers into the parochial schools to teach enrichment courses such as languages and advanced math. These teachers would come in, they'd put a sign on the wall that said "This is a public school class." The students were identified for purpose of those classes, as "part-time public school students." The school board agreed to pay rent, to lease the classrooms during those hours that they were being used by the publicly paid schoolteachers. They were paying $6 a classroom a

week. I could go on, but you get the idea. Was this an Establishment Clause violation? Ultimately the Supreme Court did strike this down seven to two, I believe. But the point of my story is that I went out to Grand Rapids. I spent several days trying to learn more about what had happened. However, the Supreme Court never documented any of this. The justices simply took it as a straight on-the-record parochial aid case. There was no testimony about a "deal" in the record. There was nothing in the argument in the Supreme Court, and not a word in its decision about a deal being made. Now these are highly sophisticated justices. What they may have known and kept to themselves, I can't tell you. All I know is by virtue of going to the scene of the case, where it originated, a reporter can get an entirely different, and, shall we say, somewhat richer, view of what transpired than you would get by looking at the record or by simply reading the Supreme Court decision. There is value in giving a reporter time and resources to work the story.

MS. FEIGIN: You began by saying, and it is indeed the case, that news organizations don't do it this way now. Why is that? Is that because it has become corporate?

MR. STERN: It's the economics of the business. I remember a point when NBC had 108 correspondents, and within about a year, having been sold by the Sarnoff family to a corporation, it was reduced to 33. At one point we were trying to cover major events in South Africa out of Rome. But let's not get into handwringing here. The situation is that network news still comes in the familiar one pound loaf, but much of it has only six ounces of journalism in it.

MS. FEIGIN: Okay. Well getting back to the Supreme Court, you were going to tell us about covering the Watergate tapes case when it came down. You got the early word. What is it like to be there when a case comes down and you've got to ruffle through the opinion and figure it out. Maybe it was different then because it wasn't 24/7 news, so maybe you had a few hours until you went on air.

MR. STERN: Well not exactly. There were a couple of incidents that involved Warren Burger that I should tell you about. Warren Burger became Chief Justice in 1969. He always thought of himself as a sort of ex-journalist because when he went to school in Minnesota, he'd been a stringer calling in sports scores for the local paper. So he was not inherently hostile to the press. Okay, in 1967, before Burger was Chief Justice, the last day of Term, twelve decisions came down, announced from the bench. About half of them landmarks, read aloud, at least summarized, starting with the junior justices. So by the time they got to the good stuff, we're already now at about 10:30. I had to file to radio on the hour about anything that happened at the Court by 11:00. But in those days the federal courts strictly enforced the rule against broadcasting from a federal courthouse. The Supreme Court wouldn't let us file by telephone from the Supreme Court building or have a microphone. I had to file from the Senate Press Gallery which, as you know, is a considerable distance from the Supreme Court building, and up three floors. So here now come these major decisions. I've got about 30 minutes to file. I haven't even written anything yet, and I've got to get over to the Senate Press Gallery.

MS. FEIGIN: Are you saying that they read all the decisions?

MR. STERN: The result was announced for each one; the more important ones were described in detail. On this particular day in 1967, among the dozen rulings was a case called *U.S. v. Wade*. It was a police lineup case. It was a question as to whether or not criminal defendants had a right to the presence of a lawyer when they were being placed in a police lineup. It raised both a Fifth Amendment question and a Sixth Amendment question. That particular decision was not read aloud. It was simply thrust into our hot little hands. It ran, I could only guess, maybe fifty pages. All I could do was flip to the last page and see how the justices disposed of the case. Remember, in those days there were no head notes or syllabus when the case was announced. They were added only months later when the Reporter of Decisions would write up the official version for U.S. Reports. I did all I could do. I flipped to the last page where it showed that on the Fifth Amendment issue, defendant Wade lost. What I didn't know until after I broadcast my story was that thirty pages back, on the Sixth Amendment issue, he won. I got it dead wrong. That is not encouraged in the news business.

MS. FEIGIN: Were there repercussions?

MR. STEIN: No. Fortunately there were other decisions that day that eclipsed *Wade*. However, in 1969, Warren Burger, as the new Chief Justice, met with some of us for a little coffee and cookies down in the basement of the Supreme Court. I still remember. December 19, 1969. It sticks vividly in my mind. I told him the sad story of what had happened to me with the *Wade* case. I

also told him that I was from Ohio where the Supreme Court puts headnotes, puts the syllabus, on top of the decisions when they are issued. In fact, in Ohio the syllabus is black letter law. If I had had the benefit of that, I wouldn't have gotten it wrong. He was sympathetic, and he changed the system for issuing opinions. To this day, when a Supreme Court decision is announced from the bench and the copies of it are distributed, it comes with the headnotes, the syllabus, and of course the lineup and so on, right there on the very first page, and that has certainly been a major benefit.

