

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 on Monday, December 9, 2019. This is the first interview.

MS. KAGAN: Good afternoon.

MS. GERE: Good afternoon, Barbara.

MS. KAGAN: My first question is how would you like to be addressed?

MS. GERE: Sally.

MS. KAGAN: Okay. So that begs the question, why Sally?

MS. GERE: Good question. That’s a good starting point. My official name is Elizabeth Sarah. I am named after my mother, but I had an aunt whose name was Sarah, and she was known as Sally, so in order to avoid any confusion between me and my mom, who was known as Bettie – now there’s a lot of confusion – I was dubbed Sally. I have spent pretty much the rest of my life trying to escape Sally, for she never sounded very professional to me, but it stuck, and so I think of myself, I guess, as Sally, although when I was in practice, I always used my full name, Elizabeth Sarah, on any legal pleadings, simply because it sounds more lawyer-like.

MS. KAGAN: I have a cousin whose parents named her Merry, and she grew up to be a lawyer and changed her name to Meredith.

MS. GERE: I feel her. I am and have been for many years called Sarah by my three younger sisters, not affectionately, but rather as a way of saying, okay big sister, you think you know it all. We’re going to call you Sarah, like that’s some form of dig.

MS. KAGAN: So would people in a business-type setting call you Elizabeth Sarah?

MS. GERE: No. Usually they just call me Sally. After a while I would forget to answer to Elizabeth, and they'd wonder how many names do you have?

MS. KAGAN: So it would just be in court and on briefs?

MS. GERE: Right.

MS. KAGAN: Where and when were you born?

MS. GERE: I was born on September 14, 1947, in Rochester, New York, and, as just indicated, the eldest child. I have three younger sisters.

MS. KAGAN: Four of you? Four girls all together?

MS. GERE: Four girls, and not for lack of trying on my father's part. But anyway, I have three younger sisters. My dad worked for an insurance agency in Rochester, but his own father passed away, and he had an insurance agency in Syracuse, and when he passed away, my dad was asked to come back and run the insurance agency. So I moved from Rochester to Syracuse when I was probably about two years old.

MS. KAGAN: So you probably don't remember Rochester.

MS. GERE: I don't have much memory at all.

MS. KAGAN: For your folks, was it a happy move?

MS. GERE: That's an interesting question. I think probably for my mom. I don't think my father really looked forward to kind of picking up the family business. I think he was interested in being more independent, but his own mother still was alive, and he came back to run the business so that he would be able to take care of her as well as his own family.

MS. KAGAN: Right. And that's what I was wondering. If he was in the same business, then why not start it out as Gere and Son?

MS. GERE: Right, but I think he wanted to make his own name in his own way in a different place, but that didn't work out, but it seemed to work out just fine.

MS. KAGAN: Did he grow up in Syracuse?

MS. GERE: Yes. He grew up in Syracuse and had sisters and brothers. He had two sisters and a brother. His mom was a homemaker, and his dad ran the insurance agency. And there had been Geres in Syracuse for probably centuries, and there's actually a Gere's Lock that is part of the Erie Canal. So for my dad, obviously, coming back to Syracuse was really coming home.

I went to the same high school that my dad graduated from, and my mom was born in Schenectady, New York. She lost her father at a very young age, and she and her brother and sisters moved to Ithaca, New York.

MS. KAGAN: Why Ithaca?

MS. GERE: My grandmother, her mother, was from that area and she taught school there and raised four children by herself. Anyway, so we're definitely Central New York people.

MS. KAGAN: You have roots there.

MS. GERE: Right.

MS. KAGAN: So you grew up in Syracuse, and is the area where you grew up urban, suburban, somewhere in between?

MS. GERE: At the time I lived there, it probably would be described as urban. My grade school, middle school, was a few blocks walking distance, and then my high school was right truly downtown and drew from most of the city.

MS. KAGAN: I neglected to ask your parent's names.

MS. GERE: My dad's name was David, and my mother's name was Elizabeth Sarah.

MS. KAGAN: And your sisters?

MS. GERE: My sister who is next closest to me in age is named Laura Ruth. My two youngest sisters are identical twins, Margaret Prescott and Marsha Dodge Gere. Very close. My mom had four of us pretty much all the same time, we were growing up together.

MS. KAGAN: So would you describe your family as sort of middle class, upper-middle class?

MS. GERE: I would say aspiring to be middle class would be the best way.

MS. KAGAN: But you didn't want for necessities?

MS. GERE: No, but it wasn't much beyond that.

MS. KAGAN: You say your sisters are all close in age, like a year apart?

MS. GERE: Yes.

MS. KAGAN: Wow. So not much of a break. Do you think they were hoping for a boy?

MS. GERE: Yes. My mom, actually. It's probably too much information, but my mother had other births that were not successful.

MS. KAGAN: Well she had a great spate of luck then.

MS. GERE: Yes. She did.

MS. KAGAN: You had extended family in Syracuse on your father's side, and any on your mother's side?

MS. GERE: Not in Syracuse, but in Ithaca where my mom's mother was, and then I had an aunt and an uncle who lived there and another aunt who lived there for a while. And lots of cousins. So that's really where her side of the family was.

MS. KAGAN: Right, and that's just down, what is it, I-81?

MS. GERE: Yes. I lived there before there was an I-81. It's like an hour and a half between Syracuse and Ithaca.

MS. KAGAN: Yes. I've spent a lot of time up there. So would you say that your family was close-knit?

MS. GERE: Yes.

MS. KAGAN: Cousins that you hung around with?

MS. GERE: Yes. On both sides of the family, and usually that would mean spending a fair amount of each summer with cousins, whether my on my dad's side or on my mother's side.

MS. KAGAN: Would you just go to their homes?

MS. GERE: One of my grandmothers, my dad's mother, had, there was a family, it was called a farm, although it was not a working farm that they worked at the time, but that my grandmother would live there during the summer, and one of my aunts and her children would spend the summer there. They were from Long Island. So we would go, you know, basically every weekend and do that during the summer, and in between my dad's working. And then most of all, I just remember a lot of Christmas holidays, Thanksgiving

holidays, with my mom's family in Ithaca, and either we would go there, or they would come to Syracuse.

I have three cousins that were close in age, and we are all very close. It was a very nice way to grow up, and I probably benefited from having cousins who were boys. I didn't have any brothers of my own.

MS. KAGAN: I imagine you learned a couple things from them.

MS. GERE: I learned about train sets. I learned about a lot of things I've forgotten I'm sure about sports and the things that little boys cared about.

MS. KAGAN: And being tough a little bit?

MS. GERE: I don't know. We girls were pretty tough.

MS. KAGAN: You didn't need any boy to teach you that.

MS. GERE: No.

MS. KAGAN: Were you particularly religious?

MS. GERE: My mother was very interested in being sure that we had a religious education, enough to allow us as adults to make choices about our religion. My dad had made his choice about religion, and it did not include going to church. So my mother would take us to Sunday School, and did that for years, to church and Sunday School.

MS. KAGAN: And probably instilled some values?

MS. GERE: Yes. I mean, in addition to understanding more about not only the religion that I was practicing, but about other faiths as well.

MS. KAGAN: Were your sisters your primary playmates?

MS. GERE: Absolutely.

MS. KAGAN: Not that many kids from your elementary school?

MS. GERE: Interesting. We lived in a neighborhood that was one block from the local Catholic Church, and so almost all of the families in the neighborhood were Catholic, and I had three sisters, so there were four kids, but most everybody else had five, six, seven, eight children, and so we had lots and lots of kids down the street, across the street, behind the house.

MS. KAGAN: Was it the kind of thing where you'd come home, change clothes, go out, and come home when your mother yelled for you?

MS. GERE: Yes. We had, at the time I was growing up, a yard, or the plot next to our house was empty, and so it was a good place for kids to congregate, play games and hopscotch or whatever.

MS. KAGAN: So you played hopscotch. Other games as well?

MS. GERE: A lot of roller skating. Just whatever kids do.

MS. KAGAN: Did you dress up, play dolls?

MS. GERE: Yes. I can remember my sister Laura, who's next youngest to me, and I used to have contests. We would each get one of our younger sisters to dress up, and of course since they were identical twins, it all mattered what the outfit was that we had selected. And so of course we would each dress up one of our sisters and then force our mother to try and say who had the best-dressed twin. My mother was far too adept at that. I don't think I recall her ever making a choice.

MS. KAGAN: Were you and Laura closer than either of you were to the twins, given twins' special relationship?

MS. GERE: Yes, probably, and certainly that has existed to today, although I would say all four of us are quite close. But identical twins have a very special bond and a code that the rest of us can't quite crack.

MS. KAGAN: Even a whole language.

MS. GERE: Yes. My two younger sisters developed their own language. My mom also was an identical twin.

MS. KAGAN: I've heard, but I don't know, that typically it skips a generation.

MS. GERE: Usually. I guess that's what has happened, but it didn't in her generation.

MS. KAGAN: Do the twins live near each other now?

MS. GERE: They do. They live about a mile apart, and they are getting close to 70 years old and have never lived more than a mile apart from each other, despite raising families, going to college, coming home, working.

MS. KAGAN: Did they go to college together?

MS. GERE: Yes.

MS. KAGAN: So they didn't have a revolt against the twinness.

MS. GERE: Oh they had a revolt, and after a while they really rejected the 'I'm not wearing the same outfit as my sister,' but they're just extremely close.

MS. KAGAN: So would you say that you liked doing the girly stuff versus being a tomboy?

MS. GERE: If girly stuff includes reading and studying and loving school, that's what I was. I was not at all athletic, and when I was growing up, girls weren't encouraged to be athletic.

MS. KAGAN: And that's why they were called tomboys if they played with the boys.

MS. GERE: Right. My sisters were more athletic than I was, or am.

MS. KAGAN: Would you say you were you an outgoing child?

MS. GERE: I wasn't shy, but I wasn't outgoing. I was comfortable with who I was. I was not an extrovert or an introvert.

MS. KAGAN: You said you loved school, and I take it you did really well in school.

MS. GERE: I did well in school.

MS. KAGAN: Was the goal to do well in school? Was it that kind of achievement, something you were striving for?

MS. GERE: Yes, and both of my parents were voracious readers, and so that was just what I observed and what I enjoyed and a consequence of reading and studying and thinking about things led to doing well in school.

MS. KAGAN: So the school was a neighborhood school?

MS. GERE: Yes.

MS. KAGAN: How would you describe its composition?

MS. GERE: It was very much the intimate neighborhood, so a lot of the kids in the neighborhood went to the local Catholic school, but a number of them still went to our grade school, and it was, I would say, a socioeconomic mix of people given where the school drew from.

MS. KAGAN: Was it racially mixed?

MS. GERE: Not so much my grade school, and it went to 8th grade. My high school, definitely was. In my middle school, I would say that there were a lot of first-generation children, but they were primarily Italian, Irish, and some Eastern European.

MS. KAGAN: So a lot of immigrant communities.

MS. GERE: Yes. I mean the families that had come to Syracuse to try and make a life.

MS. KAGAN: Back in the 1950s and early 1960s, times were very different, and there was oftentimes a stigma associated with being in a lower socioeconomic class or someone that was new to the country. Did you get that sense of people being seen that way?

MS. GERE: Yes. Definitely.

MS. KAGAN: In school, did kids mostly play with those like them?

MS. GERE: You know, that's an interesting question because I don't recall that. I don't know whether we were, for the most part very young and kind of growing up together and more accepting of each other. There were, I'm sure there were cliques of kids, but at least at that point in my life in that school, that was not my overwhelming sense.

MS. KAGAN: Were you identified in elementary school as oh she's one of the smart kids? There was a coterie of smart kids?

MS. GERE: Yes. It was usually said in a pejorative or mocking way, and particularly to be a girl and be smart was not how you wanted to be viewed.

MS. KAGAN: Did you have some comrades in that precarious situation?

MS. GERE: I don't really remember any, sad to say.

MS. KAGAN: Lonely at the top.

MS. GERE: I definitely wasn't at the top, but I think the other kids who were focused on doing well in class were probably boys whose families had told them that this was why they had come to the United States, and this was important for them to do well.

MS. KAGAN: That's interesting. Did any of them come from monolingual, non-English-speaking families?

MS. GERE: I assume that they did, but the only thing I recall at this point in my life is, you know, some kids that had more accented speech.

MS. KAGAN: So your school reflected the neighborhood that you lived in pretty much. Did you have any notion of what you wanted to be when you grew up while you were in elementary school?

MS. GERE: While I was in elementary school, probably not. I probably thought, if I thought about it at all, that I would be a teacher, simply because girls were either teachers or they were nurses. I knew at a quite early age I was not cut out to be a nurse. The sight of blood was not going to be part of my chosen profession.

MS. KAGAN: Were there any teachers that you had that you would say had a particular influence on you?

MS. GERE: Certainly by the time I got to high school.

MS. KAGAN: But not in elementary?

