

**ORAL HISTORY OF
JUDGE STANLEY SPORKIN
MAY 14, 2004**

This is the third interview of the Oral History of Judge Stanley Sporkin as part of the Oral History Project of the D.C. Circuit Historical Society. It is being held by Alexander Bennett on May 14, 2004. The tape and any transcripts made from the tape are confidential and governed by the wishes of Judge Sporkin, which have been made in the form of a written donative instrument.

Mr. Bennett: We finished the last session just as you were commenting on the national-security Findings that had been signed by President Reagan in connection with the Iran issues. To start off today, let me ask if there is anything more about those incidents you would like to add.

Judge Sporkin: Well, I've already noted that I believe a good part of the sting could have been removed from the Iran incidents if early on the Administration had disclosed the three Findings that were signed.¹ Those Findings, since they were drafted in good faith and were intended to help the Administration in carrying out its obligations to the citizenry, would clearly absolve most of those who were involved from any liability when they acted under the Findings.

The Findings were drafted and signed in the utmost good faith. The only people who would have had to worry about the Findings were those who tried to turn the activity into personal benefit and possibly the President for having signed the Findings. I did not know anything about the redirection of funds from the Contra program. I did take into account, when I drafted the

¹ The three Findings were: (1) the Finding drafted by Judge Sporkin on or about November 25, 1985, and signed by the President on or about December 7, 1985, (2) the broader Finding signed by the President and dated January 17, 1986, and (3) a substantially identical Finding by the President dated January 6, 1986, which was effectively superseded by the Finding dated January 17, 1986.

early Finding, that the President's position with the public could be affected if he decided to sign the early Finding. While I realized that the operation had many risks and that the chances of it being pulled off according to the plan were probably less than 50-50, I thought that that was a decision that the President can make. I also thought that if it did go off as planned, then the President would be viewed as a great hero. Indeed, I could envision a ticker tape parade down Fifth Avenue with the freed hostages and the President being greeted by millions of people. So the decision was really up to the President.

The Findings were of interest in several other ways.

I will take full responsibility for the first Finding. It was my idea, and I drafted it shortly after I was briefed on the project.

The two follow-on Findings, which came to my attention in January 1986, were drafted by the President's National Security staff, which was clearly a validation of my advice and thinking on the original Finding.

In connection with these additional Findings, there was a dispute between Director Casey and Secretary of State Schultz. Colonel North, who was the National Security Staff member assigned to drafting the new Findings in January 1986, met with me in Director Casey's home one Sunday in January 1986. As I recall, the draft Finding did not include a mention that one of the purposes was to authorize the transfer of U.S. arms for the hostages. North reported to me that Secretary Schultz did not want that point made in the Finding. Schultz thought that it would be very detrimental to the President

that he was willing to trade arms for hostages, if and when the Finding became a matter of public disclosure or disclosure to the Congress. I insisted that the Finding include mention of that transfer of arms for hostages. I reasoned, based upon my SEC background, that for there to be adequate protection from a document, the document had to have full disclosure. I advised North that it would not be worth the paper it was written on without that Finding included in the document.

North again mentioned Schulz's objection. At that point we both approached Casey for Casey to make the decision. As noted, Casey had one of the finest and quickest analytical minds I've ever seen. After the issue was presented, within a matter of seconds he recognized the validity of the point I made and said that the subject had to be included. North said he would communicate that fact to Secretary Schultz. Later, I was advised that the Casey position prevailed.

Ultimately the position I had espoused that the Finding really protected everybody on a substantive basis was born out by what in fact resulted from the investigation by the Office of Special Prosecutor. No one was prosecuted for the substantive conduct covered by the Finding. The only indictments pertained to the twin issues of obstruction and perjury.

Mr. Bennett: Judge Sporkin, in addition to those issues, there was this issue about diversion of funds from arms sales subsequent to your departure from the CIA, which was another source of controversy and one that was looked into by the Office

of Independent Counsel. Did that sort of issue ever come up during any of your discussions?