It was also during Burger's regime, by the way, and I don't know if I've told you this. Did I ever tell you that I won the only case I ever argued in the Supreme Court?

MS. FEIGIN: You told me you had a case about the tax deduction for law school but that didn't get to the Supreme Court.

MR. STERN: No. Let me tell you about this one. Before Burger, the Supreme Court cafeteria was a dungeon.

MS. FEIGIN: Still is [laughter].

MR. STERN: Well he did have it remodeled. It's a place that some people even use as a hideaway. Senator Jeff Bingaman from New Mexico, I used to run into him in the cafeteria. He would try to get away from the Senate [laughter] so he could have some time to think to himself, and I would see him sitting there. I owned property once in New Mexico so I know him. I would see him in the Supreme Court cafeteria. In any event, to get to the point, Burger had the cafeteria redone. It was my custom in the morning when I came into the

Court to get a cup of hot tea for which I paid the princely sum of 51 cents for a styrofoam cup, some hot water, and a tea bag. And then it was my practice that after I went upstairs to hear decisions or whatever, I'd come back down and I would take my teacup, which is now empty, and the tea bag, and I'd go back into the cafeteria and get some more hot water and have another cup of tea. Well the first time I went through the line in this newly redecorated cafeteria, the cashier said "That'll be a nickel." I said "A nickel?" She says "Yeah for the water refill." I said "That's outrageous. Who's in charge here?" She says her supervisor is across the hall by the telephone operators. So I walk in there and said "This is an injustice to gouge the working man for a nickel for a water refill" [laughter]. He said "Alright, alright. From now on, the water refills are free." And so it is to this day. I maintain that I won the only case I argued in the Supreme Court. Are you impressed? [laughter]

MS. FEIGIN: I'm very impressed [laughter].

MR. STERN: Warren Burger, he and I also had some conflicts. I remember one at an ABA meeting. The ABA had a rule that speaking events were open to the press without constraints. The Chief Justice was going to give a speech. I came in there with my camera crew. He came in from the back of the room, and he took one look at me and he said to me, "You go or I'll go." Puzzled at first, I cited the ABA open-door policy. The chairman of the meeting, a federal judge from Boston, said to me "We can't have this. Please would you be a gentleman and leave?" So I left. I never did find out why he objected to having the press there.

He was sometimes difficult. But there's another side to every human being. I can see in my mind's eye today when William O. Douglas was dying at his home in the Palisades here in Washington. In those days we did stakeouts. They were part of the job too. We would spend time just sitting in a car outside somebody's home or office waiting to see if anything would happen. Here comes Warren Burger up the walkway carrying with him some jams and jellies he had made at home to bring to his adversary on the Court, Justice Douglas. The bottom line? We have to be hesitant in judging human beings. People are complicated.

MS. FEIGIN: One thing I think has changed also with the Court, and I wonder if this is correct, but transcripts of Court arguments, I believe in the old days didn't identify which justice was asking a question. Did you ever deal with the transcripts?

MR. STERN: No. I never did, so I'm not your best witness on that point.

MS. FEIGIN: Okay, anything else about the Court?

MR. STERN: How did we get on the Supreme Court? We could talk more about it, but we haven't yet discussed the cases, the trials, I covered out of town. We've talked about the ones in Washington but my work was probably evenly divided between D.C. and out of town cases.

MS. FEIGIN: And we will discuss that, but there's actually another question I have about Washington. What about the Hinckley trial?

MR. STERN: John Hinckley. Yes. You remember, of course, he was prosecuted for the attempted assassination of President Reagan in 1981. At his trial, my

strongest memory is the film “Taxi Driver,” and that's because it is the iconic 1976 film starring Robert De Niro and Jodie Foster. John Hinckley’s motivation for shooting Reagan was to impress Jodie Foster, of whom he had become enamored. He had developed an obsessive fixation with Jodie Foster. In the movie “Taxi Driver,” the character Travis Bickle has a scene in front of the mirror where he keeps saying “You talking to me? You talking to me?” [laughter] To this day, when I’m in front of a mirror, I say, “You talking to me?”

As you’re aware, Hinckley was found not guilty by reason of insanity. I think I would qualify as an expert by now all the times I sat through testimony about the DSM-4, the Diagnostic and Statistical Manual of Mental Disorders that psychiatrists use to categorize what the subject’s disorder might be. There’s now a DSM-5.

Hinckley was diagnosed as suffering from schizotypal personality disorder. It was really a battle of psychiatrists, those who claimed he was ill, and those not. Perhaps the most important thing which we could say is that the trial led to significant changes in the insanity defense, both in federal trials and in several states. In fact, there are three states that outlawed the insanity defense altogether as a result of the Hinckley trial. Essentially, as a result of the trial, the so-called volitional prong was removed, and federal courts reverted to a form of the old *McNaughton* rule, whether the defendant could comprehend that he was doing something wrong. Congress changed

federal trials in other ways, too. It shifted the burden of proving a severe mental disease or defect from the prosecution to the defense.