MS. GERE: Not in elementary school. I just remember having really dedicated, conscientious teachers who tried very hard to teach the kids what they needed to know. I can think of one that I do not recall fondly, but the rest of them.

MS. KAGAN: Were a happy blend.

MS. GERE: Yes.

MS. KAGAN: Do you have any family members who you considered a mentor in some way as having a significant influence on you?

MS. GERE: Well, I knew enough I think at an early stage to recognize that both my grandmothers had graduated from college and that that was quite unusual, and that my one grandmother, my mother's mother, basically raised four children on her own. She was a teacher. My grandmother – and my dad's father died when I was quite young, before I even had any memory of him – and she was a very strong person, so I had two grandmothers that were educated and able to be very capable of taking care of themselves and their families.

MS. KAGAN: Did your mom use her education in any professional way?

MS. GERE: Well my mom did not finish college.

MS. KAGAN: Right. This was your father's mother.

MS. GERE: My father's mother did not work outside the home, although she was very smart. I don't know what more to say about that.

MS. KAGAN: Why did your mother not finish college?

MS. GERE: Because of the Depression. My widowed grandmother was able, pretty astonishingly, to put her son, who was the eldest, through Cornell University. She put her next daughter through Cornell as well, and then came the two twins, and there wasn't enough money left. Both my mom and her twin, my aunt, had gotten maybe two years of college and then dropped out.

MS. KAGAN: Not a lot of financial aid back then.

MS. GERE: My mom went on to become a dental hygienist, and her sister raised her children. My mom was a dental hygienist before she got married and had us children. My aunt married sooner than my mom and had her life devoted to

raising her children. After her children grew up, my aunt worked, but not until then.

MS. KAGAN: So were your mom and her twin very close?

MS. GERE: Very.

MS. KAGAN: Are they still?

MS. GERE: They both passed away, but they were, just as my two younger sisters are, inseparable. Growing up as a little kid, when I would look up, I would not be able to distinguish between my mom and my aunt, and to this day, if I call one of my younger sisters on the phone, I really have to listen carefully to figure out which one I'm speaking with. With cell phones it is easier, but I used to call one sister's house and the other sister would be visiting. I'd be thinking I was talking to one sister, and it would be the other. Anyway, they sound very much alike as well as looking alike.

MS. KAGAN: And so did your mom and her twin live near each other?

MS. GERE: My aunt lived in Ithaca and my mom lived in Syracuse.

MS. KAGAN: How recently did your mom pass away?

MS. GERE: She passed away in 1992.

MS. KAGAN: So you were on your own then?

MS. GERE: Yes. I was extremely close to my mom. I don't know if you've ever read the book that Deborah Tannen, who is a linguistics professor at Georgetown, wrote about sisters. It's called *You Were Always Mom's Favorite!: Sisters in Conversation Throughout Their Lives*. Ms. Tannen interviewed my sisters and me, and we ended up in the book. One of the things that she asked us

was who was mom's favorite. We all confided in her that we were mom's favorite. I thought that was just a terrific testament to my mom, that we all thought that we were her favorite.

MS. KAGAN: But now in hindsight were you really her favorite?

MS. GERE: Well it depends on who you ask. If you asked me, I would say of course, but I think my sisters would have the same of course that they were her favorite.

MS. KAGAN: Was her death unexpected?

MS. GERE: No. She had had breast cancer, and it recurred. She had a number of years in between and then it metastasized and came back, and she passed away rather quickly.

MS. KAGAN: How old was she?

MS. GERE: She was 76, so pretty young. And she had been in terrific health and was hard to keep up with.

MS. KAGAN: Back in that day, though, even having a few years was really amazing. So your dad carried on?

MS. GERE: No. My dad actually died twelve years before my mom, in 1980. He had just retired, so was 65, and was out jogging on the beach down in Florida and had a massive heart attack and died. Which I'm sure if anybody had ever said, Dad, how would you like to go, he would say I'd like to be on the beach jogging. So in some ways I very much regret the loss of my parents at what I view as a young age for myself and for them. I think each of them would not have been good old people. I think things happen for a reason and that those two deaths at those times are probably part of it.

MS. KAGAN: Were the twins still at home when your dad died?

MS. GERE: No. We had all grown up by then.

MS. KAGAN: That helps.

MS. GERE: Yes. My dad was very much of the era that women should be married and have children, and that included his own wife, and so my mom had no financial input, made no decisions. Everything was decided by my dad.

MS. KAGAN: Was that evident to you when you were small?

MS. GERE: Very evident to me.

MS. KAGAN: Was it a source of tension between them?

MS. GERE: Between them? I think my mom tried to play that down just to avoid the tension. It was definitely a source of tension between me and my dad.

MS. KAGAN: Was that from a young age?

MS. GERE: Yes, and being the eldest, I kind of assumed the role of being the spokesperson for my sisters as well as for myself. I think that's one of the reasons that I decided I should become a lawyer. I had spent a lot of years arguing with my father and presenting a case for one of my sisters, whether it was to go away to college or do something. It kind of fell to me to make the case.

MS. KAGAN: And so you were playing that role from as far back as you can remember?

MS. GERE: Yes.

MS. KAGAN: Would he actively talk to you about his vision of what you should grow up to be?

MS. GERE: Yes. For example, in high school I was told that if I wanted to go to college, I would first have to take typing and shorthand so that I would be able to take care of myself in case I didn't find a husband when I went to college.

MS. KAGAN: How'd that sit with you?

MS. GERE: Not well. Not well. But I did learn, sort of, to type, and I definitely learned shorthand.

MS. KAGAN: Really?

MS. GERE: Under protest.

MS. KAGAN: Well it's a good skill once you're in college.

MS. GERE: Yes. It was good for taking notes. The typing, I never did quite master, so I always looked for boys to date who could type. I figured if it worked for boys, it could work for me too.

MS. KAGAN: Did you feel your dad was sort of demeaning when you were growing up?

MS. GERE: I think he had definite expectations for what we could and should do as girls.

MS. KAGAN: Which was?

MS. GERE: Get married and have a family.

MS. KAGAN: Did that create tension between you and your dad?

MS. GERE: Yes, but that probably is just, again, further training for marshalling facts and evidence and making a case in front of a judge that you knew was not disposed to see things your way.

MS. KAGAN: So what was your plan?

MS. GERE: Well, I got myself away from home to college. My sisters behind me also went away from home to college.

MS. KAGAN: You went away to college?

MS. GERE: I went away to college. That, I think, was probably the big success, in terms of victories. I think the other thing is, as I say, the training of how to identify a position for someone who needed a spokesperson and then to marshal facts and present your case. Sometimes it was beating your head against the wall, but occasionally there would be a ray of sunshine.

MS. KAGAN: So other than the big college move, what were some of the battles that you had with your father over what girls can do and can't do?

MS. GERE: Well, I kind of went along and did, for example, in high school what I wanted to do even if it wasn't something that a girl usually did. It wasn't that he said oh you shouldn't do that or that's not a good idea. It was more I kind of had to figure it out on my own, which isn't necessarily a bad thing either. I was an exchange student when I was a junior in high school. In retrospect looking back on it, I can't remember arguing with my father about it. I look back and wonder how he allowed me to do that, but that was really a real chance for me to step out of my family at a young age and travel abroad, which I'd never done, speak a language I didn't know.

MS. KAGAN: Reading your bio, I was really struck that you were an exchange student at a relatively young age, especially back then. Now there's study abroad all the time and gap year travel, so that was unusual. Was that a program that was run through your school?

MS. GERE: Yes. It was the American Field Service. Our high school historically had a family that hosted a student to come for the year to the United States and

that, as I recall, was one of the prerequisites for our school being able to nominate somebody to go on this program. Because we had hosted someone, I was able to go. Not my family personally hosted, but the school had hosted someone. It was a wonderful experience, but it made me grow up.

MS. KAGAN: Was it hard? Were you frightened?

MS. GERE: Yes.

MS. KAGAN: But you wanted to do it nonetheless.

MS. GERE: Yes.

MS. KAGAN: And you don't recall what your father had to say about it?

MS. GERE: No, other than good luck.

MS. KAGAN: Was your father proud of your academic achievement even though he thought it would be for naught?

MS. GERE: Yes. I'm sure he was, but I never got the sense that he was proud of it as anything other than a means to the end of getting married and having children.

MS. KAGAN: It must have been tough to be selected to go abroad and study.

MS. GERE: It was. As I recall, it was quite competitive, and it did mean being away from your family. I was so fortunate to live with a wonderful family, the Peyrauds, in the South of France that made wine. That was what the family business was, growing grapes and making wine. To this day, their wine is among the best in the world. The winery is called Domaine A. Tempier and is located in Bandol France.

MS. KAGAN: And so were you drinking wine with dinner regularly?

MS. GERE: Yes. I had a younger French sister, Veronique. They would water the wine down for the children, but everybody drank wine for lunch and for dinner. I had never tasted wine in my life, or a lot of the foods that they served either, but it was an adventure.

MS. KAGAN: What did you have to do to get selected?

MS. GERE: I don't even remember. I'm sure I had to be interviewed by somebody.

MS. KAGAN: And advocate on your behalf?

MS. GERE: Yes. I'm sure. To say why I thought I should be the person selected and what I would contribute to the program and whether I had the language skill or the ability to learn the language and whether I would fall apart being away from home for whatever it was, several months' time.

MS. KAGAN: So had you had French training before?

MS. GERE: I had French in high school. I'd had a couple of years by the time I went, so it was very rudimentary. But the way they also operated the program is that they had a ship that transported all of the students going on this program to wherever they were going. They were going all across the world, but they congregated people in New York, and we got on a big ship, and then we sailed initially to Europe.

MS. KAGAN: And you got off there?

MS. GERE: And I got off there, and other people got off and went to different places, but it took, my recollection is, we were on this ship for at least a week.

MS. KAGAN: Was it fun?

MS. GERE: It was fun, but we had classes all day long, so it was immersive for me, immersive French. Others, you know, had other kinds of classes that they studied.

MS. KAGAN: So when you got to France, you got off the boat, and did you know what to do?

MS. GERE: They had someone meet us. We spent a day or two in Paris, and then they transported us, and you know, this is funny. I can't remember. I probably took a train. The little town where I stayed is called Bandol, and it's partway between Marseille and Toulon, on the French Riviera, so I don't have a lot of recollection about precisely how I got to the house, but I did.

MS. KAGAN: Were there other students going to France?

MS. GERE: Yes, but none in the immediate area where I was.

MS. KAGAN: Was it small, sort of like a village?

MS. GERE: Yes, but the home was very much almost like its own village because there was a mother, Lulu, and father, Lucien, and many kids (Francois, Jean-Pierre, Marion, Fleurine, Colette, Laurence and Veronique), some of whom worked in the family business. There were people who came in, merchants to buy wine, people to taste wine. It was a very active place, and the parents of the family with whom I lived, were extremely active in the community, in the Rotary Club, and all that sort of thing. So it was really I joined a family that had a lot of deep roots in the area.

MS. KAGAN: Are you still in contact with them?

MS. GERE: I have not been in contact with them for some time. I did go back and visit them many years after I had left, and my French mother was adamant that I speak to her only in French, even though she spoke English. I hadn't spoken French in a long time. But that was just the way she was when I lived with them because, in her view, she was asking someone to come and live with her family as a way of not only broadening her children's education, but mine to learn a new language, to learn a different culture, to see my own country through different eyes. She is a remarkable woman, who now is over 100 years old.

MS. KAGAN: Did any of the children speak English?

MS. GERE: One, and she went to England for the summer to improve her English, so she was not there.

MS. KAGAN: Did the kids want you to teach them some English?

MS. GERE: Oh, I think we figured out ways to communicate, kind of both ways. And they had listened to American music, so they knew some English.

MS. KAGAN: Culturally, they were more familiar.

MS. GERE: Right.

MS. KAGAN: Where did you go to school while you were there?

MS. GERE: No. I did not go to school. I went for the summer.

MS. KAGAN: Oh, just for the summer.

MS. GERE: Yes, for the summer semester or whatever you call that.

MS. KAGAN: So it was about three months?

MS. GERE: Yes., three or four months.

MS. KAGAN: How was your French when you were there?

MS. GERE: It was good, but when I returned and applied for college and was admitted, I took a placement test and got some number of extra credits in French because I was proficient enough.

MS. KAGAN: So we should go back perhaps to middle school, and high school to talk some more about that experience. Were you involved in a lot of activities?

MS. GERE: In high school, well, in grade school, I did once run for Student Council President in like 6th grade, and I did not win. So very disappointing. In any event, that's about the one thing that I can recall from grade school.

Moving on to high school, yes, I was active in a lot of things. Probably the one that is the most, I think that had the most effect on me, was being the editor in chief of the yearbook, which meant overseeing a staff and figuring out how the book was going to be put together, how it was going to be printed, and who the vendors were. Obviously, we had a teacher who was the advisor, and the teacher who was the advisor was our English teacher, Mrs. Muriel Ketchum, and she was fabulous. She was just wonderful. She was such an inspiration to so many of us that I really was pleased to be selected so that I could get to work with her.