Judge Sporkin: It never came up. I was as surprised as anybody when that issue surfaced a number of years later when I was on the Bench. The fact is that, if I had learned about something like that at the time, that's the kind of event that I would never have been involved in or would have approved.

Also, as I mentioned, the position I generally took was that, if a person is going to be absolved from a questionable activity, it would require that the activity be included in the Presidential Finding. So if we could imagine that I had a lapse in the first instance that allowed such a diversion of funds to be a part of a covert operation I knew about, I clearly would never have permitted that such diversion to be omitted from the Presidential Finding. Otherwise the Presidential Finding would have no effect to authorize or protect that activity.

Of course the fact is that the diversion of funds never was brought to my attention until the activity was publicly disclosed years after it took place.

Mr. Bennett: One of the things that we were discussing before we started here today were some of the dates when you were confirmed, when your commission was signed for the Bench and when you actually departed from the CIA. I think we were not able to identify the precise dates but we were pretty confident that you were confirmed by December 16, 1985, that your commission probably was signed at some point that month, and that you did not leave the

CIA until February 7, 1986. Can you fill us in on why you stayed at the CIA during this period after the commission was signed?

Judge Sporkin: It clearly had nothing to do with the Iran-Contra problem. What happened is that I owed a debt to Casey because it was through his efforts that I was able to be appointed to the bench. I therefore did not want to abruptly leave the agency and leave him without having a counsel in place. So what we attempted to do during that period is try to find someone who would take my place and to have a reasonable break-in period so that there could be an orderly transition.

Mr. Bennett: Judge Sporkin, just to go back on the issue of the national-security Findings. The first one had been drafted by you, as you previously explained, on or about November 25, 1985. We later learned that it was signed by President Reagan on December 7, 1985. This particular signed document ended up being placed in a safe at the White House and ultimately destroyed. The text of the Finding was later located through the efforts of your secretary at the CIA. The second Finding, in January 1986, of course became available too at about that time and came to be known.

That first Finding actually was relatively limited in its scope in the sense that it addressed the issue that you were confronted with when you first saw this set of facts on November 25, 1985. It authorized transportation and communication assistance in connection with this project and identified it as an arms-for-hostage proposal. Then later, in January 1986, the White House

itself came back with draft of a second Finding. Can you elaborate on what your role was with respect to the second Finding?

Judge Sporkin: My role was limited really to reviewing it to make sure that it would cover all of the activity that was contemplated and that it would be an effective document. And that's what I did.

You have to remember that it is really for the CIA to draft such documents. And so therefore it really needed my okay and to come up through the CIA to be an appropriate Finding.

Mr. Bennett: While you were at the CIA there were some other incidents that perhaps you cannot talk about. But one that you mentioned that you thought you could say something about was an incident involving ABC?

Judge Sporkin: The ABC case shows you the varied aspects of the position of the General Counsel. One day we found that ABC put on a TV program that indicated that a fellow named Raywald was a person utilized by the CIA to do various nefarious activities that were really contrary to the CIA's charter. The report was wrong. Casey was furious. He called me and asked me what I was going to do about it.

This was another example of Casey's method of operation. He forced you into making quick decisions in the course of which they had to be good decisions and with the exercise of exquisite judgment. You didn't get a chance to tell Casey: let me research it and I'll be back to you in three weeks. He demanded the answers at that moment.

I thought quickly about the ABC issue and advised Casey of a course of action that I thought might work. I requested of him the time for me to check on the accuracy and correctness of my advice. My advice was for the SEC to file a complaint with the Federal Communications Commission under its fairness doctrine. The theory was that we could draft a petition that would be like a speaking complaint normally filed in an injunctive action. We would thereby have the opportunity to get our side across without the risks involved in a court action, which would have subjected the agency to all kinds of discovery on all kinds of matters. That was always the problem that the agency faced when it was wrongly accused of doing something, because it would not be able to fight back and utilize the court system.

