

Oral History of Elizabeth Sarah (“Sally”) Gere

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 Barbara Kagan, and the interviewee is Elizabeth Sarah Gere. The interview took place via Zoom on January 10, 2022. This is a supplemental interview that should be read between the second and third interviews. It is designated as session 2A.

MS. KAGAN: Good morning, Sally.

MS. GERE: Good morning, Barbara.

MS. KAGAN: We’re going to identify this session as interview 2A. When we finished with session two, we had started to talk about the *Snepp* case, but then we got ahead of ourselves because we hadn’t talked about some of the important work that you handled before you transferred to the Civil Division. So why don’t we take this opportunity to go back and talk about some of those really important cases that you worked on while you were still in the Criminal Division.

MS. GERE: That sounds great, Barbara. I would like to finish up on those cases, and the more than two years that I was in the DOJ Criminal Division. There are four cases that I want to highlight. Each one was fascinating, presented cutting-edge legal issues, and together, they were the building blocks for my initial education as a trial lawyer. I learned so much from the individuals with whom I worked with at Justice, both my colleagues and my supervisors. I want to remind us, and anyone who may read this in the future, that this time period is the mid- to late 1970s. We must put ourselves back in that time period when there was a lot of public social unrest, mostly related to the Vietnam War. There were a lot of congressional investigations that were

going on into various government actions. A President of the United States had resigned to avoid being impeached. It was a time of considerable discord, and as happens now, a lot of issues ended up in the courts, and that's where some of my litigation arose. But I also want to note, thinking back about this time period, what we didn't have. We didn't have social media. We didn't have email. At the beginning of my legal career, we didn't have faxes or Federal Express. We had regular first-class mail, and so everything seemed, at least to me in retrospect, to move at a slower and I think perhaps a more civil pace because there weren't expectations whether from judges, opposing counsel, supervisors, co-counsel, or clients that one had to react to everything immediately. There was more time for reflection. And certainly, as a young lawyer, I think I benefited from being raised in an era where reflection was valued rather than being viewed as either a luxury or a waste of time, depending on where you were sitting.

MS. KAGAN: And perhaps not being so stilted because there wasn't the fear that one wrong word choice could be taken out of context and change your intended meaning.

MS. GERE: Right. That's a very good point. The other thing about these cases that I want to highlight for my oral history, particularly because this is a project of the D.C. Circuit Historical Society, that three of the four cases that I want to talk about are ones that were begun in the District Court here in D.C. and went to the D.C. Circuit and then on to the Supreme Court, at least one of them. The fourth case was one that was before Judge Damon Keith, who was

a civil rights icon on the federal bench, initially in Detroit where I first encountered him, and then later on the Sixth Circuit.

So having said that as kind of an introduction, I'll jump in and start talking about some of these cases.

MS. KAGAN: Are these going to be in chronological order?

MS. GERE: Yes. To the best of my recollection. Although I have to say that each of these cases, because many of them were ongoing at the same time, I was balancing among a number of matters. And then as my work evolved, both on these cases and then, obviously when I got to the Civil Division, I dropped off some of these cases in order to pick up the other cases that followed, like *Snepp* and the *Progressive* case.

One of the first cases that I worked on in the Criminal Division was *Reporters Committee for Freedom of the Press v. AT&T*. It involved a challenge by the Reporters Committee for Freedom of the Press, numerous news organizations and several journalists about providing toll records to the government. The lawsuit was filed against both the government and, back in the day, AT&T, which, of course, had a monopoly over phones. The issue was that AT&T would, in response to a request by the government, provide toll records of organizations and individuals that were requested. A toll record in this instance meant not the content of any conversation but a record of a number called, the time that the call started, and the time that the call ended. The records were only maintained, as I recall, for a period of six months. In any event the press was not happy about this practice, in large

measure because there also was no notice given to the telephone subscribers that their records were the subject of an inquiry by the federal government.

MS. KAGAN: How did it come to light that this was happening?

MS. GERE: I don't even remember, Barbara. I'm assuming that some reporter's records were obtained, and they learned about it but I don't know whether it was through some acknowledgement by the government as part of an investigation. I'm not sure. But the case ended up raising First Amendment and Fourth Amendment issues. It was filed in the District Court here in D.C. and ultimately went to the D.C. Circuit where it resulted in a 70-page opinion that affirmed the District Court in part, reversed in part, and remanded in part. The case went on for a long time after that.

As I say, I was one of the early lawyers assigned to the case, so again, it was at the stage where you're doing discovery and obviously, this was a document-intensive, records-intensive matter, including what records had been requested, whose they were, where did they go, what were they used for. It was a case that really taught me about the necessity of attention to detail and to thoroughness.

My co-counsel, who was in the Criminal Division Special Litigation Section with me, was a lawyer by the name of Stan Wright, who also was quite young. I wasn't even 30 years old at this point. Stan was a little bit older. He might have been a bit over 30, and he already had argued a case in the United States Supreme Court. So, again, these were folks that were coming into Justice who were devoted public servants and really thought

they were there to do the right thing. Stan was a terrific teacher. He had the patience of Job, particularly working with lawyers such as I who had never litigated before. I had seen lots as a law clerk, but I'd never been the person looking at documents, the person having to decide okay, does some type of deliberative process protection apply, is there executive privilege. All those legal issues as well. So that was a real education for me to work with somebody like Stan. And I remembered as well in reflection for this oral history that some of the law, some of the legal issues stay with you a bit. But for me, it's a lot more about the personalities and people; those are my most vivid recollections. There was a lawyer by the name of Lee Marks who represented AT&T. For the most part, he was our co-counsel although our interests were not always aligned. There also were several government agencies involved.

MS. KAGAN: Was he in-house at AT&T or was he with a law firm?