So the *Hinckley* case had a significant bearing on making it more difficult to use the insanity defense, even though it was seldom used anyway, probably in about 2% – I think that was the figure – of all cases. I'm also recalling, by the way, that Jodie Foster testified on videotape from California. Also, there was a wonderful judge in the case, Barrington Parker.

MS. FEIGIN: Were you there when Hinckley saw the taped testimony from Jodie Foster?

MR. STERN: Yes. I would have been. He had what they call flattened affect. I don't recall any emotion at any point showing from Hinckley. He ended up spending 35 years at St. Elizabeth's, the hospital in Washington for those who have mental diseases. But it's a case we should not have left out. You're right.

MS. FEIGIN: I'm glad we got to it. So now do you want to move on to some others? You've done so many all over the country.

MR. STERN: I don't know really where to begin. We mentioned the Sam Sheppard case before I came to D.C. That was in Cleveland in 1966. I suppose my biggest, my longest assignment, would have been the Patricia Hearst trial in San Francisco in 1976. That's the case that involved the heiress turned bank robber. In fact, the case took so long that after I had been in my hotel in San Francisco for a month, I was called to the front desk and told that they would no longer be charging me California taxes on my room because I had become a citizen of California! [laughter] I should also say that I was the press

representative for that trial as well, the liaison between the judge and the press corps.

The Patty Hearst case taught me, among other things, that it's better to be lucky than good. F. Lee Bailey was the attorney for Patricia Hearst, and he did his usually sharp, incisive job of defending his client. The prosecutor, Jim Browning, later a federal judge, however, got something better. He got lucky. Here's how that happened. During the course of the trial, it seemed everything that Browning was trying to do got snake bit. There came a point where he wanted to introduce into evidence a very damning tape recording that had been made surreptitiously, but legally, of Patricia Hearst the night she was arrested. She's in her jail cell and she calls her best friend, Trish Tobin, a girlfriend, and she's talking about her parents in the most bitchy terms and saying very incriminating things. Browning was ready to play the tape, and the tape machine wouldn't work. Like I said, snake bit. Poor Jim Browning. However, at the close of the trial, the very last thing before the summation and the jury getting the case, the judge said to counsel "Is there anything that you wanted to get in that we didn't do?" and Browning, or one of his assistants, suddenly remembered the time the machine hadn't worked. So as it turned out, the last thing that the jury heard before the summation, the last evidence it heard before going to its deliberations, was that tape. I've always felt that that was the piece of evidence that nailed Patty Hearst who was convicted by the jury.

Patty Hearst herself attributed it to something else. Both sides were to make their closing arguments the next day. But Bailey had made a commitment to be in Las Vegas the night before to give a talk at an American Law Institute meeting about what he called his five rules of summation, his five rules of closing argument. Bailey had his own airplane. Bailey said to me "I'm going to Las Vegas. Do you want to come along?" I said "Sure." So I flew with Lee Bailey to Las Vegas. He had a nice big steak at Caesars Palace and then he gave a brilliant lecture, without a note, on the five rules of closing argument. And then we flew back to San Francisco. We probably got in about 1:00 in the morning. He's supposed to be giving his summation that morning. Well, he was terrible. He was obviously tired out of his gourd. In fact, Patricia Hearst herself, in a book which she later wrote, said that he was hungover. He was so disordered. At one point he even spilled water on himself. He was just stumbling. As to the five principles, he didn't mention one. Lee Bailey was one of the greats. I have no hesitation in saying that, but he was not well advised to be flying his own airplane to Las Vegas the night before summation.

MS. FEIGIN: He piloted the airplane?

MR. STERN: Oh yes. Of course he flew; he was a pilot too. He was a renaissance man, an ubermensch, whatever you want to call it. A brilliant fellow. I have nothing but respect for that part of his life. Later on he got in trouble with the bar and the criminal law and other things, but quite apart from that, his abilities – with a decent night's sleep -- were astonishing.

MS. FEIGIN: Did you ever talk to him about that summation afterwards?

MR. STERN: No I did not. In fact, I'm not even sure I ever saw him again. Okay, enough about Patty Hearst.

I wanted to mention another trial. It actually lasted almost as long, that is to say, three months. That was the Berrigan trial, which I may have mentioned earlier in our discussions, in Harrisburg, Pennsylvania, where members of the Catholic clergy, Father Berrigan, Philip Berrigan, Daniel Berrigan, Sister Elizabeth McAlister and others, antiwar activists from the Baltimore area, were put on trial for supposedly plotting to kidnap Henry Kissinger and blow up the heating tunnels under the Capitol as a means of protesting the Vietnam War. The case essentially ended in a mistrial once it became clear that a provocateur working for the FBI was the principal plotter who had organized this thing. He was an inmate at the Lewisburg Federal Penitentiary who had befriended -- well, it's too long of a story -- but he used his contact with some of these antiwar activists to put this supposed plot together. What he was really intending was to get the FBI to take steps to have his sentence modified. In any event, what I remember best from that case was that J. Edgar Hoover was so concerned that the case end with a conviction that he actually had FBI supervisors shuttling in and out of that courtroom every half hour to report to him as to what was going on in the trial. I am sure he was disappointed by the outcome.