MS. KAGAN: Was she a mentor of sorts?

MS. GERE: Yes.

MS. KAGAN: In ways of life beyond just working on the yearbook?

MS. GERE: Yes. How to lead a group, the importance of being organized, the importance of doing things on time, the importance of keeping your word.

All the basic things that one needs to be a successful adult and to assume a leadership role. But she also drilled the English language and its proper use into all of us, for which I am forever grateful.

MS. KAGAN: Grammar, punctuation.

MS. GERE: How to deconstruct a sentence.

MS. KAGAN: So I take it you were a high achiever academically as well in high school?

MS. GERE: I did well in my French classes, in Latin. The bane of my existence, however, was math. Math was not something that I excelled at. It was something that I struggled with.

MS. KAGAN: Were you always bad at math or is it the phenomenon that so many females face that once they got into high school, they thought they couldn't do math.

MS. GERE: I think it was that, just really I never felt comfortable with it, and certainly it was not something that at home I saw my mother doing or my father or learning any real application. I just didn't find it as fun as reading a good book.

MS. KAGAN: In high school, there tend to be cliques, in-crowds, out-crowds, various other crowds. I imagine you would have to balance that in constructing the yearbook.

MS. GERE: Yes. And my high school was very diverse. It was located in the inner-city, right downtown. It was built in 1900 and now is on the National Register of Historic Places but no longer is a school. When I attended, there were kids who were wealthy. There were kids who were poor. There were kids who were black. There were kids who were white. There were the first-

generation kids that I'd gone to middle school with and others with long Syracuse histories. It was a very large school.

MS. KAGAN: How many students were there?

MS. GERE: Gosh, I can't even remember. Probably, I would be totally guessing, I don't know whether we got to a thousand. I think it would kind of depend on how you counted because there was an academic part of the school, and there was a vocational part. It was all sort of under the same roof, but it was a big extended facility.

MS. KAGAN: What was the name of the school?

MS. GERE: It was called Syracuse Central Technical High School.

MS. KAGAN: Were kids programmed to go in one of the two tracks?

MS. GERE: No. It was not as we think of today's magnet schools. It wasn't as though you applied or demonstrated some particular proficiency or interest. It was, as I recall, strictly by interest. You could be in the academic portion, or, as my younger sister Laura chose, she went to the vocational school because she knew from the same young age that I knew I did not want to be a nurse, that was what she wanted to be. So she chose to go to the vocational part of the high school. When she graduated from high school, she was an LPN, and so then when she went to college, she got her RN. There were programs for auto mechanics, for carpentry, for engineering, for chemical engineering in the vocational school. And then the academic part of the high school was just like regular high school.

MS. KAGAN: That's interesting because it's thought of as a vocational program, but yet it wasn't just for kids that didn't have what it took to go to college. There were courses such as pre-engineering in high school that help prepare students for college.

MS. GERE: Yes. As I recall, there were no girls in any of the engineering programs, but all the boys who had the best math grades, that's where they gravitated.

MS. KAGAN: There were, I imagine, certain core curriculum courses that were imposed, and so, for example, everybody had to take some English, some history, things like that. Were the two parts of the school integrated for such courses?

MS. GERE: As I recall, yes. I think my sister Laura probably had some of the same teachers I did on the academic side. Boy, you're asking a lot of questions that I have to think back to [laughter].

MS. KAGAN: It's interesting, though, when you think about it. Were the kids that went into the auto mechanic and those kinds of fields steered toward that?

MS. GERE: I don't think they were steered to it so much as well that's what either somebody in their family had done, or they'd seen somebody who did that, and they didn't have any interest in going to college.

MS. KAGAN: Was it a socioeconomic question among some?

MS. GERE: It probably was. I suspect so.

MS. KAGAN: So what year was it that you started high school?

MS. GERE: I started at Syracuse Central Tech in 1963, and I graduated in 1965. I was there for three years.

MS. GERE: Did you graduate early?

MS. GERE: No.

MS. KAGAN: Oh, was it 10, 11, 12?

MS. GERE: Yes. It was 10, 11, 12. No, that can't be right. It must have been 9, 10, 11, 12. Yes, because our grade school went to 8th grade, so I must have started in 1962. That makes more sense, 1962 to 1965.

MS. KAGAN: Did you have a group of friends?

MS. GERE: Oddly, the high school had sororities and fraternities then. Don't ask me why in high school you had such things, but back in the day, that's what they did, and so I was in one of the sororities. I also had friends, girlfriends, who were not in the sorority. I don't recall them being members. I had a couple of girlfriends I guess that I was sort of close with, but mostly not. I was much closer with the people who worked on the yearbook or in the Honor Society or were in the French Club or who wanted to be exchange students. I did not view my social existence solely through the lens of this sorority.

MS. KAGAN: Was it difficult to get accepted into the sorority?

MS. GERE: I don't even remember. Probably, which, had I thought about it or known, would have made me uncomfortable.

MS. KAGAN: So, did you consider yourself, looking back, as a competitive kid?

MS. GERE: Yes.

MS. KAGAN: Where do you think that comes from?

MS. GERE: My father. I guess internally wanting to prove that I could be a successful person separate and apart from being a married mother.

MS. KAGAN: Right, so in some respects, were you trying to show that you were as good as any boy?

MS. GERE: Yes. So probably. I was just going to say probably that, that I was trying to be the son that he didn't have, intellectually, even if not physically, which, of course, is a terrible presumption because that assumes that a boy would have been smarter or more academically gifted.

MS. KAGAN: Or at least had expectations in that area of him. Was it something that was spoken about, that your parents or your father wanted to have a boy?

MS. GERE: Yes. That was pretty clear.

MS. KAGAN: For your mother and your father?

MS. GERE: Yes. I think my dad was always, I think there was a tinge of disappointment. I think it would have been somewhat ameliorated if it had been 20 or 30 years later when girls were encouraged to be athletically competitive. That just wasn't the era, so there was not that outlet for sharing.

MS. KAGAN: Right. He couldn't come watch a game on Friday night kind of thing.

MS. GERE: Right or have the vocabulary to sit and watch football because my dad loved it – it's hard to live in Syracuse and not pay attention to the Syracuse football team, or at least back then it certainly was – but none of us had had the vocabulary. My dad was an excellent golfer but we never golfed.

MS. KAGAN: He didn't introduce you to golfing?

MS. GERE: Very briefly. It was too expensive.

MS. KAGAN: Did your dad go to Syracuse?

MS. GERE: Yes. He did.

MS. KAGAN: And his dad?

MS. GERE: And his dad went to Syracuse, and his mother went to Syracuse.

MS. KAGAN: So definitely a family loyalty there.

MS. GERE: Right.

MS. KAGAN: Did the youngest two girls, the twins, sort of feel like they were the big disappointment? Not only were they not a boy, they were two not boys.

MS. GERE: Yes.

MS. KAGAN: Were there comments made?

MS. GERE: Yes. Unfortunately, by the time it got down to them, I think there was a feeling of disappointment.

MS. KAGAN: Was it the kind of thing that was brought up when they might misbehave?

MS. GERE: No. Oh my goodness, none of us misbehaved. My father was a very strict disciplinarian. We did not misbehave. If we did, it only happened once.

MS. KAGAN: And so you were lashing out, I don't know if that's the right word, but asserting yourself came through, not staying out beyond curfew or things like that, but came through your academic ability and your ability to challenge him orally.

MS. GERE: Right, and to excel at whatever I took up that was not athletics or mathematics, either one of those.

MS. KAGAN: Did your father end up having any boy grandchildren?

MS. GERE: No. None of them had been born by then. I'm trying to think. I might have spoken too quickly. My sister Laura had a daughter and her first son before my father died. Zac was just a little baby so was never really part of my

father's life because by then my sister and her family were living in Kentucky.

MS. KAGAN: Was it a big disappointment to your mom not to have a boy?

MS. GERE: No, because she loved us girls.

MS. KAGAN: Whoever showed up.

MS. GERE: Yes, whoever showed up and was in good health.

MS. KAGAN: So, when you went to high school, that was before the days where political activism was infused in high schools and things like that, so was it what you would picture as a 1950s kind of atmosphere?

MS. GERE: Yes. Very much so. Very much so. My dad was sort of, but not very, involved in local politics. I remember somebody trying to get him to run for some office. My parents were very engaged citizens, always voted, always studied who was running for office, and I think instilled in us the importance of being good citizens and being informed voters from a very young age. But in terms of being active politically, I don't think so. My high school days were just on the cusp of world events exposing all of us to a lot.

MS. KAGAN: Did you go to dances?

MS. GERE: Yes. I went to dances when I was invited. I had met through church a boy who became my boyfriend in high school. He went to a different high school. He went to the high school where the much upper-middle class, upper-class kids in Syracuse went to school.

MS. KAGAN: So he didn't live in your area?

MS. GERE: Not in my neighborhood area, but I would see him at church, and we dated. He was, still is, a wonderful person, who went on, ironically, to Cornell of all places, and so I would spend some more time in Ithaca after he went there. He and I are the same age. I did go back for some college parties a couple of different times to Cornell. So that too was kind of another eye opener for me was to go to his high school dances and to meet his friends. To see their lives and what they could afford and what was going to be expected of them was far, far different from my high school friends.

MS. KAGAN: Do you know whether the girls were treated differently than the girls in your high school?

MS. GERE: I don't, although again sort of ironically, I ended up in college living with a girl who had gone to high school with him. She was brilliant. She still is.

MS. KAGAN: When you were in high school, did you know what you wanted to be when you grew up?

MS. GERE: No. Again, I knew that my assignment was to go to college and find a husband and get married and have children.

MS. KAGAN: So that did stick with you?

MS. GERE: Oh yes. Absolutely.

MS. KAGAN: Was it a concern that you wouldn't find a husband?

MS. GERE: There definitely was a concern, and I didn't find someone until just before I graduated from college. He was not somebody that my father approved of.

MS. KAGAN: Oh? Were they kind of pushing you to get a boyfriend?

MS. GERE: My father assumed that if I went to this college, which was Denison University, most people there would be well-to-do. He didn't care which one, just get married to him. I certainly dated in college, but the person that I ended up deciding to marry just before I graduated was probably one of two people that was at the college on scholarship, so it didn't exactly turn out the way my father had planned.

MS. KAGAN: What happened to the high school boyfriend who went to Cornell.

MS. GERE: We both decided that, he was studying to be an architect, and that was a five-year course. We both decided that after our first year of college, we really needed to date other people and see what the world was like. It was a good decision for us, and to this day, I stay in touch with him.

MS. KAGAN: It sounds like there wasn't any heartbreak associated with it.

MS. GERE: Not on my side. I don't think on his. I think we both eventually came to the same conclusion.

MS. KAGAN: How did you decide where you wanted to go to college?

MS. GERE: The summer that I was an exchange student, my parents knew that my sisters were going to be disappointed to not be doing something exciting themselves. My parents rented a cottage up on the Saint Lawrence Seaway for the summer so that my sisters would have something exciting and different to do. As a result of living in this cottage for the summer, it happened to be next door to the cottage of the man who was president of Denison University. My father obviously listened to him all summer long, and when I came home from France, my father said, you can either go to

Syracuse University and live at home, or you can go to this place called Denison University in Granville, Ohio, and no, we don't have money for you to go and look at it. Take your choice.

MS. KAGAN: Was the French trip between your junior and senior years?

MS. GERE: Yes.

MS. KAGAN: So you came back, and it was time to think about college. Had you been thinking about college?

MS. GERE: I had, and I had decided at some point that I wanted to go to what was then called the Seven Sisters schools, Vassar or Smith or whatever, and so I had taken Latin because at the time, to be admitted, one had to have had three years of Latin, so I dutifully took Latin, for which I'm also eternally grateful that I did. But my father was, I don't know, the other schools must have cost too much or maybe my grades weren't right. I don't know, but by the time it came down to it, it pretty much was, and I think I also thought about Duke, and I don't know why. I'd never been there, didn't know anybody who was there.

MS. KAGAN: Did you apply to all three?

MS. GERE: No. I recall that I applied to Denison. I don't know whether I applied to Duke or not, and I don't think I applied to any of the Seven Sister schools.

MS. KAGAN: Did you apply to Syracuse?

MS. GERE: I did, as I recall, but I was accepted at Denison, and I was thrilled to be going there.

MS. KAGAN: But you knew almost nothing about it.

MS. GERE: Nothing about it.

MS. KAGAN: But you knew it wasn't in Syracuse.

MS. GERE: It wasn't in Syracuse. My father was not going to be close by, and the brochures looked very nice.

MS. KAGAN: And there were boys there.

MS. GERE: There were boys there, somebody that I might find to get married to, and they had plenty of classes in French, and so seemed like an okay place to me.

MS. KAGAN: Did you resent your father for kind of pushing you towards that?