MS. GERE: I believe he was with a firm, Ginsburg, Feldman & Bress, then a powerhouse law firm in Washington. I can't remember, but what I do remember about him is that he was always such a gentleman and very calm. There were no ad hominem attacks, whether he disagreed with a position we took or even with opposing counsel. Lloyd Cutler, another Washington legal giant, was representing the plaintiffs. He was a renowned lawyer in the D.C. community.

It was a way of learning how to be a professional, which I think as my career progressed, unfortunately, a lot of that was lost on new lawyers. I

always look back and think I had a good foundation anyway. And, I tried to pass on what I had learned.

Another case I recall quite vividly was *Halkin v. Helms*. I thought about including case citations in this oral history, and I noticed that some other people do, but I don't think that's really a critical thing. If anybody wants to read about these cases, they'll be able to find them because there are written opinions and a lot of press coverage. *Halkin* was filed in the District Court here in D.C. in 1975. The plaintiffs were anti-Vietnam War activists who were living abroad, and they alleged that the United States government, primarily the CIA and the NSA, were conducting unlawful surveillance of them. They believed their constitutional rights had been violated, their First Amendment and their Fourth Amendment rights. They sought injunctive relief and damages from the government for the use of informants, electronic surveillance, physical surveillance, intercepts of phone calls, the application of watchlists. In fact, there were a number of government programs that were implicated in this lawsuit, many of which were designed to determine the level of foreign government influence on American citizens and American organizations.

The groups that had gotten caught up in several of these programs—one could have differing views, to be outraged that it was happening or to be comforted that someone was keeping an eye on foreign influence of U.S. actors. But the programs themselves were highly classified, and in order to work on this case and again frankly most of the other cases I ever worked on

at Justice, I had to get a very high-level clearance to be privy to the information that I was learning. I had a Top Secret/Sensitive Compartmented Information clearance. They did not hand them out routinely, and certainly not back in those days. But the cases really required it in order to determine what could be produced in response to document requests or how to respond to interrogatories. It was a necessity.

MS. KAGAN: How long does it take to get that clearance?

MS. GERE: I can't even remember, but I had to fill out a lot of forms and a lot of paperwork. I think it was after this, but when I was planning to leave the country on vacation, I had to have a debriefing to make sure that I knew what I could say or not say and who to alert if something were to happen.

The information in this case frankly was very sensitive, and it was before there was such a thing as a SCIF (Sensitive Compartmented Information Facility). Justice and probably most other agencies now have facilities that are dedicated to being adequately protected so that you can have a conversation and not be concerned that somehow there's going to be an intercept of your conversation. But back in the day at Main Justice, there were no SCIFs. There were no rooms that were adequately protected to discuss or review documents. So, for months on end in this case, I reported to work at the CIA out in Virginia. I ended up going out there daily. I never came downtown. I would just get in the car and go from my house in Arlington to the CIA, which was totally fascinating, both what I was getting to look at, and being out there and seeing how cautiously people operated in

the building. For example, any time that I had to go to the restroom, I always had to have an escort with me. I could not just get up from the desk where they had assigned me to sit, which didn't have any windows and it seemed like a very small room. And people would bring me documents to look at. I would sign for them, and they would check the documents, and then they would take them back.

That was pretty exciting to be going out to the Agency and seeing this kind of information, getting an understanding of what our intelligence capabilities were in the 1970s, and then trying to figure out in the legal construct, okay, what can we produce, what can't we produce.

At one point, we had in response to a document request, we had produced a lot of documents, and, as I recall, the other side, and the plaintiff's lawyer in this case was, and eventually everything leads back to *Snepp*, the plaintiff's lawyer in this *Halkin* case was Mark Lynch, who later became Frank Snepp's lawyer.

In any event, Mark and the ACLU had decided that they would have a press conference about the documents that they had obtained in civil discovery. This part is, I frankly don't remember how this came about, but the ACLU and Mark prepared a press release about what they were going to announce in a press conference about documents produced in discovery and when they were going to have this press conference. They provided Justice with a copy of the press release is all that I can remember. And we then, I think it was at our instance, but we, the United States, had an objection to a

party taking civil discovery materials and putting them out into the public for a whole variety of reasons.

At the time, and this probably would have been 1976, 1977, 1978, probably 1977, there was a local rule in the District Court that prohibited basically trying your case in the press. It was a rule of limitation as to what a lawyer could say about a case, with an overlay of, in particular, any adverse influence it might have on prejudicing a potential juror so that it would be an interference with the right to a jury trial. There also was Rule 26 itself, the primary discovery rule, which provides that you have to have good cause to deviate from a use not related to the case. And then there also was in our Rules of Professional Conduct at the time an admonition against lawyers using civil discovery for purposes not related to the litigation. This was a really significant and hotly contested issue.

As I recall, we filed for a protective order arguing this press conference should not be held, the lawyers should not be able to use documents for purposes of having a press conference, that it was not really related to advancing the purpose of the litigation. And, of course, this is back in the day when people were just starting to do things like litigate cases in the press, but it was pretty much frowned on at the time. We went back to the trial judge. The trial judge, and I'm trying to think, the judge may well have been the judge for whom I clerked. I could not go back and figure out from the records, and I don't personally recall arguing anything before her. But back then too, there may not even have been an oral argument.

In any in any event, the judge entered a protective order which said you can't use documents that you get in civil discovery for purposes not related to the litigation and having a press conference is not advancing the litigation. That decision went up to the D.C. Circuit. The Circuit in *In Re Halkin* decided the case in a very lengthy opinion. It was a 2-to-1 decision. The two most liberal judges on the D.C. Circuit, Judge Skelly Wright and Judge David Bazelon, concluded that the protective order was not drawn narrowly enough and that it infringed on the First Amendment rights of the litigants, despite there being no case law that recognized a First Amendment right to talk about what you got in discovery. Judge Malcolm Wilkey dissented in the case, and going back and rereading the opinion, of course in my view, Judge Wilkey had it absolutely right. He said that the protective order should be sustained or affirmed, whatever the District Court's decision on the protective order. But Judge Wilkey didn't prevail.