In those days, I should also tell you, our technology was much more primitive. We had to feed from our closest station, in Hershey, Pennsylvania,

by microwave to our studios in Washington, D.C. and then to the network. ABC would feed from Hershey too, ahead of us. What had to happen was that a technician had to climb a microwave tower on a mountain in central Pennsylvania to turn the dish, which was aimed at the ABC receiving site in Washington, turn it in another direction toward the NBC receiving location, at a precise moment in the schedule. We were always petrified that ABC would run over and the dish wouldn't get turned in time for us to feed our signal. Of course today you probably do it out of a little gadget in your pocket [laughter].

MS. FEIGIN: Is there a real sense of camaraderie among the reporters from different stations?

MR. STERN: Yes, there is. One other thing I should mention. When the Berrigan trial was over and I was feeding night after night doing network stories on it – there was much interest in it on the network – I remember when I was leaving Harrisburg I said to myself I'll never get another story like this. And then about three months later came Watergate [laughter].

MS. FEIGIN: You just went from amazing story to amazing story.

MR. STERN: I had the Cassius Clay trial – today you would say Mohammed Ali – for refusing induction into the Army during the Vietnam War. This would have been in Houston in 1967. By the way, he never formally changed his name to Mohammed Ali. Legally, he was always Cassius Clay. In any event, it took the jury all of 21 minutes to convict him.

MS. FEIGIN: Were you surprised by that?

MR. STERN: No, because he conceded everything. But what has remained with me was that in the middle of this trial, with national attention – Cassius Clay, Vietnam War, all these important things going on -- the judge takes a recess and invited the lawyers from both sides to come with him to join him in going next door to a courtroom where Percy Foreman was arguing a case. This is the famous Texas lawyer, for those who don't recall. Here we have this big case going, and the judge takes a recess in the middle of it so all the lawyers can go next door and watch Percy Foreman argue [laughter].

MS. FEIGIN: That seemed like a bigger case than Cassius Clay.

MR. STERN: Right.

MS. FEIGIN: Just to put the Cassius Clay case in context, because over time the perception of him changed, but at the time, was there public support for him?

MR. STERN: Well, it was divided. The Supreme Court ultimately held in his favor. Cassius Clay wasn't arguing a religious belief. It wasn't that some religious principle compelled him to do this. This was a matter of his own beliefs, which muddied the waters a bit. In any event, bottom line, what happened in the Cassius Clay case was the Supreme Court decided unanimously that the draft board's policies contained too many uncertainties and inconsistencies to support a conviction.

Every time I think of Clay, I think of another out-of-town case, Clay Shaw. I'll give it to you in short form. He was a businessman in New Orleans who was accused of having a role in the assassination of President Kennedy. The District Attorney in New Orleans, Jim Garrison, had

embraced rumors that were floating around that certain characters in New Orleans had gotten involved in the Kennedy assassination. In any event, the whole case ultimately fell apart.

MS. FEIGIN: When was it?

MR. STERN: You're pushing me on this one. I'm going to guess around 1969. It was a surreal case in more than one way. The judge, who looked remarkably like Mickey Rooney, was sitting on the bench, and in front of the seal of the State of Louisiana, which had, as I recall – at least then – a huge pelican, and the judge would be situated in such a way that he appeared to be coming right out of the pelican's mouth [laughter]. And the judge had a practice of reserving at least part of the courtroom between the defendant and the bench for his lady friends who would come into court each day vying with each other to wear the most spectacular fashionable attire. Each day, as our interest in the defendant faded, most of our attention was devoted to what these women would be wearing [laughter].

MS. FEIGIN: When you say "lady friends," is that a loaded term? You're not meaning wife and daughters.

MR. STERN: Well not being an investigative reporter, I didn't go too far with that [laughter]. But he clearly had a regard for these women, for whom he had reserved these seats.

Before this goes on too long, let me quickly mention some other cases, maybe just by name. Just to give you some idea of the geographic diversity, I covered the Chattanooga jury tampering trial of Jimmy Hoffa, the IBM

antitrust case in New York, which lasted more than a decade. You can ask me about that if you want. The 1984 Pinto case in Winamac, Indiana. That was the case of the exploding gas tanks, and importantly, was the first time a corporation was prosecuted criminally by a state for reckless homicide, so an important case. I covered the John Walker spy trial involving Walker and his son and his brother in Norfolk, Virginia. That would have been around 1985. I covered the landmark Alabama prison conditions case in Montgomery, Alabama, in 1982. The reason I remember that is because I got to meet Frank Johnson, the legendary civil rights judge. It was the first case in which a judge took control of an entire state prison system because of the failure of the legislature to do anything about horrendous conditions of the prisons. I covered legal proceedings in Milwaukee, North Platte, Nebraska, Port Gibson, Mississippi.