I explained my analysis to Casey. I mentioned to him that as far as I knew it had never been done before, which I later confirmed was true. But I did say that, before we invoked that strategy, I would like to visit with the ABC officials to see if I could get them to voluntarily retract the news story. Casey bought in on the plan and dispatched me to New York to visit with an ABC vice president.

My discussions with the ABC official got us nowhere. The network was arrogant and would not budge from its position that the story would stand as broadcast. When I arrived back at the agency and explained what had happened to Casey, he demanded that we immediately carry out the FCC plan. We did so. It worked even better than we expected. The complaint was filed, which caused the media to take note of what we had to say. Indeed, the *Los*

Angeles Times told the agency's story in a cover story in its Sunday news magazine.

ABC's reaction was to move to dismiss the action claiming that a government agency had no standing to make such a claim. We won that motion, which again made ABC look bad.

Sometime after the matter was closed, I was talking to a former high-level reporter of ABC, who told me an interesting story. He said that after I had spoken with the ABC vice president, the ABC vice president reported that I had said that if ABC did not publish a retraction, we would have to take appropriate action against the network. I did not tell the ABC vice president the nature of that proposed action. I wanted it to be a surprise attack.

The ABC vice president thought I was bluffing. He reviewed the matter with ABC's general counsel, who reported that there was absolutely nothing that the CIA could do to ABC in the form of bringing an action or otherwise. The former ABC reporter who was conveying the story to me said that, after we had brought our complaint before the FCC, the vice president went back to the ABC general counsel and said: "Damn it, I thought you told me that Sporkin was bluffing and that he could do nothing to us. How come he was able to think of the FCC action and you weren't."

The ABC reporter thought that the story that ABC had televised was inappropriate and was pleased that we had taken the action that we did, which gave ABC a good spanking.

Mr. Bennett: {After a short break.} During the break to take the call, we agreed to just come back and ask you what was Mr. Casey's reaction to your success with this matter.

Judge Sporkin: Well, Casey was the most incredible individual; the brightest man I ever met. I had maybe three great mentors. Casey, of course my father and Irving Pollack, who was my boss at the SEC for many years.

Casey's style is very interesting. He showed his appreciation for what you did, not by slapping you on the back and telling you that you are doing a good job, but by giving you more work and more responsibility and relying on you more. So after the ABC matter of course it meant that I would be called in on more matters and asked to advise him on a variety of things.

The other thing that was amazing is that Casey and I were able to communicate with each other without direct communication. Casey was always on the move, and he was doing so many things he oftentimes forgot to tell me about certain matters that I had to know about. This is what I mean about being able to communicate without actually being in direct communication.

For example, he would send people to me to brief me on a matter without having forewarned me that these people were going to be coming. However, the briefers did not know that Casey hadn't called me, and they assumed that I knew what they were there for and expected me to be prepared to advise them. Since this was the way Casey operated, I would not let on that

Casey hadn't called me. Instead I would tell the persons who were visiting that I would very much appreciate it if they could just quickly sum up where they are so that I could better focus on the matter. I knew that Casey expected me to run with the ball and to provide the advice, and that usually would turn out to be an effective way of doing business. It worked pretty well.

There are two other matters I think that would be of interest. I think that I mentioned on a previous occasion that when I first came to the CIA, there was a proposed revision of a basic executive order governing the CIA already underway. President Reagan had wanted to supercede the earlier order of President Carter, which very much limited what the intelligence agencies could do.

When I came in, I was told by Casey that I should not worry about the new executive order, that it was being worked on and that I would not have to get involved. I was told that it was ready to go over to the White House and be signed. And so I didn't do much with it.

It turned out that, when the proposed order did go over to the White House, it came back as fast as it landed. I think that I mentioned that the National Security Council stated that they did not want warmed-over Carter.

So when the document came back, I obviously had to get involved. We redid it. It went back over to the White House. When it came time to be signed, for some reason I did not receive the invitation. The people who had worked on the warmed-over Carter piece did go over, and they took all credit

for that. That might have hurt me a little bit. Casey's reaction was very simple. He said don't worry about it, Stan. We all know who did it. That soothed over things and also made it clear that Casey would realize what had really been done. There were a number of other instances where this happened.