MS. KAGAN: It's always the luck of the draw, isn't it?

MS. GERE: It definitely is the luck of the draw. That case was, as I say, it went on for some time before it ultimately was resolved, and when it was ultimately resolved, I no longer was working on the case.

The one other thing I should mention, I did say that Mark Lynch was the lawyer for the plaintiffs. His co-counsel in the case was a lawyer by the name of John Shattuck, who also was an ACLU lawyer. John was a bit older than I, not decades older by any means, probably not even a decade older, but he was a consummate professional. Even though he was on the other side of

the case, as I'll talk about in a minute, he also was on the other side of the *Halperin* case that I'm going to talk about. And interestingly, John later became involved in government and diplomacy, and ended up being I think the Ambassador to the Czech Republic. I think he then went on to the Kennedy School to teach. Anyway, he took an interesting turn in his in his legal career, particularly from being an advocate for the ACLU's clients in cases that regularly took on and criticized the government to frankly becoming part of the fold, a public servant. Anyway, he was, or I shouldn't use that in the past tense, he was then and I'm sure still is, very bright but was a very interesting and educational person to have as an opposing counsel.

MS. KAGAN: He probably thought that it was all in the public interest.

MS. GERE: Yes. Exactly. And you know a lot of these issues are. I'm sure he looked at it and thought that the surveillance programs that were being challenged were too intrusive or too unsubstantiated as to who was caught up perhaps in a dragnet of being identified as person who had been influenced by a foreign government.

Anyway, that was an interesting case. There were two lawyers who picked up the case because it went on. It went to the Circuit on the merits and back and forth. The two lawyers who succeeded me on the case, one I worked with, and then the other succeeded me too, were Larry Gregg and John Seibert. They each left Main Justice at some point in their careers, and Larry went on to become the Chief of the Civil Division over in the Eastern

District of Virginia U.S. Attorney's Office. John Seibert probably had enough of winters in this area, and he ended up in the U.S. Attorney's Office in Hawaii.

Anyway, I learned a lot from people like that who were just such dedicated public servants, clearly didn't do this for the money, just as I'm sure John Shattuck and Mark Lynch weren't doing it for the money with the ACLU either. I think we all believed we were doing the right thing, however each of us defined that, and probably to the good of our legal system, there were two sides to the issues and judges got to make decisions.

And then I want to take just a brief detour to talk for a few minutes about the one case that's not a D.C.-centric case. I was in the Criminal Division at Main Justice and was assigned to a case that had been filed in the Eastern District of Michigan in Detroit. It was a lawsuit that was filed by a group called the National Caucus of Labor Committees, which was an arm of the United States Socialist Party. They had kidnapped an individual who had been serving as an informant for the FBI on what this organization was up to. And in some fractured sense of responsibility, this National Caucus of Labor Committees decided that it would give the informant one phone call after kidnapping him.

MS. KAGAN: They had their own legal system?

MS. GERE: Their own legal system, and so the informant called his "dad," who was actually his contact at the Bureau to say help, they're holding me hostage here. And so he was able to get through to the Bureau with his one phone

call, and the Bureau, because this was in Pontiac, Michigan contacted the Detroit Police Department, and together, they went to where the informant was being held and executed a search warrant to look for him. But he wasn't there by the time they got there. So, then they started taking documents and other information to try and see if they could glean the location of the informant. And as I recall, the informant somehow had crawled out of a bathroom window. Anyway, he had gotten away. That left a controversy between this organization and the FBI and the Detroit Police Department over whether the search had been one in violation of the Fourth Amendment and I'm sure they had First Amendment claims too.

I was assigned to the case early on and ended up, in addition to getting documents and all that sort of thing, taking depositions of about twenty members of this organization who either had been on the premises or were identified as part of the leadership. I took those depositions in Detroit, and I'll never forget, even the court reporter and I as we were walking away after these depositions saying those people were frightening, absolutely frightening. They were automatons. It was like talking to members of a cult. I thought it was scary who these young people following and what they were believing.

MS. KAGAN: Were you personally afraid?

MS. GERE: No. I don't think they would have done any harm to me, maybe if I lived in the Detroit area. But I got to get on a plane and come home to Washington.

It was more just they were clearly not thinking for themselves. They were instructed what to say.

MS. KAGAN: Did they have lawyers with them?

MS. GERE: Yes. They had lawyers. They had a series of different lawyers, as I recall, that they went through. And again, this was a case that ultimately went up to the Sixth Circuit, probably a couple of times. But while I was there at the beginning of the case at the trial level, I had one of my very first oral arguments after I began at Justice. It certainly was the first argument I had out of town. It was before Judge Damon Keith, who, as I say, was known to be truly a civil rights icon, an excellent judge. At the time that the case was pending and I was assigned to it, Judge Keith's law clerk was Myles Lynk, who later went on to become President of the D.C. Bar. Judge Keith had a practice of giving his law clerks a lot of responsibility and autonomy, and so, for example, he would have a conference in advance of trial, like a discovery conference. He would ask his law clerk to preside over it. Not the judge. It would be in chambers. After going out there a few times, I got to know Myles in a professional way. But then fast forward. I am living here, Myles moves to D.C., and we become friends. I don't know whether through some bar activity or whatever, we kind of rediscovered each other, and to this day, however many years later that is, more than forty, he and I still are friends. So, I have a fond place in my heart for that case. It gave me a good friend as an added benefit to learning a lot about litigation. That was another one of

my early and interesting cases, especially because of the personalities involved.

MS. KAGAN: You were there alone?