MS. FEIGIN: Let's dig into it before we end, maybe pick one and dig into it a little deeper?

MR. STERN: Okay.

MS. FEIGIN: Is there any one that you particularly want to talk about? Maybe the Hoffa case?

MR. STERN: Well, the Hoffa case, there's not much to say. It had a colorful cast of characters. Some of Hoffa's lawyers I knew from other places.

MS. FEIGIN: This was jury tampering, right?

MR. STERN: Yes, in a previous trial. Hoffa was convicted. His lawyer, his name was Moses Krislov, was from Cleveland, so I knew him. I had really just come to NBC at that time, and they told me to get what film we had – and in those

days, of course, it was film – to our feed point in Chicago the fastest way possible. So I chartered a Lear jet. Later they said "Hey, we didn't mean that" [laughter].

MS. FEIGIN: Hoffa seems quite a striking personality. Do you have any sense of that?

MR. STERN: No. He was a very stoic sort of person. I have no funny or even dramatic stories to tell you. He just came and went.

MS. FEIGIN: You mentioned a case in Milwaukee.

MR. STERN: That was the H-Bomb secrets case. That's a case where a young fellow, Howard Morland, had written an article in *The Progressive* magazine, which was published in Madison, called "The H-Bomb Secret." This would have been around 1979. Morland had been a chemistry major in college. He was an anti-nuclear activist who wanted to show that knowledge of the technology had become so widespread that almost anyone could build one, imperiling all of us.

MS. FEIGIN: He was working from public sourced information?

MR. STERN: Pretty much so. The government filed an emergency suit to block the publication of what appeared to be nuclear secrets. The case was before Judge Robert Warren in Milwaukee who entered the order, at least temporarily. By the very next day, it was discovered that almost everybody, including the Encyclopedia Britannica, had published essentially the same information, and so the whole case fell apart. However, what I remember best is what Morland told me in an interview afterwards. He told me that when he was working on his research, there came a point where he was

trying to figure out where the center of gravity had to be in putting together a nuclear weapon. He decided to go to the Atomic Museum in Los Alamos, New Mexico, and see where the grappling hook was on the top of Big Baby. That would tell him where the center of gravity was. So he went to the Atomic Museum, and he's in a room, nobody's there, and there's this atomic bomb. He didn't want to take out a tape measure, so he has this idea. He takes off his tattered sneaker and he puts it on top of the bomb. He realizes if he takes a picture, that from that photograph, knowing the dimensions – the length of his sneaker – he can then figure out where the grappling hook goes and other components. So he steps back to take a picture, and just as he's about to snap the picture, there's a voice from behind him saying "Oh no, no. You can't do that." He looks around and a figure, one of the directors of the museum, says "No, no, no. You don't have enough light" [laughter]. He turns up the rheostat on the wall. So much for our vaunted precautions.

MS. FEIGIN: Oh, no [laughter].

MR. STERN: These are the events that stick in my mind. I did want to mention Port Gibson before our time runs out.

MS. FEIGIN: Okay. Why don't we end with that one.

MR. STERN: Okay. Because in a way, that is my most dramatic story because my life was in danger. Is that sufficiently dramatic? [laughter]

MS. FEIGIN: Absolutely [laughter].

MR. STERN: The Port Gibson case involved a boycott by Black residents of this town on the river in Mississippi in Port Gibson. With the encouragement and support

of the NAACP, the local residents had undertaken a boycott of white merchants to protest the conditions under which they were treated in that community. The boycott lasted several years. The white merchants sued for malicious interference with their businesses. A local jury took little time to convict the NAACP and its leadership, and of course the NAACP wanted to appeal. For the NAACP to appeal, Mississippi required a bond in the amount of $2 million to be posted.

MS. FEIGIN: Is that figure based on something?

MR. STERN: It was a state law provision.

MS. FEIGIN: I assume it was a law, but the amount $2 million, is that based on the amount of damages that were imposed?

MR. STERN: Yes. They wanted the bond computed on seven years of business losses, and that was very much disputed. This case is called *Claiborne Hardware* because that was one of the plaintiffs. These merchants came in showing how much money they claimed to have lost by virtue of the Black residents not doing business with them.

In any event, the deadline arrived for posting the $2 million bond. I was there in Port Gibson with somebody I knew, Nathaniel Jones, who was the general counsel of the NAACP. I knew him from Cleveland. He was from Youngstown. He had been First Assistant to Merle McCurdy, the U.S. Attorney in Cleveland. Nat was a wonderful person, subsequently a judge on the Sixth Circuit Court of Appeals in Cincinnati. In any event, Nat finds a federal judge in Oxford who's willing to enter an order blocking that required

posting, enjoining it, at least temporarily. One slight problem. This is about 1:30 in the afternoon. The judge says you've got to be here before the clerk's office closes at 4:30. Oxford is 220 miles from Port Gibson, about a four-hour ride [laughter]. Well, you can do the math. So I jump into Nat's car, and we go racing up the highway. I'm not sure the tires ever touched the pavement. And I'm thinking to myself as I'm going, here I am a northern TV network reporter, Jewish too if that counts for anything, riding in this car doing 95 miles an hour with the Black general counsel of the NAACP. If they pull us over, you will never hear from us again [laughter].