MS. GERE: I probably did a bit at the time. But honestly, reading about Denison and thinking I was so grateful to even be given that opportunity to go to college, even if I had been somehow resentful at the beginning, I certainly wasn't after I got there or when I graduated.

MS. KAGAN: Was it a given that you would go to college?

MS. GERE: Yes.

MS. KAGAN: And what about your sisters?

MS. GERE: Yes, which I guess is, thinking back on it, I suppose that was fairly open-minded about my father that he thought that we all at least should get a college education, but it was not necessarily for the right reason.

MS. KAGAN: So when you went away to college, did you feel like you got a separation from your father?

MS. GERE: Yes.

MS. KAGAN: And did you feel like there was less that you had to prove?

MS. GERE: Oh no. No. Because I still had to figure out how to get good grades and, you know, be in the right activities and find somebody to go out with, all that sort of thing. I had to be a successful college student.

MS. KAGAN: What year did you enter?

MS. GERE: I started in 1965 and then graduated in 1969.

MS. KAGAN: So life was getting political then?

MS. GERE: It was, but not so much at Denison. It was still a very, I mean it's a small school in pretty much rural Ohio. It was not anything like, had I gone to Syracuse University, for example, it would have been far different from Denison. So it was the beginnings, and there were some of the students, particularly as I got closer to my senior year and started looking around and thinking about the rest of the world and what I was going to do with my life, realizing that it was not going to be insular as my college experience pretty much had been. When I went to college, before the year I graduated, women lived on one side of the campus, the men lived on the other. There were very strict curfew rules. It was truly a different time.

MS. KAGAN: And things changed pretty rapidly.

MS. GERE: The year after I left, it changed dramatically.

MS. KAGAN: Did you have a general awareness about what was going on?

MS. GERE: Yes. General.

MS. KAGAN: But there really wasn't anybody at Denison that kind of had a torch.

MS. GERE: There were people, I'm sure, but I was focused on getting my grades, and I had a job so I could help pay for my education, and it was pretty much what I focused on.

MS. KAGAN: What kind of job did you have?

MS. GERE: I, for several years, worked in the dining hall. Back then, you used to get a tray, and you'd come through a line, people would serve you your food, and I was one of the people in the hairnets serving the food.

And in my junior year, I was selected to be what we then called a junior advisor. I lived in the freshman dorm. I had a roommate, and the two of us were responsible for one wing, one floor, of the freshman dorm.

MS. KAGAN: Was it like an RA?

MS. GERE: Yes. It was like an RA, and that paid for my room and board, I believe. It was very prestigious to get this position. It was very competitive, in part, I'm sure, because of the financial piece of it. It also was a lot of work.

MS. KAGAN: Was it a tough position?

MS. GERE: It was tough because you saw the struggles of a lot of young women and, fortunately, my time was before drugs, but certainly alcohol, what we now know as depression, people really struggling academically, people who had never been away from home, people whose parents had set expectations that were just totally unrealistic.

MS. KAGAN: But you had the kind of temperament that was well-suited to people coming and opening up to you.

MS. GERE: Yes. I was a listener.

MS. KAGAN: And how did that come about? Do you think you were a born listener?

MS. GERE: A born listener and somebody that having had my younger sisters around and listening to them, I guess it kind of translated to being a listener in college.

MS. KAGAN: And compassionate.

MS. GERE: Yes.

MS. KAGAN: It could have had the other effect because of your sisters, that you're used to being the boss and having little sympathy for immature behavior.

MS. GERE: Yes. Sometimes I think they thought I was the bossy big sister, but it was one way for me, I mentioned earlier that I thought about teaching, but helping my younger sisters with their homework made me realize I didn't have the patience to be a good teacher, so I pretty much knew that was not going to be my vocation.

MS. KAGAN: What did you major in?

MS. GERE: I majored in history. At Denison, in order to graduate with honors, you had to do a thesis. I wanted to write my thesis in French in the History Department. The History Department did not have enough professors who were fluent enough in French to read my thesis, so I said fine, I will switch majors, and I will be a French major, and then I will write my thesis in French. So that's what I did.

MS. KAGAN: On a different topic?

MS. GERE: Yes. Totally different. I analyzed a novel, the Charterhouse of Parma by Stendhal, for my thesis.

MS. KAGAN: A French novel?

MS. GERE: Yes. A French novel. We called them Honors projects back then.

MS. KAGAN: So there you were, going through college. You're getting toward the end of it. Had you found a husband?

MS. GERE: No. I had not. Probably at some point, probably in my senior year. Gosh, I'd have to go back and reconstruct, but at some point, as I got closer to graduation, there was someone that I was dating, and he was a very special person, on scholarship. We decided that we should get married. I at that point already had been accepted at Syracuse University Law School on a full scholarship. He had been accepted at GW Law School on a scholarship. We had decided we would get married at the end of our first semester of law school, but then you really can't transfer in the middle of the year, so we both thought well, we'll play out the year and then we'll decide where we're going to finish up. There wasn't much contest. I transferred to George Washington University Law School.

MS. KAGAN: What made you decide you wanted to be a lawyer? When did you really make the decision that's what you wanted to do?

MS. GERE: Obviously, I had to decide, I guess I would have decided in my junior year because I had to take LSATs. By that point, I hadn't found anybody to marry. All of my close college female friends were getting married, with one exception, the woman that I lived with when I was a resident advisor. She was going to medical school. I knew I would not be going to medical school and looked around and said okay, all the other girls are getting married. What are the guys doing? All the guys I knew well were taking LSATs, so I

thought I'll do that, and that's about the extent of it. I thought I don't know any lawyers though. I've never met a lawyer, but I know how to argue, and I don't have anything else to do, so I might as well go to law school. Maybe there'll be a husband there.

MS. KAGAN: A lawyer by default.

MS. GERE: Yes.

MS. KAGAN: There are a lot of default lawyers around. Going back to your college days, what kinds of activities were you involved in?

MS. GERE: I was in a lot of things. In addition to working, I was on what was called the Judicial Council, for which certain students were designated and basically you would hear things like student infractions, curfew infractions, and it was at the time kind of a peer system for dealing with disciplinary issues,. That probably also helped my interest in being a lawyer. I was in Phi Beta Kappa.

MS. KAGAN: Were there activities associated with that?

MS. GERE: I guess. I think we had dinners, but it was not a big-time commitment. I also was active in a sorority, Kappa Kappa Gamma, until my senior year. I was not comfortable with the rush process and withdrew. But by then, I really had a very, to my mind, interesting circle of friends, most of whom, a lot of whom, men, particularly, were not in fraternities. You know, guys that I worked with in the dining hall that came from a different strata from most of the students at Denison.

MS. KAGAN: Why did you go into a sorority in the first place?

MS. GERE: Because at the time that I started, something like 96% of freshmen were in either sororities or fraternities. You did not live in the house at any point. You always lived in a dorm. So it wasn't quite as confining, I think, as other sororities are. But it was just what you did. And I picked a sorority that one of my mother's sisters had been in and one of my father's sisters had been in it. So it's like okay, it must be meant to be.

MS. KAGAN: Was there a dress code at that point?

MS. GERE: Oh yes. Definitely a dress code for going to classes, and I'll never forget that when my first husband and I finally got married and we moved in together, one of his first questions was, where are all your clothes. I said all those clothes belonged to my roommate who had a lot of clothes, and she was lovely and lent me her clothes. I did not have money to invest in a wardrobe. And then when I got married, I was very, very fortunate to have a mother-in-law who was spectacular and had never had a daughter. She was a fabulous seamstress and made all my clothes, which was very nice.

MS. KAGAN: Did you do other activities, anything like a yearbook-type activity?

MS. GERE: I did not do anything like that. I think mostly being on the Judicial Council, being a student advisor, the sorority, and working in the dining facility and trying to get good grades and work on my Honors project.

MS. KAGAN: That sounds like quite a full plate. Did you go home on vacations or break from school?

MS. GERE: Not frequently because that was pretty far to go.

MS. KAGAN: How far was it?

MS. GERE: It would have been, or was, at least an eight-hour drive, and I didn't have the money to fly, so it would mean I would come home at Christmastime pretty much, and in the summer. I was lucky to have roommates along the way that were more local. The woman, Chris Kreger, that I lived with who went on to medical school was from Cincinnati. That was pretty close, and I did spend some holidays with her family.

MS. KAGAN: That's nice. So anything else about going to Denison? How would you say it changed you?

MS. GERE: It gave me more confidence in myself. It exposed me to, probably ironically, most people go to college and are exposed to people of a different socioeconomic strata, and mine was the upper strata, to which I had not ever been exposed, but it helped me see more of the world or more variations in people. I had a wonderful education. I had terrific professors, people that were really dedicated. I had wonderful friends. It was a very positive experience.

MS. KAGAN: No adjustment problems?

MS. GERE: Oh I missed my sisters and my mother terribly, and that was back in the day when you'd have to get a roll of quarters and go stand in line to get to the one phone booth in the dorm. I wrote a lot of letters. I still have probably some of them somewhere that my mom wrote to me.

MS. KAGAN: Did you communicate with your father often?

MS. GERE: He'd get on the phone occasionally, when I called, but his questions would be how's the weather or how's school.

MS. KAGAN: It sounds like he was sort of a typical 1950s father, not very engaged.

MS. GERE: I would say that.

MS. KAGAN: You knew he loved you, but the relationship didn't really go beyond that.

MS. GERE: Yes. It's not demonstrative in other ways.

MS. KAGAN: And do you feel like he knew you as a person?

MS. GERE: I think so. And I think, truth be told, by the time I graduated from law school and had some of my first cases, I think he was extremely proud of me, and I think he saw in me things that, had he not had to come back and take over his father's business, he might have accomplished.

MS. KAGAN: Just a couple more questions about Denison. What was the composition of the student body like?

MS. GERE: We had some minorities, but not a significant number.

MS. KAGAN: Did the minorities stick together?

MS. GERE: Yes. Unfortunately, which was reinforced by the sororities and fraternities and the geographical isolation of Granville. People did not choose to go to Denison to be exposed to the world. They picked Denison to go and reinforce the world they came from, except for me and my husband-to-be.

MS. KAGAN: Did most of the students come from Ohio or Midwest area?

MS. GERE: Yes. A significant number of kids from Ohio, Michigan, Pennsylvania, and Chicago area.

MS. KAGAN: I imagine Syracuse wasn't that different from a lot of midwestern cities at that time.

MS. GERE: Probably not. Probably not.

MS. KAGAN: So you felt like you fit in?

MS. GERE: Except that everybody had a lot more money than I did and had had a lot more exposure to the world than I had had.

MS. KAGAN: Was that an issue? Did it create a problem for you with your social life?

MS. GERE: No. I just realized that, as I say, there was a different strata in the world that I hadn't experienced.

MS. KAGAN: You weren't aware of the way rich kids lived?

MS. GERE: No. I was not aware of people taking ski vacations or going to the Caribbean for Spring break or having wardrobes that I didn't have or having gone to a private school or having parents who were lawyers and doctors and such.

MS. KAGAN: Did that trouble you?

MS. GERE: No. I don't think it troubled me. I just knew that I didn't quite fit, or at least I didn't feel like I quite fit.

This is probably a good place to stop.

MS. KAGAN: Okay.

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 on Thursday, February 13, 2020. This is the second interview.

MS. GERE: Good afternoon, Barbara.

MS. KAGAN: Good afternoon, Sally.

When we last finished, which was a good while ago, we were coming to the end of your college years, but we hadn’t fully wrapped that up. I know that you had mentioned you were working in the college cafeteria. That was important to you, and it kept you grounded with some of the kids there that weren’t all from affluent backgrounds. So in addition to that, did you work during high school?

MS. GERE: Yes. That’s one of the things after we talked, I realized that I had not given proper emphasis to the importance that my family placed on working, in significant measure as a way to learn the virtues of being on time, doing a good job, learning how to work with people that you might not otherwise know or come into contact with, so I started working at a pretty young age. I think I mentioned in my neighborhood growing up, there were a lot of large families which offered very fruitful opportunities for babysitting, which I did frequently for the neighbors as soon as I was old enough to be a babysitter instead of being the babysittee. And then when I was in high school, I had jobs during the summer, even though I probably wasn’t even 16 years old, that involved working for somebody who had a little concession booth in a resort town in Alexandria Bay, N.Y. I had a regular schedule there.

MS. KAGAN: Daily, nine-to-five?

MS. GERE: Yes. I watched people put paint on cards and then spin them around and go home with their artwork. They spun the cards around, not themselves. And from there I graduated to being a waitress in a steak restaurant, which was, for the area, quite upscale.

MS. KAGAN: Did you have to carry heavy trays?

MS. GERE: I carried heavy trays and had to learn all about the menu, learn how to deal with getting between people and their food, which I learned is sometimes an unpleasant place to be if they haven't gotten what they think they wanted in the amount of time they wanted it. So that was a very interesting and good experience in terms of learning how to deal with people, including working with, and at that time it was all women, and we did not wear anything like scanty outfits, but that didn't stop the people who came there from being inappropriate. So I learned from an early age how to kind of navigate that as well. Part of the time I worked at the same restaurant as a cocktail waitress. That was even more of a challenge. I remember working in the bar while watching the Apollo moon shot. It was extraordinary. I have good memories of amazing things that Americans accomplished while I was at work in a bar.