MS. GERE: Yes. I was there alone. I guess I shouldn't say entirely alone because of course anytime a lawyer from DOJ went out to a foreign jurisdiction, we always had an Assistant U.S. Attorney from the local U.S. Attorney's Office with us. I remember the Assistant U.S. Attorney that I worked with in Detroit ultimately went on to become the U.S. Attorney several years later, At one point, I really gave serious consideration to taking a job with the U.S. Attorney's Office in Detroit. At that time, Detroit was much more of a vibrant community. I liked the U.S. Attorney's Office. I liked the people in the office, and they had some good judges in the Eastern District of Michigan, so I thought I could do worse than that. But that obviously never came to fruition.

MS. KAGAN: Probably for the good.

MS. GERE: Probably. I also at one point toyed with the idea of, this would have been many years after that, of accepting an offer from the U.S. Attorney's Office in San Diego, California. This was after I was divorced, and so I was footloose and fancy free. And talk about an interesting office. They had terrific work. It would be hard to complain about San Diego. At the end of the day, though, I thought it was just too far from my family and it seemed like another world to me, which it probably would have been. Whether that was a good decision or not, that's another one of those I can't look back on.

To go back, as I'm going through these cases, it was interesting for me to try and put some of this back together in retrospect. If you asked me, and please don't, because I won't be able to tell you the answer, which case I either liked the best or on which I learned the most or whatever superlative one would attach, I'm not sure I could tell you. But one of the top contenders would have to be the case of *Halperin v. Kissinger*, a lawsuit brought by Morton Halperin, who was a protege of Henry Kissinger and had been part of the National Security Council staff for Kissinger when Kissinger held the National Security Adviser position. But what led to the case was then-President Nixon and others, including John Mitchell, J. Edgar Hoover, and Kissinger were concerned about leaks of information from the government to the press about classified and sensitive information. The leaks, in their view, led to putting at risk American lives and putting at risk strategies in connection with the Vietnam War. In one matter, information about secret Cambodian bombing raids appeared in the press, and it appeared before the occurrence of whatever was supposed to happen. It was the final straw for the people I've identified, and they concluded that they would identify the two-dozen or so people who likely had access to that information and put taps on their telephones to find out the source of the leak.

MS. KAGAN: They were employees?

MS. GERE: They were members of the press and employees. Anybody, whatever their position, who might have had access or to whom a revelation or disclosure to somebody in the press might have been made. So, it was both, whoever

would have disclosed and the person to whom it was likely disclosed. The telephone taps were put on to see if anybody either continued to disclose what was believed to be confidential or classified information, whether anybody acknowledged that that happened and to serve as a deterrent because after a while, it was disclosed that taps had happened. But the tap on Halperin's phone lasted for 21 months, which was a long time. At that point, the law, when these taps first went on, did not require a warrant. If it was a National Security tap, you did not have to have a warrant. At about this time though, in another case handled by Judge Keith, there was a decision by the Supreme Court that the Fourth Amendment had to be satisfied to obtain a warrant for domestic surveillance.

Anyway, going back to the *Halperin* case, Halperin and his family, his wife and his children, all had been caught up in the wiretap. They filed suit against the government, and specifically against Nixon, Kissinger, John Mitchell, Clarence Kelly, who was at that point head of the FBI because J. Edgar Hoover had passed away, H.R. Haldeman, John Ehrlichman, other FBI officials, and C&P Telephone Company for facilitating the tap on the phone. The Halperins claimed their constitutional rights had been violated and sought both an injunction and financial damages in the case.

MS. KAGAN: How did they find out about the taps?

MS. GERE: Ultimately the program was disclosed. That's a good question. I can't remember. The suit was filed in 1973, so I don't know whether it came out as part of any of the Watergate investigation. I honestly can't remember,

Barbara. I don't remember, or whether it certainly could have become known because a lot of the press was caught up in it, and then former government officials who were at State or NSC learned things about what happened. I honestly don't know. I'm sure I knew once, but no longer.

There were a lot of legal issues that were cutting edge, novel issues, many of them having to do with immunity questions, meaning either executive absolute immunity for acts, for example, as President of the United States, qualified immunity, prosecutorial immunity, and what, given the state of the law in 1973, what the law actually was or what an official should have known it to be or predicted it to be. And with issues involving qualified immunity there's a considerable amount of factual investigation and fact finding that has to be done before you can determine whether someone is covered by some form of immunity.

Halperin presented those issues on many different levels because the former President of the United States was involved, the chief prosecutor, the Attorney General, was involved and various members of the White House staff like Haldeman and Ehrlichman were involved. There potentially was a deliberative process protection that should apply to what was being disclosed and a question of how far the litigation would go in resolving the immunity issues. So again, this was a case, certainly at the early stages when I was involved, that involved a lot of document review and production. This was before anybody had electronically stored information or hired companies that came in and reviewed your documents for production. We as lawyers, and at

Justice we didn't have very many paralegals, were spending our time going to agencies, getting documents, reviewing them, redacting portions, producing them, and so on and so forth. And then we got to the point of depositions, and that was to me the fascinating part of any case I was involved in. This is what I can recall most vividly, and again, this goes not so much to the legal issues but to the people who were involved.

In January 1976, I went to San Clemente, California for the deposition of former President Nixon in the *Halperin* case. I met one of my supervisors, a lawyer by the name of Ed Christenberry, in order to prepare former President Nixon for his deposition. Mind you, Nixon is out of office. He has retreated to San Clemente, California. This deposition is the very first time that anybody hears from him in a sort of quasi-public role because obviously the deposition was not open to the public, but ultimately the transcript would be. So, Ed, my supervisor, and I went out and prepared Nixon for his deposition. He had a beautiful home in San Clemente overlooking the Pacific Ocean. I can remember we sat in his study and reviewed documents and discussed what if they ask you this, what would your answer be, and going through everything. He was very, gracious might not be quite the right word, but he was thankful to us because we were his lawyers. We had been appointed to represent him by the Justice Department. Once the former President was cleared of any potential criminal charges, he was entitled to defense counsel from DOJ in civil litigation that arose out of what occurred within the parameters of his Presidential actions. He was grateful to not have to pay us

to represent him and was trying to cooperate, and he wanted to be successful in the lawsuit so that he didn't end up having to pay money. The lawsuit was filed against the former employees in their individual capacities, so any verdict would have been against them personally, not against the government. Government employees, in some cases, had gone to Congress and gotten a special bill to cover a judgment, but whether that would have been successful in *Halperin* would have been another question. In any event, the deposition preparation went fine. I remember that former President Nixon had phlebitis at that time, so he sat with his legs elevated for most of the time we were with him. I found him to be, as I said, very sharp and was very nice to us. He was apologetic that he could not have dinner with us that evening because he had other plans. Whether he did or not, I have no idea. That would have been kind of intimidating anyway. I was just happy at the end of the day to go relax.