MS. FEIGIN: And?

MR. STERN: Well it worked out.

MS. FEIGIN: No trooper stopped you the entire 220 miles?

MR. STERN: No. I told you, it's better to be lucky than good, right?

MS. FEIGIN: That's amazing. So you blocked the posting. That's great.

MR. STERN: They may have held open the clerk's office a few extra minutes. I don't remember.

MS. FEIGIN: We should say, because people reading this may not realize – it's so different now – but it's not as if you had cell phones and could call and say "we're on our way." It was a whole different world, right? You were on the road unless you stopped and found a place to put money in a phone and called the court and said you'd be a few minutes late; it wasn't like now where communication is instant.

MR. STERN: Right.

MS. FEIGIN: What year was this?

MR. STERN: The Port Gibson case was in 1982.

MS. FEIGIN: Before we end today's session, do you have any more you'd like to tell us about the Supreme Court?

MR. STERN: I could point out that covering the Court has unique difficulties, other than getting water refills for free [laughter]. For example, in the news business, editors and commentators for some reason try to convert every case into a test of the Constitution. As you know, a little bit more than half the Supreme Court cases are simply matters of statutory interpretation where the Court is trying to figure out what a statute means. In other words, how to apply it. But for some reason, Tom Brokaw – a great journalist who I worked with for many years – every time I would call with something the Supreme Court had done, he tried to convert it into some sort of constitutional question, when much of the time it was not a constitutional question.

I felt so strongly that journalists should know the difference that when I was teaching a course on the Supreme Court some years later at George Washington University, the first case on my syllabus was *Holly Farms v. NLRB*, hardly a landmark akin to *Marbury v. Madison*. It was a case about chickens and live-haul crews, employees who work for poultry processors who send out crews of people to catch the chickens that farmers raise. They stuff the chickens into cages on trucks and drive the trucks to the processing plants. Under the National Labor Relations Act of 1935, agricultural workers are not authorized to organize and join labor unions for collective bargaining.

So the question in this case was, were these live-haul crews agricultural workers? Holly Farms said they go to a farm. They do something on a farm. That makes them agricultural workers. The live-haul crews said, "well, yeah, we start off on a farm, but basically we do work that farmers don't do. We have to catch these rascals and stuff them into cages and then deliver them to the processing plants." They asserted the right to have a union. What did the Court decide? Interpreting the labor law in light of its origins and application, it ruled that the live-haul crews weren't doing farming and could organize. The point of my starting off with this "chicken case" was to make my students distinguish between statutory construction and a constitutional case.

MS. FEIGIN: In talking about the Court earlier, you mentioned Warren Burger. Can you tell us about some of the other justices?

MR. STERN: Yes, I recalled Justice Burger bringing jams and jellies to Justice Douglas. That reminds me of my misadventures with Justice Douglas over the years. In 1967, about a year after *Miranda* -- the Miranda warnings that have to be given to criminal suspects -- I decided to do a program on "Miranda One Year Later." Had in fact policemen been handcuffed by having to apply that rule? Just starting to cover the Court and not knowing any better, I sent a note to Justice Douglas who was the principal Fourth Amendment person on the Court in those days. I asked whether I could interview him about *Miranda*, and, much to my delight, he said yes. I was doing this for NBC Radio. He wrote that he had four requirements. First, he wanted to get the

questions in advance. I had to agree not to cut his answers. I forget what numbers three and four were. In any event, comes the day, my engineer and I go to the East Conference Room in the Supreme Court to set up. In comes Justice Douglas. I start with my very first question about the impact of *Miranda*, and he begins talking about some poor devil in the Philippines having pepper rubbed in his eyes. He's going on and on. I think he's talking about a case from about 1921. In any event, he's about four minutes in now, and I realize, among other things, I've agreed not to cut his responses. I am in trouble. What am I going to do? So finally he stops to take a breath, and I say "Mr. Justice" – and I'm groveling – "I appreciate your giving us this time, and I agreed not to cut your answers. Is it possible I could ask the question again and you could respond more succinctly?" And he looks up at me and he says, "Well if you're not interested in what I've got to say . . ." and he walks out. I was a dead duck either way [laughter].

MS. FEIGIN: This was him on the decline, obviously.

MR. STERN: Yes. He had begun. All I'm trying to explain to you is life as a Supreme Court journalist sounds kind of cushy [laughter] and easy. It isn't always.