MS. KAGAN: Did people get physically forward?

MS. GERE: Yes. There was and still is a military base nearby, and so a lot of times the guys would come in in a group, and they were the ones who tended to be the most rowdy.

MS. KAGAN: They were there for meat, so to speak.

MS. GERE: Right. I worked one summer at a different resort, and I'm trying to think which came in what order. I think that one came first, where I had to serve breakfast, which as a server notoriously is the worst. The amount of money that gets charged is less, so the tip is less, but the amount of work you do in exchange for that is more because there are more pieces, there are more things that you have to remember to do, bring the coffee, the sugar, the toast, the eggs, the cereal, the maple syrup. I can remember one day these guys came in and decided it would be very funny if they left my tip in change in a plate of maple syrup so that I had to wash every coin. And I couldn't afford not to, so I did. But that was the funny part. I guess funny. There were other parts that weren't quite so funny.

MS. KAGAN: And there's not much you could say to the management to help you?

MS. GERE: No, because, at least in one of those places, the management was part of the problem. So I learned from an early age about hard work and the importance of doing a good job.

MS. KAGAN: And people skills.

MS. GERE: And people skills.

MS. KAGAN: I think that's really important. I appreciate that myself. There's not enough of that, I think, these days.

MS. GERE: Certainly not with everybody on their device screens.

MS. KAGAN: We're getting to the end of college, and you found a husband, and he happened to be going to law school. I know you mentioned that you were trying to figure out what to do, you didn't have a husband, and all your male

friends were going to law school, so you thought about that. You took the LSATs, and you were off to the races. Did you meet your husband in that context?

MS. GERE: Actually, I met him in college, right at the very end of college.

MS. KAGAN: He was planning to go to law school?

MS. GERE: He was already planning to go to law school. And then we both lived for the summer before we got married in the resort town, Alexandria Bay, N.Y., because it was a good area to try and make some money. Then he started at GW in the Fall, and I started at Syracuse.

MS. KAGAN: Was it just a coincidence that your husband-to-be was planning to go to law school? It wasn't like interest in the law brought you together or anything like that?

MS. GERE: No. Probably early on, I would have considered him one of the guys who was my friends who was taking this law-school route. I had another close friend in college, Alex Curchin, who actually had applied for and decided to go to Syracuse Law School. He lived with one of my parent's friends who happened to have a big house. She was getting on in age and was thrilled to have somebody in the house with her. He too ended up transferring from Syracuse after the first year, so he and I didn't stay.

My first year of law school was challenging because as I think I mentioned that there were, to my recollection, only two other women in my class. At the time I was accepted, I was the only one.

MS. KAGAN: Out of how many?

MS. GERE: I don't even know. I guess several hundred as far as I can recall. Law school was a different learning experience, and as I mentioned, I didn't know any lawyers. I didn't really know what would be expected of me as a law student, let alone as a lawyer, but there I was as a law student and just figured well, if I study hard enough, everything will work out. I still look back on those times, and I'm not sure how or why, but my two closest friends in law school were two other students, Richard George and John Laidlaw, who had served in Vietnam and came back and started law school. They seemed to me to be more grounded. They seemed to be more mature, and they had wicked senses of humor, so that's how I got through my first year of law school. It was having some close friends because the professors were very skeptical of having women in the class, but at least at Syracuse, I was more ignored than picked on, I would say. I'm not sure which one ended up being better because I had the other experience when I got to GW.

MS. KAGAN: Let's back up a second. Did your husband have a particular goal in mind when he decided that he was going to go to law school?

MS. GERE: Yes. He definitely was going to be a labor lawyer and represent labor unions. His dad was a truck driver, a teamster, and Glenn (Whitaker), my husband-to-be, felt very passionately that that was a segment that needed good legal representation. So he had his eye on the prize early on.

I, on the other hand, was somewhat more, I don't know, either a drifter, ambivalent, and just wasn't certain. Maybe it's more of a reflection on me, but I started out as a history major in college and ended up being a French

major because I wanted to write my college honors thesis in French. I had to change majors to find sufficient faculty fluent in French to read and grade my thesis. I'm not sure that's an education plan one scopes out years in advance. In some ways, I guess, law school was that way for me. I was searching for why did I do this, and what am I going to do next. But going through my first year of law school, I can't say that anything stuck out for me as showing me a path for where I wanted to go.

MS. KAGAN: None of the basic classes spoke to you?

MS. GERE: No, although I guess if I had to pick anything, I probably would say that criminal law was more comprehensible to me and more meaningful, and constitutional law, which I think law students love or think that they love. But more critically for me was getting married in January 1970 at the end of the first semester of law school and trying to figure out, all right, now I've gotten married, I've got a husband who lives 500 or 600 miles away. How are we going to navigate this. I also had taken a part-time job as a check-out cashier at Loblaws, a local grocery store. More lessons about getting between people and their food. More learning people skills.

My new husband quickly made it clear there was no way he was moving to Syracuse. I'd never even been to Washington, D.C. and so I said well I'll at least come and look at it and see if there's any way that I can transfer.

It was a very difficult process because that would have been in the spring of 1970, which basically was the time that most college campuses were in the throes of extreme distress, demonstrations, and disarray over the Vietnam

war. The National Guard killed four students at Kent State. There were demonstrations at schools and in cities across the country. At most law schools, final exams in the spring of 1970 were cancelled. People couldn't get to class, so law schools just didn't give exams. Nonetheless, I had been told by GW that there was no way that I could transfer unless I had taken final exams for the second semester of my first year, even though GW didn't have final exams for its own students that year and Syracuse was not offering final exams. And so this other fellow that I mentioned earlier, Alex, and I, and I think there was one other person that I can recall very vaguely, had to go to professors and get them to give us final exams so that we could transfer. So there were three or four of us in the first-year class at Syracuse who did take final exams.

MS. KAGAN: The professors were willing to do that?

MS. GERE: There were professors who were willing to do it. I can remember my father driving me up to the SU campus and practically, he was not very happy about the whole situation, and felt, I think, quite rightly, threatened. Even to drive up onto campus through the demonstrators was quite an undertaking, especially if you didn't have your peace sign jacket on, which my father clearly did not. He was somebody's father driving his daughter to take exams and you best get out of his way.

In any event, I got through exams and interviewed at GW. The then-Dean, Wallace Kirkpatrick, was a very difficult man. During my interview, he said I've looked at your husband's record, and he's done very well his first

semester here at GW, so I'm sure he'll be able to help you through law school. With that, I'm willing to recommend your acceptance. Mind you, my husband and I had basically the same GPA graduating from college and probably about the same LSAT scores too. My husband was very bright, but he was going to get himself through law school. He wasn't getting me through law school. I'll never forget that. Of course then I set about making it my business that I did a good job and never looked back. I did well at GW. I graduated with honors, as did my husband.

Then that interest in criminal law started to speak to me because some of the professors were so interesting. Ironically my ex and I, it's not ironic, but we were poor. We concluded the one way we could finance our way through law school was to take the same classes and buy just one set of books. If one of us had to work, then the other could go to class, and we would tag team so we wouldn't miss anything. I took a lot of labor law, and he took a lot of criminal law, which was okay. It was all right for both of us.

MS. KAGAN: How political were things at the law school?

MS. GERE: By the time I got there, we could have gone to a march every weekend had we wanted, and we did, and I, going fast-forward, thought afterwards, now how am I ever going to get a job with the Justice Department because I'm sure I'm on somebody's photo feed marching down Pennsylvania Avenue. But I'm getting ahead of myself.

Getting to my second year of law school, being a transfer student, being newly married, was kind of isolated in a way. The people who had started

together had formed their cliques and study groups of which I was not a part. Shortly after I got to GW, I found a job and so was working a fair amount.

MS. KAGAN: What were you doing?

MS. GERE: I worked for what was then, and this will come full circle, I worked as a law clerk for the D.C. Corporation Counsel, now today's D.C. Attorney General's Office. I worked on a project that was funded by the LEAA, Law Enforcement Administration Association. We worked to prepare a jury trial manual for use by the Corporation Counsel lawyers, so a lot of legal research, a lot of it on criminal issues for local prosecutions for which they were responsible.

MS. KAGAN: At that time it was traffic offenses and misdemeanors less than 180 days?

MS. GERE: Yes. I believe probably juvenile too. One of the very first bosses, well, the very first boss I had as a lawyer, was a woman, which was pretty extraordinary, I later came to find out in my naivete. Margaret Hines was a very bright person, a very good manager. I think there were four of us who were law clerks. She might have had a staff lawyer. I can't remember. But she kept us all very busy, and it was, again, a very good experience. A learning experience. And, through that work, I met a GW classmate, John Leonardo, who remains today my closest law school friend. He went on to be a judge on the State Court bench in Arizona and later, the US Attorney there.

MS. KAGAN: How many hours a week did you work?

MS. GERE: I think it was twenty. But I got paid.

MS. KAGAN: Was your husband working?

MS. GERE: He was working. His first job was with a government contracts law firm. His second job was with the Teamsters Union. He got a job with the in-house General Counsel for the Teamsters, which was a dream job for him, and he did very well at that.

MS. KAGAN: Were you working the summer after your first year?

MS. GERE: Yes.

MS. KAGAN: And was that in D.C.?

MS. GERE: No. That would have been the summer after my second year. After our first year of law school, we lived in the resort area of Alexandria Bay in the Thousand Islands on the US-Canada border. Glenn worked there too. I was a waitress and he worked at the marina. We didn't have legal jobs. We were trying to make money so we could someday have legal jobs.

MS. KAGAN: Did you take night classes to help with your schedule?

MS. GERE: Yes. We both took night classes. I also liked them, not just because it was good for my schedule, but I also found that the professors were more often people who were engaged in the active practice of law. It also seemed that the students in the class who were night students more mature and more focused, kind of get in and get out, learn what I need to, and then I need to go home and eat my dinner or whatever because they had already been working all day.

MS. KAGAN: Right. Approach it like a job. Where did you live when you first moved to D.C.?

MS. GERE: We lived in an efficiency apartment in Arlington, Virginia, which was right across the street from Ft. Myer, so we could hear reveille in the morning, and if we could get home in time, taps at night, but that was not that frequent. We kept our bikes parked next to our dining room table. But it was fun. It was a good place to live. It was near a laundromat. It was cheap. I think we paid \$80 a month.

MS. KAGAN: How did you get back and forth to law school?

MS. GERE: We either drove or we biked, depending on what was going to happen during the day or which of us had to work or who needed to be where.

MS. KAGAN: Was there such a thing as a kind of a typical law school day?

MS. GERE: I can't think of a typical one.

MS. KAGAN: Did you do most of your studying in the library?

MS. GERE: Yes. I remember thinking if I could buy a soft drink during the day, that was living large. We packed lunch and never bought anything to eat at school.

MS. KAGAN: You didn't get a scholarship at GW?

MS. GERE: I did, beginning my, I think I got it the second semester of my second year, and then I had it my third year as well. We both had what were called Trustee scholarships. I think it must have covered a goodly amount. We had loans that we had taken out, but it certainly was a tremendous help.

MS. KAGAN: At what point did your father become proud of you for your path?

MS. GERE: Not until I got a job at the Justice Department, which would have been after my clerkship. I was there for a while and was assigned to a case to represent former President Nixon.

MS. KAGAN: Okay. We'll get to that later.

MS. GERE: So that's down the road. It takes a while.

MS. KAGAN: He wasn't thrilled with your choice of spouse because he wasn't able to support you?

MS. GERE: More I think it was his political persuasion that my father did not share.

MS. KAGAN: Did you have a large wedding?

MS. GERE: No. We got married in January 1970 in Syracuse, New York.

MS. KAGAN: Where was his family?

MS. GERE: In Cincinnati, Ohio. There was one of those blockbuster blizzards that weekend. We weren't going to have a big wedding anyway. We got married in a church, and the reception was downstairs in the church hall with a champagne cocktail, so it was not anything extravagant. But we, I thought, had a very lovely wedding. So that part started off fine.

MS. KAGAN: Given that there was so much pressure, social and familial, to get married, to be married, did you feel any different after you had gotten married?

MS. GERE: I thought now I can get that off my checklist of things that I don't need to worry about now. Getting married was one of them. My parents were pleased that I got married. I think they were then concerned, how was I going to be married and be starting off on this career that was just not what women did. How was I going to be able to do that. Which I also asked myself.

MS. KAGAN: And the pressure to have kids.

MS. GERE: Yes. That quickly became the next box to check.

MS. KAGAN: Right. Okay, so now you're sort of humming along, on low octane, in law school. And then after your second year, did you keep the job with the Corporation Counsel?