At that point, my supervisor by the end of the day, was not feeling well, so I went and had dinner with John Ehrlichman's lawyer, who was there as well. He was a local Washington lawyer who was very highly regarded, by the name of Larry Schwartz. Larry died an untimely death in a car accident at Chevy Chase Circle many years ago. He was smart. He was funny. He was fun. I remember we went to a Mexican restaurant that Nixon had recommended to us, and we said to the host that President Nixon sent us. We could have had anything we wanted at the restaurant. So that was a fun evening. I kept a diary of sorts of my trip because my parents and my sisters

were very interested. I still have it. I wrote it out in longhand on the flight back to Washington. I don't talk anything about the law. More just my personal observations.

MS. KAGAN: The human-interest part of it.

MS. GERE: Yes. The deposition itself, there was a separate building as I recall that had offices in it because, remember, for a while it had been the western White House while Nixon was in office, so there was still a fair number of buildings in the compound that the public couldn't access but where we had the deposition.

John Shattuck, the lawyer that I mentioned earlier who went on to a diplomatic career, was the lawyer who took the deposition. I recall that there was some concern by people at Justice that it would be a difficult session because emotions were running high everywhere. The case had gotten a lot of press. There was a lot of animosity between Kissinger and Halperin because they had worked together. You can go back and read about it in the *Atlantic* or the *New Yorker*. There are articles about the case and their relationship. But to John Shattuck's credit, he was very professional. He began the deposition by addressing Nixon as Mr. President, which I thought showed his respect for the office, even though he did not have a lot of respect for the person whose deposition he was taking. I thought it showed John's professionalism and, as a trial lawyer, I think he probably also realized I'm going to get a whole lot more out of this man if I treat him with some degree

of respect than if I come in and start using tactics that are designed to get a rise out of him rather than to get information.

MS. KAGAN: Especially given Nixon's reputation for, to put it mildly, defensiveness.

MS. GERE: Right. My recollection is that Nixon was ready to tell his side of the story. Part of that I attribute to us preparing him well. My memory is that my supervisor and I prepared the former President for several hours in advance of the deposition, but my supervisor, and his supervisor earlier, had also had a separate earlier session with Nixon to prepare him. So I don't want this to sound like we breezed in, spent a few hours, and he was ready to go. Nixon had spent time looking at documents and whatever else he had available to him to prepare.

I should say while we were waiting at one point, I think we were in an anteroom, Rosemary Woods came in and said hello to us.

Going back to the deposition itself, Nixon was ready. This was one of his first times to address publicly some accusations against him, and so I think in response to maybe the next question after state your name, the answer went on for pages and pages and pages because he was just ready to lay it out there. He was a witness that I thought did a good job given what the allegations were, given what the questions were, and given the circumstances. I do recall though that when we went into the deposition room, I had expected, as had my supervisor, that it would be the court reporter at one end of the table, opposing counsel on the other side, and there were other parties' lawyers there too. It wasn't just Nixon's counsel. It

wasn't just Halperin's counsel. There was a lawyer for John Ehrlichman because he had hired separate counsel, Larry Schwartz. I can't remember their names, but a couple of other lawyers were there for other people. I can't remember, but in any event, I thought that it would be Nixon, my supervisor to his right, and then me sitting to the further right next to my supervisor so that my supervisor and I could whisper to each other or hand notes to each other about what was going on during the deposition as would be the custom in most depositions. Instead, when we went in, Nixon insisted that I sit on one side of him, and my supervisor sit on the other side of him.

MS. KAGAN: Why was that?

MS. GERE: It was like he wanted to be flanked by lawyers. I don't know whether it gave him some physical sense of either insulation or protection. I don't know. It was just one of those quirks that you don't say well no, we don't want to do it that way. You just said certainly that would be fine. At one point during the deposition, I do know that he said something about his able counsel on his right and on his left. I can't remember a lot of the questions, but I can remember when I got complimented.

MS. KAGAN: How did he address you?

MS. GERE: I'm sure he just called me Sally although he may have called me Ms. Whitaker, because that's how I had been introduced to him. And I called him, as I recall, Mr. President, to the extent I had to address him. Years after this I received from him one of his books inscribed to me thanking me for my work on the case, which I still have. It was very generous and very nice.

The deposition concluded. Larry and I had the Mexican dinner. I'm trying to remember, and I probably won't get this quite right. I'm jumping around here. I had really wanted to take pictures while I was there at San Clemente, of the deposition room, but the Secret Service was having none of that. One of Halperin's lawyers or somebody with them took pictures and the Secret Service wanted to confiscate the roll of film because, of course, this is back in the day before phones or anything. You actually had a camera with film in it. Somehow something was worked out. I think the person had to promise to turn in the pictures he had taken, but he got to keep pictures of his kids on the roll of film. At some point, I think the Secret Service did let me have a picture of the room, but to this day, I don't have the picture, and the only way I even remember that is because I noted it in this little diary that I wrote for my parents. Wherever the picture is, it's gone from my possession.

MS. KAGAN: I used to work with the ambassador to India during the Obama administration, and I went to see him while I was visiting India. The guards would not let me take a picture of the building with my phone. They would take a picture, and could send it to me, but I couldn't take it.