MS. FEIGIN: Just to focus on that interview, you at least might have thought, maybe you didn't, that -- this was at the end of his career, I assume, right?

MR. STERN: At that point I was too rattled to think. Of course, I couldn't use anything.

MS. FEIGIN: Did you think he might have been showing early signs of, or some signs of some form of dementia or decline? Is this something that you reported or did anything with, or did you just let the whole thing drop?

MR. STERN: I just had to write it off as a miscommunication. As it turned out, it wasn't the last time I sat on a William Douglas story.

MS. FEIGIN: When else did that occur?

MR. STERN: In the early 1970s, I don't recall the year, the American Bar Association was meeting in San Francisco at the Jack Tar Hotel, and the Young Lawyers Section announced that Justice Douglas was going to be present to give a talk about the Fourth Amendment, and of course I arranged with my crew to cover that, and we did. We filmed his presentation. Well, by that point he had pretty much gone round the bend, and he talked just nonsense, and obviously it wasn't useable. I took the film back to our affiliate KRON across the street to see if there was anything that made sense. There was not. So what did I do with that film – the film that showed beyond question that a sitting justice of the U.S. Supreme Court had dementia? What did I do with the film? I threw it away. In those days, it simply would not have been part of our way of doing business to humiliate, to so embarrass the Court and Justice Douglas, as to put that on the air showing that this justice was no longer functioning. Now can you imagine? I'm not trying to defend what I did. By today's standards, I failed to report a matter that was important for the public to know. I didn't do my job. But we lived differently then. It

was a different time. We tried to avoid hurting people or demeaning the Court.

MS. FEIGIN: It was a different time. But having the advantage of hindsight now, if you could make the rule, would the rule be that you would report that or you wouldn't? What do you think is the better way?

MR. STERN: That is a tough question. I think today our responsibilities would require us to report the story, but you could report it in a way that's sensitive and not sensational. It was not a trivial matter. It would be different if the situation had been less newsworthy.

I remember a colleague of mine who worked for another network during the Watergate trial. As John Ehrlichman was entering the federal courthouse, he tripped. He fell right on his face. We all had film of that. Although Ehrlichman wasn't injured, my colleague started off his piece that night by saying that John Ehrlichman had a bad day and showing the embarrassing moment. I didn't. That wasn't part of the story. I wouldn't include it today.

MS. FEIGIN: Any other justices you want to mention?

MR. STERN: Lewis Powell was another favorite of mine. I had known him for years. He was on President Johnson's Crime Commission back in 1967. I had known Powell when he was president of the American Bar Association, with which I was active. Around 1970, Lewis Powell wrote an article which appeared in *The Richmond Times Dispatch* and then was published in the ABA Journal defending the Nixon Administration's use of wireless wiretaps without a warrant in domestic security investigations. He believed that the attorney

general had the inherent power to do that. Less than two years later, the Supreme Court, in a case called *Keith*, a case that came out of Michigan, ruled unanimously that the attorney general had no such power. The author of that decision was Lewis Powell. You see the point. He had a different role once he became a Supreme Court justice.

I should tell you another story about Lewis Powell. When he retired from the Court, his very last day was a rainy day and I saw that he had come out the Maryland Avenue entrance to the courthouse, standing back to get shelter from the rain. He was waiting for Mrs. Powell to bring the car around. Of course I walked up to him and exchanged pleasantries, and said something about how sad I was that he was leaving the Court and expressed my concern that the Court might lose something in his absence, that it might become less caring. And he said to me "The Court doesn't go backwards." That was in 1987. Of course, he was talking about fundamental rights and liberties, but I have always remembered what he said to me.

Occasionally my interaction with justices left me with a red face. I remember in 1969 when Justices Harlan and Black left the Court, the question was who would be taking their place? In the rumor mill around the Justice Department, we were hearing Powell would be nominated for one seat and somebody raised William Rehnquist's name for the other seat. Well, that didn't make any sense at all. Rehnquist was an unremarkable assistant AG in the legal counsel's office. You'll recall from the White House tapes, President Nixon called him Renchburg [laughter]. Nixon didn't even know

his name. So we're talking about a relatively obscure public official, right? I remember this was about maybe 5:30 in the afternoon. I picked up the phone and I called Rehnquist at home. He was in the kitchen, and I sort of laughingly said "Hey, I just wanted you to know that now we're hearing *your* name in connection with the Supreme Court. I thought you'd get a kick out of it." [laughter] I'm laughing, and he says "I can't talk about it." Oh no! By about 7:30 that night, there he was at the White House being introduced by the President along with Powell for the Supreme Court vacancies. So mine is a very hazardous profession. We have embarrassing moments [laughter].