MS. GERE: Yes. It seemed like a good job. I worked with one of the other interns who also was from GW, and to the extent that I made any friends during law school, it was because of that internship or clerkship, whatever you want to call it. As I mentioned earlier, his name is John Leonardo. He and I became very good friends. We remain good friends.

MS. KAGAN: Is he still in D.C.?

MS. GERE: He is in Tucson, Arizona. He was an AUSA. He then went on to become a judge on the State Court in Arizona. He then became the U.S. Attorney in Arizona, and within the last few months, has just returned from living in Albania for several years under the auspices of the Department of Justice to train Albanian lawyers on legal systems because Albania wants to become part of the EU, and in order to do that, there are certain markers that they have to meet. Anyway, John had a very illustrious career and has just retired. So I stay in good touch with him. His daughter lives here in D.C., so we're lucky to keep in touch with him when he visits, and we usually vacation once a year in Tucson, so it works out to see each other regularly despite the distance.

MS. KAGAN: So while in law school, were the criminal classes still the ones that you enjoyed the most?

MS. GERE: Between the two of us, I found actually that I liked a lot of the labor classes, and then my husband, I'm not sure why, got interested in government contracts because GW has a really outstanding government contracts program. So we dabbled, but here and there. My husband during his first year of law school tried out for a place on law review, which he was successful in achieving. I, of course, missed the mark because I wasn't there at the law school. But I had half a law review experience because he was too busy to do most of what he was supposed to do so a lot of it he handed off to me. I was on another journal, the *Journal of International Law and Economics*. I don't recall it taking a great deal of my time and attention.

MS. KAGAN: Any professors stand out in your memory?

MS. GERE: John Banzhaf, who taught, I can't remember what I took, something that was a little bit off the beaten path. It must have been consumer law or something like that. Professor Banzhaf went on to take on the tobacco industry and had a lot of major impact lawsuits that he brought using GW law students. He was very engaging.

There was another professor, James Starr, who taught a number of criminal courses that I took, and he too developed somewhat of a reputation for some kind of cutting edge, some people might not think it was quite cutting edge, they might have thought it was over the edge, analysis of identification of criminal remains, forensics theories. That developed after my graduation, but as he was building up his resume, I took a couple of classes from him. He was a very interesting professor.

I was busy working. I was busy being a newly married person. I was busy trying to make sure I was succeeding in law school, at least academically. But again, I don't know what comes next. I don't have this burning desire I'm going to be a tax lawyer, a criminal lawyer, a constitutional lawyer. Again, looking around a bit at people in law school, not that I had --

MS. KAGAN: How many women were there?

MS. GERE: I later learned that there were, I think, our class had maybe 6% women, so maybe a dozen, fifteen, twenty. But again, because by the time I transferred, people were in their places, their cliques. It wasn't as though you were in your first-year classes where you're divided up alphabetically, so a lot of people I didn't really even know. I didn't have time to hang out at school and socialize.

MS. KAGAN: Was there a dorm for first-year students?

MS. GERE: My husband lived in a dorm for first-year students during his first year at GW.

MS. KAGAN: That's what kind of cements the first-year experience.

MS. GERE: Yes.

MS. KAGAN: How was the domestic life going? Were there expectations you or he had for yourself that weren't the same for him?

MS. GERE: I would say it was pretty good. There were certain things that I did and certain things that he did, but I don't remember feeling as though he said okay, these are your duties, and these are mine. To his credit, or maybe his

good luck, his mother worked most of her life as a secretary/special assistant to an executive in a chemical company, so from an early age he had a vision of women going to work.

MS. KAGAN: Which was unusual to have a working mother back then.

MS. GERE: Which was unusual. His mother was also quite impressive in terms of what she might have achieved in another day and age. She did graduate from high school; she was bright. She clearly would have had much more of a career. That is one of the things that likely endeared me to her. She looked vicariously at my life and said this is good for a woman.

MS. KAGAN: Did she have daughters?

MS. GERE: No. My husband was an only child.

MS. KAGAN: So you had to pass muster.

MS. GERE: Which I did. His parents were wonderful people. Very much regular people, very hard-working.

MS. KAGAN: His dad was a union guy?

MS. GERE: His dad was a union guy. His dad was a prisoner of war in World War II and barely survived.

MS. KAGAN: Oh wow. Where was he?

MS. GERE: He was captured in North Africa. He was moved to Germany for at least some part of his captivity, but he came back to this country weighing less than a hundred pounds and had been severely mistreated. But he muscled on. He was really quite remarkable. It was a different age, a different generation.

So I'm getting toward the end of law school and thinking okay, now what. Again, looking around, lots of people had identified their prize, had their eye on it, and they were going for it. I looked around and thought I need another year to figure this out, so people said well, there are these things called law clerks to judges, and maybe you should think of that as kind of an extension of law school.

MS. KAGAN: Were there professional career counselors at school?

MS. GERE: Not that I recall. As a matter of fact, GW had a formal clerkship committee through which one had to go to secure a clerkship, and I can't remember why or what happened, but I think my husband got crosswise with them for some reason and said the heck with that, I'll just go apply for a clerkship by myself. Why do I need these people. So I thought, why do I need these people. We decided between the two of us that there was going to be enough competition as it was. I was very interested in getting a clerkship with a woman. Of course I had no idea how few women in 1972 were on the bench. Very few. My husband did not have necessarily the same goal. He just wanted a clerkship. We both decided a federal clerkship would be nice, so he said alright, I tell you what. I'll apply to judges in Baltimore, and you apply in D.C. because you're going to have more women judges to apply to. They might not be federal, but at least they're women. And so that was the extent of our preparation for a clerkship.

He interviewed with a number of federal judges up in Baltimore, got two offers, and took one with Judge James R. Miller on the District Court for

Maryland. I identified the, maybe there were three women judges in D.C. One on Superior Court, one on the D.C. Court of Appeals and one on the federal bench.

MS. KAGAN: And you only applied to women judges?

MS. GERE: I definitely heard that I should save my paper and my energy because there was no way that I was even going to get an interview let alone a job with any of the male judges. Some people whose reputations to this day are how open and progressive they were not, but in the early 1970s, they weren't. I obviously saw that in the treatment of the judge for whom I did clerk.

Anyway, so going back to that, I had an interview as I recall with Judge Sylvia Bacon who was one of the early judges on Superior Court. I also had an interview with Catherine Kelly who was on the D.C. Court of Appeals, and I had an interview with June Green who was the only active female judge on the federal court in the District of Columbia and the fourth woman to be appointed to the federal trial bench. She had been appointed by President Lyndon Johnson. I had an interview with her that included being interviewed by her secretary and her current law clerks because, from her perspective, it was a very small and close-knit setting, and if there was someone who was not going to get along, then the judge wanted to suss that out before going too far. I doubt that too many other judges thought that way. I thought it was a terrific idea, particularly in those days because judges' secretaries pretty much ruled the roost. Law clerks came and went. Secretaries did not, and the secretaries were an integral part of the judge's work, everything from

the various dictation, typing, to just okay, judge, you want a real-world view, here's my two cents. So I passed muster apparently. As a matter of fact, the judge and the judge's secretary told me after my interview that I must have walked out of the courthouse very quickly because the judge sent her secretary to catch me to make me an offer on the spot but missed me. The Judge called me the next day to offer me a clerkship with her.

MS. KAGAN: Oh wow. Oh my goodness.

MS. GERE: And so it didn't take long for me to get an offer. I was thrilled to have it. That was one of the best parts of my legal career. And it was totally, I don't want to say dumb luck, but I had set a goal to clerk for a woman judge that I did not even realize how hard it would be to meet that goal. I learned a phenomenal amount from the judge, not just about the law and not just about how to be a good lawyer, but how to be a good person, which were all valuable lessons.

MS. KAGAN: Did you have any idea what to expect when you were going into the clerkship?

MS. GERE: Gosh no. I had very little idea. As a matter of fact, I remember the second or third day that I was there, the judge, I don't know, somebody called chambers and had a question, so I went in to ask the judge, lawyer x called and wanted to know should he do xyz, and the judge looked at me and said just tell him to file a praecipe, and I turned around and walked out. Oh my gosh, what's a praecipe. Nobody told me in law school what that was. So I had a number of moments like that, but the positive management by Judge

Green of her chambers was that she required a two-year commitment from her law clerks and then staggered their start dates, so she always had somebody who was slightly more in the know. But Eleanore Soltanoff, her secretary, could have told me, she could have filled out a praecipe by herself. So I had a lot of times like that where I did a lot of learning very quickly.

MS. KAGAN: Did you read up on her opinions before you went to the interview?

MS. GERE: I did. There was no internet. There was not a lot of way to find out about people, but I learned that she had been a trial attorney, had been a very successful trial lawyer, in spite of the era and in spite of her gender. I learned that on kind of a spectrum of things, she probably was considered to be liberal, in some respects probably more on the criminal side, but also a person of real empathy and somebody who listened well. From a lawyer practicing before her, I know a lot of lawyers used to say she'll just let you try your own case because she's been on the other side of the bench, and she knows there are times that judges need to step back. Yes, it's their courtroom, but it's not their case to try. But I watched a lot of men come in and think this is just a woman.

MS. KAGAN: They underestimated her?

MS. GERE: Oh yes. Underestimated her and overestimated themselves, as if I'm a man therefore I'm going to know how to do this better, I'm going to be better, I'm going to be more successful. To my shock and amazement, the men would be very blatant about it and be very dismissive of the judge.

MS. KAGAN: How did she handle that?

MS. GERE: With great equanimity. She'd had plenty of that kind of treatment in her private career. She was always one to say you have to be prepared. You can't rely on your gender. Either man or woman, you've got to do your homework. But I think she also thought particularly in jury trials, she had a great deal of faith in jurors. If a juror observed a lawyer being dismissive of the judge or seeming to talk down to a woman as a witness or, later on, to women lawyers, jurors would see it, and the judge said they'll get it.

MS. KAGAN: Did you and the judge discuss those kinds of issues?

MS. GERE: Yes. Because I would ask. I would say, so how on earth did you do this. How did you get here. How did you succeed.

MS. KAGAN: After a day in the courtroom when you saw the disrespect that she had faced?

MS. GERE: Yes. She was very much of the view you have to be better than everybody else. You've got to be more prepared. You've got to be stronger. You've got to stand tall.

MS. KAGAN: How was she treated by her fellow judges?

MS. GERE: It depends on which ones you look at. Not surprisingly, Judge Aubrey Robinson and she were quite close. I say not surprisingly because he was African American, so they were sort of out of the mainstream. She had a very good relationship with Judge Joseph Waddy, who also was an African American. She had a good relationship with Judge John Sirica whose chambers were down the hall. She had, I don't know what adjective I'd give it, but her chambers were right next to Judge Gesell, and he was a very strong presence on the court. They got along fine. In her time on the bench, and

this is a tradition that the current judges on the trial bench at least have carried on, the judges always had lunch together in the judges' dining room. I think that was a way that many of the judges got to know Judge Green personally, and it gave her an opportunity to demonstrate I don't have three heads and can understand the law as well as you men. I always thought that was a good thing. She cared very much about, I don't want to say she cared about the opinions of the other judges of her, but she cared about being part of a group of judges that really set the tone for civility for the court, for the work that they did, for the community.

MS. KAGAN: Was there a clubiness among the clerks?

MS. GERE: Oh yes. There definitely was. That may have changed by now, but there was no way that any of us who were trial judge law clerks would eat lunch with the Court of Appeals' law clerks because they viewed themselves as academically above us.

MS. KAGAN: And the District Court as well as the Court of Appeals judges, would all of them eat lunch together?

MS. GERE: Yes. They were more open and inviting. I just remember the trial judge law clerks, the District Court judges' law clerks tended to eat more together. But because we would talk at lunch time, your judge would be in the middle of trial, and you'd be up there saying okay, the judge wants me to research XYZ, has anybody ever looked at this. We were forever, in obviously days before computers or anything like that, we would always trade draft jury

instructions. I'll trade you one of these for one of these. That was a lot of how information circulated around the courthouse to the good.

MS. KAGAN: How many women law clerks were there?

MS. GERE: During my tenure, I don't recall any on the District Court. Judge Green had had a woman as her first law clerk. She tried to have a man and a woman law clerk together, and sometimes it didn't quite work out timing-wise. Toward the end when more women were given opportunities for clerkships, she ended up with her last several law clerks being women because they were available and there were other opportunities for them after clerking.

MS. KAGAN: Did you get a sense of how she juggled her professional life and her personal life? Was that problematic for her?

MS. GERE: I don't think it was problematic. Her husband also was a lawyer. He had a number of very important, significant government positions, but the law was not the reason he lived. Frankly, I think he lived for her, and in many respects, she for him. They had a very close relationship. He probably made more adjustments to his life for her career than the other way around. I don't think he regretted or minded. I think he was one of her biggest cheerleaders.

MS. KAGAN: Did she discuss any of that with you?