MS. GERE: This was during the time period when there was Presidential protection. The following day, my supervisor and I went to Los Angeles to prepare H.R. Haldeman for his deposition because he too was entitled to government representation as he'd been named as a defendant in the *Halperin* case. I'll never forget it. We got to the hotel. It was the LA Hilton as I recall, and

Haldeman was staying there, and we were staying there. There was a gaggle of press because somehow, they knew that Haldeman was there. We ended up preparing Haldeman either in my hotel room or my supervisor's hotel room. I don't remember which, but I remember it involved somebody having to sit on the bed because the room wasn't that big. We were trying to go through documents and talk about what the questions might be, and how he might respond.

MS. KAGAN: He wasn't living in LA at the time? You just met him there?

MS. GERE: I think that's right. My recollection is he too was staying there. I know we were meeting in the hotel, and why the government didn't spring for a conference room, I have no idea. Or maybe the hotel didn't have one. I don't know.

In any event, Haldeman was very affable, just a very, again, somebody who was appreciative to have lawyers that he didn't have to pay for and that seemed to know what they were doing. With his deposition, I don't have any particular recollection of anything untoward happening. It was just a deposition. Again, when it finished, there still were press around, not in the deposition, but trying to find out what had happened. I think he came out and said he told the truth about what was asked or some such thing as that.

The other thing that I remember about Haldeman is that after the deposition, which, of course, is standard practice with all depositions, and I assume it still is, but once the deposition was transcribed, a witness had thirty

days to review the transcript and edit it for any errors in the transcription. I remember sending the deposition to Haldeman for his review.

MS. KAGAN: This would be errors in transcribing and not a chance to change what was said?

MS. GERE: Right. You wouldn't change a yes to a no unless, of course, you wanted to reopen the deposition and go through all of that or have it come up on cross exam at trial. This was if a court reporter had misspelled a name or some transcription error. You probably did, as did I, have more than one occasion when you got caught up litigating whether it was a transcription error or a substantive change. That then opened up cross examination at trial. Anyway, that didn't happen here. As I recall, these were word edits that nobody would have found objectionable.

But I did get a letter back from Haldeman on which he wrote at the top of the onion skin cover copy I had sent him. This was back in the day when we didn't even have regular paper. It was crinkly paper, and he wrote back on it and said thanks, I'll look at the deposition, please send me an envelope to return it to you in because I don't have a secretary. I'm sure he didn't want to spend his own money on postage sending it back either. Anyway, I did keep a copy of that letter for myself, which I still have. The thing that would make me laugh is I framed it just as a conversation piece, and I used to keep it in my office at the firm, and I think I might have had it at OAG too. I can't even remember. But after a number of years, it would really strike me how many young lawyers would come in and say what's this about. Who's H.R.

Haldeman. Why do you have this letter? That was when I knew I was aging or that perhaps the history lessons that young people were getting did not include Watergate or certainly not at the level of having lived through it.

I have one more *Halperin* deposition story. Actually, two. One of the other fascinating, from a human-interest perspective, depositions that I defended was of former Secretary of State, he was at that point the Secretary of State, Henry Kissinger. We did his deposition at the State Department in one of the very fancy seventh-floor historic conference rooms, which meant there was a huge table and heavy chairs that were immovable. We arrived at the deposition. We had prepared the Secretary at least a couple of times before the day of the deposition. When we arrived, there were name tags on the backs of each chair where people participating in the deposition were to sit. I didn't have anything to do with that. My supervisor didn't have anything to do with that. This was Kissinger dictating where people were going to sit at the table. As I later learned, and I don't know how or whether this was some kind of legend that developed, but there was such animosity between Kissinger and Halperin that Kissinger did not want to give Halperin the satisfaction of being able to sit directly across from him and watch him be asked questions by Halperin's lawyer. So, on the opposite side of the table from Kissinger, it was Halperin's lawyers, probably John Ehrlichman's lawyer, any other lawyers who were there, and then Halperin was down at the other end of the table. There was no violation of deposition rules. The rules do not prescribe who has to sit where. My experience was that it

depended on the layout of the table, the layout of the room, where the plug was for the court reporter, if there was a videographer, where the camera was going to be. This deposition though was before much of that. There was no such thing as a videographer, if I recall back that far. But Kissinger knew how he wanted people to be sitting in the room and what he was going to be comfortable with, and that's what we did. And it wasn't like you could move chairs around. They weren't nailed to the floor. But they were so big there was no way that you could move them to reorganize anything.

MS. KAGAN: What if Halperin's lawyer wanted to ask him something during the course of the deposition?

MS. GERE: His lawyer was right across the table from Kissinger.

MS. KAGAN: Right. But what if Halperin wanted to say something to his lawyer?

MS. GERE: Like anybody else. You just hand a note up. That's what happened in other depositions too. There probably was some kind of kerfuffle. I don't recall. It probably came down to do you want to take Kissinger's deposition, if so, have at it. This is your chance, and if you don't like it, you are free to leave. It was not the kind of thing that a lawyer was going to go back to court or file a motion. A lot of this, too, involved people who were still at high levels of government service. Being called for depositions, you don't just pick up the phone and say hey, I'd like to take the deposition of the Secretary of State tomorrow. That is my major recollection of that deposition.

And then the last deposition that I have a particular memory about was the deposition of John Mitchell. And again, he no longer was the Attorney

General, but his deposition was being taken about the time period he served at the Department. Obviously, I was one of the lawyers at the deposition, and my same supervisor likely was with me, Ed Christenberry. I remember Mitchell saying when we got there, and although this is clearly not the first time that I had met him because I'd been involved in the preparation, but he made some comment about how the women at the Justice Department when he was Attorney General hadn't been as pretty as I was. I thought, are you really saying this. I was young. This was early on in my career. I wasn't going to rock the boat and say something at that point, but I was the only woman in the room. All the male lawyers got a chuckle out of it, and we moved on. I'm sure one could look at this and say well Mitchell was just trying to make small talk because he was nervous about his deposition. There are excuses for people. I'm not saying good ones.