Let me give another illustration of Casey's style. When I came in, we had put out a contract to build next to the CIA building, which was to be an addition of the same size of the existing structure. This had all been done before Casey or I came in. I learned that the company that they were going to award the contract to was a foreign company. I went to Casey. I didn't know anything about the way the agency worked. So I said to him: "Bill, does it sound a little odd to you that the company that's been designated or awarded the contract to build this new building is a foreign company?" He looked at me and said: "It does seem odd to me."

For reasons that I think are obvious, you need the highest degree of security when you construct an intelligence building. Casey said to me: "Okay, well, do what you have to do." I took that to mean that we had to do something to change who would construct it. It happened that the number two company that came in the bidding was a Detroit domestic company, and arrangements were made that that company would ultimately get the contract. Apparently the contract had not been signed. So we could make the change.

But all hell broke loose after that, because Casey gets a call from a

senior Senator – I don't remember his name, but a Senator that had a lot to do with the CIA's budget and a lot of other things – who obviously was behind the foreign company and wanted to know from the Director how dare that company not get the contract. So, Casey called me and said, you know you got me in trouble on this one. I said, yes. He says, go and fix it. I said, what do you mean? He said, go over and see the Senator and you do what you have to do.

Obviously Casey was being very facetious with me in the sense that he really wasn't chastising me for doing what I had done. He simply wanted me to go and take care of the matter. So I did visit with the Senator's Administrative Assistant to explain to him that nobody's going to look very good if it ever came out that the Senator was behind a non-American company to build this annex to the CIA. As you know, Senators are politically astute. They got the message and we never heard from them again. So that took care of that problem.

Mr. Bennett: Well, it is a quarter to four. There's one subject we could perhaps start but maybe not finish before your commitment at four. Let us move on to the next phase of your career when you went over to the bench. Let us start by asking you how was it that you came to be a judge?

Judge Sporkin: All right, I'll explain that. It was my goal in life to be a judge. I loved the law. I read the law from the beginning of my teenage years, I guess, and even before that. In those years my father was a prosecutor. He was an assistant

district attorney in Philadelphia. He was a career prosecutor, although you could be a career prosecutor and also have a practice at the same time. It was a part time job. Although you could not practice criminal law, you could practice civil law.

I was very taken with the law. My father did not encourage me at that time. He said he'd rather that I become a doctor. He thought the law was a difficult way to make a living. We were certainly not wealthy, though my father did make enough money to get by and educate his kids and do what had to be done. Now remember this is all during the depression and later war years.

Nevertheless, I very much enjoyed watching him operate. I enjoyed seeing him prosecute cases. I knew I wanted to follow in his footsteps.

My father later became a judge. I wanted ultimately to do that as well. At that point he encouraged me.

While my father had been in politics in Philadelphia, I did not really go that route. I knew you would have to have political backing to obtain a judgeship. I realized that it would be difficult to obtain a judgeship without getting into politics.

During my time at the SEC, I was on a list to become a judge and a number of other positions because of my record at the SEC. In addition to being put on a list to go before a judicial selection commission, I was also on a list to become the director of the FBI. But for one reason or another, I never made it to the top of these lists.

The next thing that happened was during my time at the CIA. Bill Casey and I had a mutual friend who we very much respected. His name was Milton Gould, a prominent New York attorney. Milton knew of my desire to become a judge and unbeknownst to me, and without my permission, he went to Casey and told Casey of my desire. Casey was not aware of my career goal to be a judge. I later learned that Casey asked Gould how he should go about helping me become a judge, at which point Gould told him: why don't you start out by writing a letter to the President. Gould reportedly said to Casey that, since Casey had been President Reagan's campaign manager, he certainly should be able to obtain some consideration for such a recommendation.

Casey did write such a letter, and it apparently worked. I remember – I guess it was in 1984 – receiving a call from Ed Schmults, who was the Deputy Attorney General. Ed and I knew each other, because he had represented persons before me at the SEC. He was an exceedingly competent attorney and worked extremely well with Attorney General Smith.