MS. GERE: Yes, but a lot of it was just plain observation. Because the judge and Mr. Green were very close to her law clerks, we all became part of that network, and every year we would be invited, we'd have a cookout at her home in Annapolis, and she just made a point of keeping up with all of us and making sure we were doing alright. So you could see that. I became

particularly close to Mr. Green just, I don't know, partly when I was going through my divorce of all things, he seemed to be a good, steady sounding board.

MS. KAGAN: That happened during your clerkship?

MS. GERE: No. This was years afterward. I'm just saying it was kind of the genesis of a long friendship, one that I kept up long after Judge Green passed away.

MS. KAGAN: Were many of the clerks married, male or female?

MS. GERE: During the time that I was there, none of my co-clerks was married. An interesting thought. I clerked with three different men. My successor was a woman, and she was not married. But the judge later on then had more clerks who were married. The closeness of the judges' judicial law clerk family ended up with two of her clerks getting married to each other.

MS. KAGAN: They overlapped?

MS. GERE: Yes. I can't remember if they knew each other somehow before.

MS. KAGAN: That must have pleased her.

MS. GERE: Oh yes. Every law clerk was her favorite for some reason. It's kind of like being a parent and not wanting to show too much favoritism.

MS. KAGAN: So during the time of your clerkship, you didn't have any problem with divisions of domestic labor?

MS. GERE: No, and we had very different clerkship experiences. Glenn's clerkship was for one year. His judge was very, very bright and had very definite ideas about what he wanted his law clerks to do. I don't think my husband got to spend as much time in the courtroom, for example, as I did. Some judges are

interested in having their clerks there all the time. Of course nowadays you can sit back in the chambers and flip a switch and hear what's going on in the courtroom, but back in the day, that wasn't the way it was. And Judge Green encouraged us to be in the courtroom because her thought was if you're a law clerk for a trial judge, it's probably because you want to be a trial lawyer, and the best way to learn is to watch how other people do it. How to be debriefed on, okay, this is what worked, this didn't, this is something you should think about. Everybody has to find their own rhythm, their own way. So I got to spend a lot of time in the courtroom.

MS. KAGAN: Right. You probably saw a whole spectrum of lawyers. Were you still living in Arlington?

MS. GERE: Yes. And then partway through, because I started my clerkship before I graduated from law school because the prior clerk had to leave early. He had a take it or leave it offer from the US Attorney's Office and the judge said I'm not going to hold you up, you should go. Anyway, Glenn and I then moved from Arlington to Greenbelt, Maryland, because with him going to Baltimore and me coming to D.C. and we had one car that went in alternate weeks to alternate places. We each found people to carpool with on alternate weeks.

MS. KAGAN: Were you both working long hours?

MS. GERE: Yes, but not, I don't recall it being as bad as being in private practice or being at the Justice Department or the Office of the Attorney General.

MS. KAGAN: How did it compare to being in law school?

MS. GERE: It was more than law school. The judge was solicitous of people's health and their personal lives to the extent that she could be. At that time, it was just not as much a thing to grind through law clerks as I understand it is now.

MS. KAGAN: So you spent two years there. Your husband was in Baltimore for one year.

MS. GERE: Yes. And then he got a job in D.C. at a small boutique labor union law firm, O'Donoghue & O'Donoghue, doing just what he wanted to do or what he thought he wanted to do. He did very well, but having been a law clerk in a trial judge's chambers, he was bitten by the courtroom bug. There was a fair amount of arbitration work at his firm, but he didn't see a lot of actual courtroom work. I'm trying to think, it's hard to keep all these dates straight. After I finished my clerkship, I started at the Justice Department and was in court a whole lot more than my husband was.

MS. KAGAN: Just to nail down some dates. The date you graduated from law school.

MS. GERE: I graduated from law school in 1972.

MS. KAGAN: And then you clerked.

MS. GERE: I clerked for two-and-a-half years, until January of 1975. And I started at Main Justice in the Criminal Division in January of 1975.

MS. KAGAN: Was it unusual to switch in January?

MS. GERE: In part, as I said, I took the place, I started way early because this person had been offered, and he had already been with the judge a year-and-a-half, and she didn't want to hold him up. I don't remember what the timing was or why, whether it was just there happened then to be an opening at DOJ. I remember doing interviews and so forth while I was still clerking. But the

Judge did push me out the door. Actually, she pushed me out the door. I wanted to stay there forever. It was a lot of interesting, good work.

MS. KAGAN: So how did you decide then that you wanted to go to DOJ? Let me back up. Maybe the better question is what roads did you see available to you as a result of the clerkship?

MS. GERE: As a result of the clerkship, to the extent I had seen myself as a criminal defense lawyer, I quite quickly saw myself as something else. I believe it was a combination of the weight of the work of being a criminal defense lawyer and the people who were good at it were the people who were very quick-witted and rolled with the punches. This is the days before *Brady* was given significant emphasis, so it was very much a you've got to be on your toes. I fairly quickly saw that my strength would be in the puzzle piece moving of civil litigation. When do you ask this interrogatory or when do you take that deposition, how do you lock them in with a request for admission. The strategy before you get in the courtroom, not as you're standing up there in front of a jury going now what do I do.

So part of the education that I got as a law clerk was seeing where young lawyers seemed to be doing really interesting meaningful work at a stage in their career that I didn't see other people doing it. I also had been bitten by that I want to be in the courtroom bug. I had seen lawyers in the courtroom. I thought I can do better than that. It kind of boosted my confidence and my interest in what I thought I might be good at. Particularly impressive to me

were a couple of very young lawyers at the Department of Justice and I thought, that looks like that would be an interesting place to go.

MS. KAGAN: Did you find that they had greater roles to play than their counterparts in private practice?

MS. GERE: Yes. And you would look and see decades of difference in age. I also interviewed at a couple of firms. At Williams and Connolly, I'm trying to think whether it was Steve Umin or David Webster, one of the giants at Williams and Connolly, who, after my interview, learned I had gotten an offer from Justice, and they said, oh you should take that. The firm will be here. Go get some experience.

So the other part of it was there were still very few women in private practice even here in D.C., even fewer in anything that might be described as trial work or litigation. The Justice Department, that was one of the selling points, the Honors Program. The Department was open to all comers regardless of gender, racial identity, anything else. So I thought well that would be a good place for me to look.

I also had heard that there was a section in the Criminal Division at Justice where there already were a couple of women who had taken time off to have children, which was pretty much unheard of, and I thought I'm going to aim for that, and if I have a long-range plan, that's perfect. So I applied. It was the Criminal Division Appellate Section. I applied, and the next thing that I can recall is somebody from a brand-new part of the Criminal Division that had just been set up called me and invited me to come in for an interview. It

was called the Special Litigation Section. So I thought I'll go see what this is about. I very much enjoyed the interview with a man who then pretty quickly became the Deputy Assistant Attorney General in the Criminal Division. He was a very nice guy, a good lawyer, and they made me an offer, and I accepted. I found out that Special Litigation basically meant that we were set up to represent federal officials who had been sued civilly for actions that they had taken in the context of a criminal prosecution. So essentially *Bivens* cases where people could file lawsuits against individual government employees. That meant a lot of our clients were Assistant U.S. Attorneys, FBI agents, ATF agents, Presidents of the United States, Attorneys General, and even a Secretary of State. It was a very exciting place to be. It was a brand-new part of the Division given very high-profile responsibility, and I felt like I got in a great office on the ground level.

MS. KAGAN: Why was it established?

MS. GERE: Because they were finding, apparently, an increase in cases against federal employees following the decision in *Bivens v. Six Unknown Named Agents*. People saw such cases as a way, a two-fold way to litigate. One, to get a monetary recovery, but the second, it was used strategically by people improperly, I think. For example, ATF agents in the middle of an investigation would be sued and because once they were the subject of a lawsuit, they no longer could be a lead investigator or involved. So it was a way of getting rid of people that were giving you a hard time. There was a recognition that people in the Criminal Division were outstanding lawyers in

criminal defense matters, but they weren't experts in civil litigation, and so this was a Section that was established to know how to handle these matters from a civil perspective.

MS. KAGAN: How large was the unit when it was established?

MS. GERE: I think we had about a dozen lawyers.

MS. KAGAN: And you come in on the ground floor?

MS. GERE: Yes. I was one of the first lawyers hired in that Section.

MS. KAGAN: Did they all come from outside of Justice pretty much?

MS. GERE: Yes. I don't recall exactly but young law clerks. One of the lawyers had clerked for one of the District Court judges in D.C. One of them I think had been a law clerk for I want to say a judge in Kentucky or somewhere in the Midwest.

MS. KAGAN: Anyone with a lot of actual experience?

MS. GERE: No. The supervisory attorneys, we had a supervisory chain, and they had more experience, but this was a group of young lawyers that was itching to learn, itching to get out there and do it. There couldn't be a lot of people who had experience because this was a whole new area of the law that was just developing.

MS. KAGAN: But just as civil litigators, generally.

MS. GERE: Right. Just as civil litigators generally.

MS. KAGAN: Many women in the group?

MS. GERE: No, except as secretaries.

MS. KAGAN: So you have a pattern of being pretty much the only woman.

MS. GERE: There were no other women in that section when I was hired. Another woman was hired some time later.

MS. KAGAN: So you got pretty much used to that?

MS. GERE: Yes. And at one point we did have a supervisor who, summing things up said, Sally, we have to move offices, so I'm going to put you in charge of the decoration committee for the conference room because girls know stuff like that. In any event, I can't say that he didn't give me a fair shot at cases. He was just very difficult.

MS. KAGAN: Oh, so he didn't?

MS. GERE: He did. But there was just too much work not to assign some of it to me. Had it been any other way, I might not have fared so well. After some time, probably at least a year, it might have been a little more, there was a change in administrations. Edward Levi became the Attorney General. He set about reorganizing the Justice Department.

MS. KAGAN: That would have been around 1975?

MS. GERE: Yes. 1976-ish. He looked at this group of civil litigators housed in the Criminal Division and said what on earth are these people doing there. They should be in the Civil Division where other people are doing civil litigation. So our Section wholesale got picked up and put into the Civil Division. We being my whole group.

MS. KAGAN: How many of you were there by then?

MS. GERE: I don't think we had grown significantly. It probably would have been somewhere around the same, a dozen.

MS. KAGAN: Including the supervisors?

MS. GERE: The supervisors, at that point, the supervisor who was the next up in the supervisory chain left somewhere along line to become either general counsel or deputy general counsel of the TVA, Tennessee Valley Authority. A terrific job for him, but a loss for the Department. Ed Christenbury was a very fine lawyer and good human being.

So I found myself in a new home where, probably weeks before, my then-husband had just accepted a position in the Civil Division of the Department of Justice in the Federal Programs Branch, which is where I was transferred to. So there was again something new to navigate.

MS. KAGAN: You were still with a different subset.

MS. GERE: Yes, although we basically we got folded into the Federal Programs Branch, and most of us stayed with a national security, *Bivens* “major.” The Branch did a broader array of civil litigation defending federal programs that were challenged.

MS. KAGAN: Like government contracts?

MS. GERE: Government contracts were handled in a different Branch of the Civil Division, but Federal Programs handled constitutional challenges to any kind of a federal program that you could think of. We also did challenges to housing issues. There were a lot of class action employment cases that we worked on, and I kind of got pulled in some of those directions, but stayed mostly on national security litigation.

MS. KAGAN: How large was that group of attorneys?

MS. GERE: That was much larger. Probably thirty to forty-ish I would say by the time I left. A goodly number of people. The supervisors in the Branch and the Division were outstanding. I learned so much from Dave Anderson, Irwin Goldbloom, and Denny Linder. They were great teachers and examples of outstanding and devoted public service lawyers.

MS. KAGAN: So you started there in the spring?

MS. GERE: The spring of 1977 I would say and then I had to figure out the issues about nepotism. My then-husband and I weren't working for each other or one supervising the other.

MS. KAGAN: Were you at the same level?

MS. GERE: Yes.

MS. KAGAN: That didn't create problems initially?

MS. GERE: No. Because we each had our own cases. We had, I would say, a common set of friends that we worked with in the office, and we all just hung out together. We went to lunch together. We'd go have drinks together. We'd all talk incessantly about work and trade ideas and theories.

MS. KAGAN: So they were pretty heady times.

MS. GERE: It definitely was heady times.

MS. KAGAN: Was it a surprise to the group there that suddenly this couple shows up together.

MS. GERE: Yes. People were not sure how to handle that, but it became really a non-issue. We did not, it seems to be a pattern that I have, because I ended up working with my second husband at the D.C. Attorney General's Office, but

that's another story too. But we were very professional in the office. We commuted in and out together.

MS. KAGAN: Still from Greenbelt?

MS. GERE: No. By then we moved to Georgetown and lived there maybe a year or year-and-a-half, and then we bought a house in Arlington, before I-66, before Metro. It was back in the day when one could afford as two young government lawyers to buy a house.

MS. KAGAN: You still had a good domestic division of labor? No problems because you were actually then really working in the same situation.