MS. KAGAN: I'm surprised you didn't get more reactions of that sort back then.

MS. GERE: I did get reactions. Back then, I can't tell you how many depositions I went to where people assumed that I was the court reporter, for example, or that I was somebody who had wandered in off the street as opposed to being the lead lawyer on the case. So yes, I had a lot of situations like that. Or people coming into a room and basically if there were other people there who were men, they were the ones who were acknowledged. Not I. But you had to at that point, grin and bear it. I was just a baby lawyer at that time. None of it was a comfortable position to be in.

The *Halperin* lawsuit ended up going on for years. It went to the D.C. Circuit and ultimately went at least on some of the immunity issues to the United States Supreme Court. There was a divided court because Justice Rehnquist had recused himself because he'd been at the Department during some part of this time period, which left a D.C. Circuit opinion in place. I have this vague recollection that fourteen or more years after the litigation began, President Nixon ended up paying a dollar in nominal damages, and Secretary Kissinger wrote a letter of apology to Halperin. The apology, I would say to call it an apology was definitely a stretch, but whatever it was, everybody was ready to say enough, no mas, we're done. There's a lot of law that came out of the case regarding issues of absolute Presidential immunity, prosecutorial immunity, and qualified immunity. So, a big case, and I certainly had a lot of interesting experiences with it and learned a lot.

MS. KAGAN: Did Halperin attend any other depositions?

MS. GERE: Yes. Halperin is a smart man. He was, as you always hope to have, a client who is well-informed about whatever it is you're litigating, because they help you become the expert needed to ask the right questions or the right follow up and to be able to translate when you get some answer that leaves you scratching your head. But he also was very emotionally invested in the case as well.

MS. KAGAN: Well, that's why I was wondering about him being so far down the table. It's a little awkward.

MS. GERE: My recollection is that Kissinger was one of the last deponents, if not the last. and by then I think probably the lawyers had a pretty good lay of the land.

MS. KAGAN: Were Halperin's lawyers pro bono lawyers?

MS. GERE: They were with the ACLU. I'm sure they were pro bono. I'm pretty sure that Halperin didn't pay anything. I had other cases even while all of that was going on in the Criminal Division, but those were my highlights from *Halperin*. It would be hard to pick my favorite child among my cases, which case did I have the most fun on, which case did I learn the most in, which lawyers did I like the best, which judges did I appreciate appearing before. It was a great experience too as a trial lawyer in seeing what happens when cases go on appeal, how important the record is. This goes back to what I was saying at the beginning about the importance of attention to detail and really digging into facts to make sure you've got them all and that you're putting them together. It's like putting together the pieces of a puzzle, making sure you've got the right pieces in the right places.

At this point in the chronology is when I make the transition to the Civil Division from the Criminal Division at DOJ. All the people that I had worked with in the Criminal Division came to the Civil Division with me, but people began to be given different caseloads because the supervisors had to balance out who was working on which cases, who had time. The cases I've just spoken about were ones that, as they went on their litigation lives, I rotated off and became involved in these other significant national security cases. Initially I regretted leaving the Criminal Division because I thought

we had such a good group and the work was so interesting, and we had our own little world because we were not in Main Justice. We were in a building that long since has been torn down. It was at Ninth and Pennsylvania, N.W. That block now has another big building on it. But there used to be a biker bar on the first floor of the building as well as a sort of greasy spoon coffee shop around the corner on D Street. It was just the old world of litigating; you know lawyers would go in there and have coffee in the morning and talk about cases before you went to the office. In the evening, there'd be this whole coterie of people who rode motorcycles coming to the bar in the building. It was an interesting place to be. The government rented I don't know how many floors in this office building, but that's where we were. Then, when we were transferred on the organization chart to the Civil Division we physically were transferred to Main Justice. That to me was in and of itself a thrilling place to be because there was so much history in Main Justice. Everything from the murals, the Depression Era murals that are on the wall, to the statue in the Great Hall, to thinking about Bobby Kennedy having walked the halls or Wade McCree or Griffin Bell or any of the Attorneys General or Solicitor Generals. The offices were old, obviously the building was old. It subsequently was closed and went through a major renovation, but when we were transferred, the individual offices were so big that you never had an office to yourself. You shared an office with another lawyer and so you had to learn how to coexist with somebody else and not get distracted. You had to be able to do your work, and you had to put on

your blinders. I initially shared an office with a lawyer who was on the Civil Appellate staff. He was a nice guy, very quiet. We got along fine, and ultimately when I became a supervisor, I did get an office to myself because you would have personnel issues to deal with. I had some other officemates along the way, and that was an interesting experience.

So, those were my formative years and my formative cases at Justice. From a personal perspective, I was relatively newly married. My husband and I both were working in the same office at Main Justice, the Federal Programs Branch. We each had our own cases other than the point where we intersected and tried the *Snepp* case together. We would commute in and out from Arlington. I think probably because there were two of us, we got a parking space in the building. It may have been we qualified as a carpool. That's how my legal career started and my work at the Justice Department unfolded.

MS. KAGAN: That's an incredible string of cases. Few lawyers have had such a great opportunity to work on so many really interesting and important cases, especially so early on in their career.

MS. GERE: My reaction after a couple of years of this was wait, what am I ever going to do after this that's as legally challenging, with people who are known across the country and the world as my witnesses. But fortunately, my legal career continued, and I continued to have extremely interesting litigation to work on. I might have had an early ride to the stars in my litigation, but fortunately I did not have to come crashing back down to earth.

MS. KAGAN: Right. Well, that's part of your career and why it is so fascinating. You deserved to handle great cases. I imagine a certain amount of circumstance just put you in the right position at the right time, but you wouldn't have been able to continue that kind of trajectory if it wasn't for your own skill.