Ed Schmults said to me that the President would like to appoint me to be a judge if I agreed to such appointment. I said I would be honored to be appointed a judge. He then advised me at that time that there were no vacancies in the District of Columbia Court House, at either the district court level or the Court of Appeals level. He said that because my background would qualify me to be a judge on either of the two courts, he wanted to know

what my preference would be between the two. I told Mr. Schmults that I would take the first vacancy available.

Within a matter of weeks, Schmults called me back to tell me that Judge June Green had recently become a senior judge and that there was a vacancy on the district court. If I wanted it, I would be appointed. I responded that it sounds fine to me, and the process of becoming a judge began. This entailed first being vetted by the Administration and the FBI and then by the American Bar Association.

There was no real difficulty in the FBI investigation, and the ABA gave me a highly qualified rating. The real problem came about when my name was submitted to the Senate. It became obvious that my activity as the Director of Enforcement at the SEC had caused a number of people to declare it was payback time. The people who were particularly influential included Senator Denton of Alabama. My confirmation process spanned a period of some 18 months, including a Presidential election and a second nomination.²

This brought about a very difficult period in my life. There were several times when I was ready to quit the process and go out and do what some of my fellow SEC colleagues did and enter the practice of law and quit being a public servant. At each one of these occasions, Casey said he would

² Judge Sporkin's original nomination was sent to the Senate on June 28, 1984. The Senate never acted on that nomination, and it was returned to the President on October 18, 1984. The President renominated him the following year. The nomination was sent to the Senate on April 5, 1985. The Senate Judiciary Committee had closed hearings on October 29, November 7, November 15, November 20, and December 10, 1985. There was also an open hearing on December 10, 1985, and Judge Sporkin was confirmed by the Senate on Monday, December 16, 1985.

hear nothing of it.

My enemies brought up all forms of scurrilous charges, two of which emboldened me to fight on because they were so outrageous.

First, an investigator from the Hill interviewed the chief of security at the CIA to question my loyalty to the United States in view of the fact that I had taught at Antioch Law School and Howard University Law School. To this investigator it was thought to be subversive for someone to have taught at schools like Antioch and Howard. The Director of Security, Bill Kotavish, was a wonderful individual who was as outraged as I was for someone to make such an accusation.

The second incident involved a scurrilous charge that I somehow was involved in an obstruction of justice because I had arranged for a CIA agent to be represented by counsel during an investigation of the agent. The obstruction of justice charge got some play. One day I received a call from Senator Thurmond's Administrative Assistant, who told me that I was under investigation for obstruction of justice and that there would be a hearing on the matter but that I would not be allowed to be present.

Because someone used the words obstruction of justice, I decided that I needed counsel and went to my old friend Edward Bennett Williams, who said he would represent me. Ed Williams could not believe that anybody would seriously consider such a charge on the sole basis that I had arranged to obtain counsel for a CIA agent who was under investigation. Because he was concerned that I was not going to be allowed to be present at the hearing, he

immediately went into action and contacted the Committee to explain to the Committee that, under the concept of due process of law, the person accused of a charge such as obstruction of justice had the right to be present when his accusers testified.

We won that battle, and I was present at the hearing. It turned out that the charge was based upon the facts that, when the agent retained the counsel I had recommended, the counsel needed some time to prepare his client's defense, that such preparation delayed the proceedings and that accordingly there was an obstruction of justice. You would not believe the expressions on the part of the senators when they heard that claim. Other than Senator Denton, no one could believe the basis for the charge.

One of the purposes for holding the hearing was to force the agent to take the Fifth Amendment. My opponents thought that, if this would happen, they could put my hearing off until such time as the issue was resolved, which would have in effect defeated my nomination. The agent was a stand-up person, who I believed was innocent of the alleged misconduct. Indeed, he was never charged with any violation, although he had to resign from the agency.

Mr.Bennett: OK, we hear the phone ringing so we'll end for today because of your other commitment and pick up here the next time.