The justices used to prize their anonymity, by the way. I think of that with Rehnquist. He had a bad back, as you may know. Almost every morning when the weather was decent, he would come out the back exit of the Supreme Court building with a clerk, and they'd go for a walk around the building. There'd be all these tourists on the front steps with their cameras, taking pictures of each other, and the Chief Justice of the United States would walk right past them and never once to my knowledge did anybody say "Hey, there's the Chief Justice. Hey Chief, can I have a picture with you?" [laughter]

Much the same thing happened a few years later when Harry Blackmun was on the Court. This was in 1981, sometime after the *Roe v. Wade* decision which Blackmun wrote and which made him the principal target of abortion opponents. There were anti-abortion demonstrators marching in front of the Dirksen Senate Office Building where Sandra Day O'Connor

was undergoing confirmation proceedings. When Mrs. O'Connor was in the Arizona legislature, she had been a moderate on abortion, enough to turn the pro-lifers against her. It suddenly dawned on me. At noon Harry Blackmun exits the Supreme Court and takes a walk. I've seen this a dozen times. He comes down First Street, and he goes to the corner, Independence Avenue, right past the Dirksen building, where the demonstrators were parading. I said to myself he's going to go right past those people with their anti-abortion signs and fetus photos and anti-Supreme Court placards. I called the office, and I said "Quick, get me a camera crew." And sure enough, I get a camera crew, and sure enough, noon, here he comes, the author of *Roe v Wade*, walking right past the demonstrators. And they didn't recognize him! As he went further down the street, I caught up with him and tried to ask him about it. He kept walking without responding.

MS. FEIGIN: Any memories of Thurgood Marshall?

MR. STERN: Thurgood Marshall. Much as Thurgood Marshall was a wonderful human being, he could at times be exasperating. There came a time during the summer when there was a New York City election dispute and the parties came to see Marshall in chambers sitting as a circuit justice with an application to delay the election. I called Justice Marshall's chambers. He came on the phone, and I asked "Are you going to let a member of the press attend?" He said, "No." I gave him my best spiel as to the role of the press in a democracy and the need for an informed public – subjects he appeared to

treasure in his opinions – and I remember he said to me "You guys are a pain in the ass" and that was the end of that [laughter].

Justice Scalia and I were on very good terms. I had known him. We exchanged a lot of correspondence when I was doing Freedom of Information Act requests and he was head of the Justice Department's Office of Legal Counsel. He was brilliant. I mean he was charming. He was an Italian ubermensch if there is such a thing as an Italian ubermensch [laughter]. But in some respects, I have to say this originalism, textualism thing was a schtick in my judgment. Just as an example, in *Bush v. Gore* in 2000 when the Supreme Court ordered Florida to stop the recount in three counties in south Florida, I recall having a conversation with him, just the two of us, and he was absolutely irate, livid, about what had happened and why the justices had to intervene, in his view. His point to me was that all the justices on the Florida Supreme Court were Democrats and that they clearly had been trying to steal the election from Bush. He didn't say a thing about originalism, textualism, due process. All that was on his mind was that Democrats on the Florida Supreme Court were using extraordinary tactics in his judgment to try to make it possible for Gore to win and had to be stopped. His judicial philosophy was window dressing.

MS. FEIGIN: I should just say, because people may be reading this dozens of years from now, that we are having this discussion right at a point in time when the 2020 election is still undecided, and court challenges are being filed, so it's a timely memory.

MR. STERN: I have one, maybe two, last comments and then I think you may want to call a halt to this session. Clarence Thomas. I just wanted to point out I tried to talk to him when he was first confirmed and he was like coiled steel. He just wouldn't open up to me. He just wouldn't talk. Thomas joined the Court in 1991. Now fast forward. Fifteen years later, I'm teaching at GW and I bring my class to visit Clarence Thomas. He agreed to see us and he could not have been more charming, more chatty, more fun. He would've spent the whole day with us. Just a different person. So again, you can't judge people too quickly. Human beings are complicated.

The last person I want to mention here is one who didn't reach the Supreme Court – Robert Bork. One thing that has been stuck in my craw all these years has to do with his rejection by the Senate for a Supreme Court seat in 1987. People seem to remember it simply as highly partisan politics. That isn't what sunk his nomination. As someone who covered the hearings, I have to tell you that I have long remembered the moment when I realized that he was swimming against the tide. He was in the wrong time. The moment came when he was asked about a case in which women seeking employment or promotions to better-paying jobs in a lead battery factory, I think it was, had to agree to be sterilized if they were still in their child-bearing years. The company was concerned that exposure to lead might affect a fetus and result in a deformed child or worse. But weren't there other ways to deal with the situation? When he was asked about this, Bork's reply was "Well maybe they didn't want to have children." Watching this at

a desk I had in a corner of the hearing room, I picked up the phone and I called my wife at home, and I said, "Did you hear that?" And she said to me "Did you hear that?" Bork's towering insensitivity, at least about the plight of these women, was staggering. That's why Bork's nomination was rejected. It wasn't just because of politics or his rejection of privacy rights. To be "Borked" has a more honorable meaning than history has recorded.

MS. FEIGIN: Well that's a dramatic note to end on and I thank you for a lot of wonderful reminiscences.