MS. GERE: I can't say that everything was roses in the Criminal Division. For a while, we had a supervisor, and I think we must have moved floors in the building or something, and so we got a conference room. My supervisor said to me, well Sally, why don't you be in charge of decorating the conference room because you're the only woman in the Section, and you would be the only one who would know how to do that. To his, I won't say credit, but I had good assignments while I worked for him. But thinking back, he probably had no choice because we had so much work and so few resources. It wasn't as though he could say okay, I'm going to cut her out of it because she's a woman and shouldn't be doing this work. I like to think he recognized that I was as good a lawyer as anybody else in the Section.

MS. KAGAN: Probably better than many.

MS. GERE: Probably better than, well I won't say that. Anyway, I was still enjoying life as a newlywed with a challenging job and an exciting city and buying a new house in Arlington, Virginia, before I-66 or the Metro.

MS. KAGAN: So, were there any tensions with your husband about you having so many high-profile cases? I assume your husband's cases were a little bit more routine.

MS. GERE: Actually, no on both counts. The Federal Programs Branch where we worked handled many cases that were high-profile, and Glenn ended up working on several of the most significant. I don't know if you remember the *Karen Silkwood* case. That was Glenn's case. He represented the FBI agents who were sued by the Silkwood estate. That was a high-profile case. He was counsel on a case about the Tennessee-Tombigbee Waterway, which was a huge civil case about constructing a dam. I can't remember the details. But it was national news kind of case. Glenn also worked on a case that was an effort to stop a railway strike where the Government was seeking an injunction to bar the strike. It was a nationally critical case and ended up being argued in the Ceremonial Courtroom in the federal courthouse. It was such an important case that Griffin Bell, who then was the Attorney General, came to the argument, sat at counsel table, and introduced my former husband to the court as the person who would be arguing the case on behalf of the United States.

MS. KAGAN: Wow.

MS. GERE: I remember his mom flew in from Cincinnati. He didn't know she was coming, but she came to watch the argument. I think the same question could be asked of me, was there tension because he was getting a lot of high-profile cases. I would say we both were very fortunate. Glenn was an outstanding lawyer. No question about it, and the things he worked on, he was well-deserving of having them assigned to him. He did a bang-up job for the government.

MS. KAGAN: Where did he go after Justice?

MS. GERE: After Justice, and this is where questions come about what I did and when I did it. I think I mentioned Glenn had grown up in Cincinnati, Ohio, and was always really interested in going back to Cincinnati to practice law. I think there was some amount of him that was going to prove that even though he grew up the son of a truck driver, he was going to be at the top of the legal profession in his hometown. That was part of his goal. In Arlington, we had a neighbor, this is how random life is, but we had a neighbor who had a lawyer who had worked for him in the Tax Division at DOJ. He left the Tax Division, moved to Cincinnati and went to work for a law firm. The lawyer who moved to Cincinnati contacted his former supervisor, our neighbor, and said do you know anybody who would be interested in working for my law firm in Cincinnati. Glenn and I talked about it. We both were having such terrific runs at Justice. Why would we want to leave, except that this was part of Glenn's long-range goal. So, we talked about it, and I remember we agreed, you go and interview. Here are the things that we will absolutely insist on. And in our little DOJ world, these were like pie in the sky – pay for our moving expenses, pay x dollars in salary, whatever it was – much more than he was making at DOJ. The firm offered considerably more than what was on our list. Glenn liked the people at the firm, Graydon, Head and Ritchey.

MS. KAGAN: What kind of law did he practice there?

MS. GERE: Litigation. This was an old blue-blood firm, which I think was also part of the I can play on any field and best people who may have had a lot more opportunities than I did. He quickly became one of the leading lawyers in Cincinnati. He had his very first criminal case that he took to trial which was defending a doctor who was accused of Medicare or Medicaid fraud. I can't remember which. It was front-page news every day. And he won. That set him on a path of getting more high visibility cases and clients. He did a lot of true trial work. He later did a lot of False Claims Act work.

MS. KAGAN: Did he stay there for the rest of his career?

MS. GERE: Yes. He did leave that firm and go to Vorys Sater, which has an office here too, but he was in Cincinnati the whole time. It was a small legal community. When we divorced, it did not seem that that was going to be a good place for me to stay, as much as I had a lot of good friends and there were parts of living there that were attractive. I liked the U.S. Attorney's Office a lot, but I needed to do what was best for me, which at that point was not staying where I otherwise might have been in the shadows.

MS. KAGAN: Was the divorce hard on both of you in the same way?

MS. GERE: I can't speak to on the same way. I don't know. It certainly was hard on me. I have to believe it was hard on him. After we got divorced and I moved back here, we started dating again.

MS. KAGAN: Each other?

MS. GERE: Each other. Yes. We gave some thought to whether we should remarry. We didn't do that.

MS. KAGAN: Was the divorce mutual when it happened?

MS. GERE: I don't know about that. We went through efforts to reconcile with a professional. We both just came to see that we had crossed some line where getting back was not going to be likely. That was a very difficult time in my life, I know that, and I suspect it was for him too. I remained extremely close to his parents. I know it was difficult on them too. I used to go and visit them. My mother-in-law came here and visited me here in D.C. several times.

MS. KAGAN: I guess there wasn't so much acrimony that you couldn't go back and revisit the relationship.

MS. GERE: Yes. But then once he met and married somebody else, we didn't communicate anymore after that. His parents have passed away, so what little I used to learn, which wasn't necessarily a lot, ended. His mom was good at compartmentalizing. I was her friend at that point as opposed to her daughter-in-law.

MS. KAGAN: Well this has been fascinating. So next time, we will pick back up again with the *Snepp* case and finish talking about that.

MS. GERE: Yes. I think that sounds like a good plan. I will be brushed up to move on to the next session.

MS. KAGAN: Wonderful as always.

MS. GERE: Thank you, Barbara.