MS. GERE: Yes. We both understood the pressures of, because back then at Justice, there was a lot of travel and there were some ships passing in the night and knowing that somebody's got to pick up whatever loose ends there are at home.

MS. KAGAN: Were there women in the larger division?

MS. GERE: Yes. There were. One of the more memorable Assistant Attorneys General for whom I worked was Barbara Babcock. She ran the Civil Division. She later became the first woman faculty member at Stanford Law School. She was a dynamo. She had been a trial lawyer here in D.C. and had an outstanding reputation. Again, it was exciting to have a woman in charge, to see a woman could rise to those levels. Of course she was a political appointee, but nonetheless, extremely impressive. She was appointed by President Carter. She was the supervisor, if you will, on one of the early cases that I did at Justice.

MS. KAGAN: Were there any very noteworthy cases that you dealt with when you were a clerk?

MS. GERE: Yes. One involved a Voting Rights Act issue. I remember there was a three-judge panel, and my judge was on it, and it ended up going to the United States Supreme Court which was interesting. I remember going to watch the argument in the Court. But there were a lot of cases that the judge had that were very high visibility at the time. In some respects because when I first started as her law clerk, the federal court was still the court of general jurisdiction. It was before the Home Rule Act, so the judges in federal court, had all kinds of cases including pickpocketing and prostitution cases. It ran the gamut. The federal court used to be much more bustling. You would go into the federal court, which now when you go in, it's like a tomb, but it used to be like walking into Superior Court back in the day when the court had much broader jurisdiction. There would be all kinds of people in the courthouse. That was an interesting time.

MS. KAGAN: Would you draft opinions for the judge?

MS. GERE: Yes.

MS. KAGAN: How much would you discuss the case before you set off on a draft?

MS. GERE: A fair amount. I would have a sense of where the judge thought she wanted to go, and then it would be doing research to see how to frame it or was it just going to be something that she might have thought was a good idea, but the law didn't bear it out.

MS. KAGAN: Did you find yourself disagreeing with her viewpoints much?

MS. GERE: From time to time. She would always listen if you had a rational argument and case law to back it up, a proposal of how to improve what route she wanted to take, she certainly was open to that.

MS. KAGAN: So she would change her mind?

MS. GERE: I did change it a few times. I can't tell you a specific case, but I can remember turning in drafts after having discussion and having her come back and say things like yes, you were right, or yes, it's better that way, or that makes more sense or that case fits better. There were lots of good lessons on how to write.

MS. KAGAN: Did she help you with your writing stylistically as well as legal content?

MS. GERE: Yes, as well as the substantive, she would have no qualms about correcting your grammar, even if you were talking to her, or especially if you were talking to her. We law clerks laughed. Somebody among the Judge's former clerks actually not too long ago put together a list that we kind of got going round robin about what we considered to be Judge Green-isms, and half of them have to do with grammatical errors that we were perpetually being enlightened on.

MS. KAGAN: And those lessons stuck.

MS. GERE: Yes indeed. They did.

MS. KAGAN: Did you find that you were a little ahead of the curve compared with your similar level colleagues in your writing ability?

MS. GERE: Yes. And in my comfort in what went on in the courtroom or what a pleading should look like or how to frame issues, how to remember

important lessons like a judge gets a lot of paper. If you want to grab the judge's attention, you need to focus on that first paragraph, and you need to keep it short. Not the first paragraph only, but all your documents. Brevity is a virtue, and a very difficult thing to do.

MS. KAGAN: So did you mentor some of your colleagues along those lines.

MS. GERE: Certainly as time went on. For all of us who had been law clerks, I think we were sources of reference for lawyers in the Branch that had not had similar experience.

MS. KAGAN: How long were you there before your first case went to trial?

MS. GERE: Let's see. My first case that went to trial was after I had transferred to the Federal Programs Branch in the Civil Division. The case was filed in 1978 in the Eastern District of Virginia before Judge Oren Lewis, "Roarin Oren" to lawyers who appeared before him. He was a legend both in his own mind and in the courthouse, in addition to being part of the rocket docket, which required that anybody that litigated there better be prepared from day one to go to trial, and if you weren't prepared, it didn't matter to him. You were going to move your case. He didn't really believe in extensions of time or rescheduling trials or anything like that. The case that I had at the Department that went to trial was a suit that, unusually for my part of the Department, was a plaintiff's lawsuit, the United States was acting as the plaintiff in this lawsuit. The lawsuit involved a man who had worked at the CIA who wrote a book about his work with the Agency and its withdrawal

from Vietnam when Saigon fell. He published his book without obtaining required Agency review and approval.

MS. KAGAN: What was the name of the case?

MS. GERE: It was *United States v. Frank Snepp*. He had written a book called *Decent Interval*. He took great pains to have the book published in secret. He had it published by Random House. There was a whole clandestine effort to publish the book without getting the required CIA clearance.

MS. KAGAN: Was the pre-publication review process pretty well-established?

MS. GERE: This is the case that really established it. There was a part of the employment contract that employees at the CIA and many other federal agencies that handle classified information would have to sign which said before you can disclose any information about your employment, you had to get clearance from the agency for which you worked. The Department of Justice, once it found out that the book was on the market, considered litigation at the request of the CIA. The United States was in a very difficult position because if we sued and said you disclosed classified information, that's a dagger to the heart because the whole point is you don't want to confirm or deny or give credence to classified information. So we spent time thinking about how do we keep this from happening again without further damaging the country.

MS. KAGAN: And the book was already out.

MS. GERE: The book was already out, so we filed a lawsuit for breach of contract, which was a straightforward breach of contract action, and for unjust enrichment

seeking to impose a trust over any of the ill-gotten gains, *i.e.*, profits, from the sale of the book. So we didn't say there's classified information or there isn't classified information. We said we don't have to prove classified information. We just have to prove that there was a contract that required pre-publication review, the contract was breached, and we are entitled to appropriate damages and imposition of a trust.

MS. KAGAN: How long had you been there at the time?

MS. GERE: About a year or so. I had been in the Department a couple of years. I was a pretty young lawyer, about 30 years old.

MS. KAGAN: Had you been in second chair in court before that?

MS. GERE: I had done a lot of motions, summary judgments, mediations, things like that, but this was my first trial. Ironically, my co-counsel, Brook Hedge, was my successor with Judge Green, who after she finished her clerkship, came and worked in the same Department of Justice office where I was.

MS. KAGAN: Did you encourage her to do that?

MS. GERE: Yes. And so we were assigned to try this case together. We filed suit in the Eastern District of Virginia. The ACLU was on the other side representing Snapp. A lawyer by the name of Mark Lynch who later went to Covington and Burling was lead counsel. He may be retired by now. I've seen him from time to time over the years. Harvard Law Professor Alan Dershowitz also was on the defense team.

MS. KAGAN: For the ACLU?

MS. GERE: Yes. They were out to make a point, and their point was this is a First Amendment case. Government employees should be able to publish freely.

MS. KAGAN: Who was the author's lawyer? The ACLU represented him?

MS. GERE: Yes. The ACLU represented him. Judge Lewis, I'll never forget, when we filed the complaint and we had a status conference four days later or something, the judge said, well what's your timetable for this case. I remember saying we're going to send out interrogatories and eventually we'll do depositions, the usual steps. And the judge looked at me and said, "You don't want to ask him any interrogatories. You're just going to find out what his lawyer thinks. You need to get him under oath. What are you doing on Saturday?" What am I doing on Saturday? The judge was a terror. We may have had some interrogatories somewhere along the way, but very quickly we did depositions. Those were the days before you had a seven-hour limit, so I believe we probably spent more than a day, probably a couple of days, taking his deposition. Snepp also had appeared on the *Today* show and on *60 Minutes*. He had been interviewed and was very proud of the fact that he had done an end-run around the CIA, and no, he didn't submit his book, didn't think he had to. He could decide for himself what was publishable.

MS. KAGAN: This is the first time it had happened?

MS. GERE: Yes. There may have been one matter that people considered suing over earlier but it could have been after. I can't remember, but this is the first one where there was definitely public attention and an author-agent thumbing his nose publicly, I'm going to show you all, and I'm going to open the flood

gates for anybody else who works in the government regarding whatever kind of access they'd had. So the case very quickly went to trial.

MS. KAGAN: How quickly?

MS. GERE: Months later. The Complaint was filed in February 1978 and the trial was in June 1978. We used Snapp's TV appearance statements as part of a request for admissions. I always used to tell my law students don't take anything for granted because you don't know what the other side is going to do. People would say things like requests for admissions, they're a waste of time. We sent out requests for admissions and attached the transcripts, which we had a hard time getting, of the interviews on the *Today* show and *60 Minutes* where Snapp made all these admissions. So we sent out this request for admissions.

MS. KAGAN: Like he knew he was being a bad actor.

MS. GERE: Oh yes. He was quite proud of it. We sent out this request for admissions, and he never responded. And you know what happens when you don't respond to requests for admissions? They're deemed admitted, and Judge Lewis was not interested in hearing about why they didn't get responded to in time or anything else, so we had a very good start with that. Snapp made some very damaging admissions substantively during the course of these interviews as well as in his deposition. So we went to trial.

MS. KAGAN: Was it a jury trial?

MS. GERE: On the morning of trial, Judge Lewis concluded that it was not going to be a jury trial because, based on the pretrial stipulations, there were no issues of fact for the jury to decide. We were seeking equitable relief, which the court

decided. We had drafted jury instructions and they were all ready to go. At the last minute, we also decided we needed another lawyer to assist at trial, and so our supervisors at Justice were looking around and saying this is a big case, there's a lot to learn. Who has the time? And then somebody said how about Sally's husband, Glenn. He knows all about the case because he's had to live with it. So he joined our trial team, which was interesting. He and Brook Hedge were the other lawyers for the United States.

MS. KAGAN: You were lead counsel?

MS. GERE: Yes. I was lead counsel.

MS. KAGAN: Did that create tensions?

MS. GERE: No.

MS. KAGAN: It doesn't sound like the two of you had been competitive at all.

MS. GERE: No. Not really. We were, maybe we were subconsciously, but it wasn't anything obvious. We both had enough of our own lanes that we didn't necessarily feel that. We had a very good trial team though for *Snepp* we thought. One of the witnesses we called was the man who ran the office that administered the paperwork at the CIA to get all the orientation forms signed and to get the employment agreement that had the key language in it into evidence. This poor man, I'll never forget, was petrified about being on the stand. It was very painful for him. The CIA was a very secretive place. I spent a lot of time preparing him for trial. I remember they asked him during his deposition, I don't know what they thought they were going to get out of him, but did you prepare for this deposition? Yes. Did you meet with a

lawyer? Yes. Did she give you instructions? I probably told him don't tell them what I told you, but I can remember him blurting out during the deposition, "yes, and she told me to tell the truth and wear a blue suit." But he managed to get through his trial testimony very well.

We put on the stand, I'm trying to think, we didn't have very many witnesses because basically it was a contract with language that the Judge could read. We put on Stansfield Turner, who was then the Director of the Central Intelligence Agency. He was our star witness, if you will. Someone who could talk about the importance of the pre-publication review process and the risks to national security attendant to not having such a process in place. He was, I don't know if you ever recall him, but he was out of central casting, just an immensely attractive man with piercing blue eyes and full of patriotism and very persuasive in presenting the case for the United States.

MS. KAGAN: Was he able to discuss it without revealing the sensitive parts of the book.

MS. GERE: Yes, because this was more to show, Snepp signed the contract, here's a provision of the contract that he's already admitted he ignored or flouted, which basically kind of came in with the first witness, who was in charge of security at the Agency but our concern was that part of Snepp's defense was that he had a First Amendment right to tell the American people what happened in Vietnam, to tell the American people what the CIA did or didn't do. We knew that we would have to have a witness who could say without going off the track about the First Amendment, that the reason for the provision of the contract was to protect the national security through pre-

publication review of material learned during the course of employment to assess what was classified and what could be disclosed. But no individual employee could decide that; it had to be done by the Agency.

The defense called William Colby as a witness, and by then, the defense team was joined by Harvard Law Professor Alan Dershowitz. I was not privy to their internal deliberations, but apparently with his advice, the defense lawyers put William Colby on the stand without ever having talked to him. Colby had at about this same time written a book himself. He had submitted it for pre-publication review and was in the midst of a battle with the Agency over what they were telling him he had to take out before publication, and he had been quite vocal about the whole process. He was upset that he had written this book and now somebody was going to be telling him what he couldn't put in it. So Snepp's defense lawyers apparently concluded that calling him as their witness was going to work just fine because he'll get up and tell Judge Lewis all the problems with pre-publication review. Instead, Colby got on the stand and basically testified as well as or better than Director Turner about the importance of this whole process and the significance of it to the national security and the operation of the Agency. Yes, it was an aggravating thing to go through now that he was an author, but he absolutely believed in the integrity of the process and the importance of it. After that, people referred to Mr. Colby as the government's witness. I had to keep saying no, he's a defense witness, not ours. But we wholeheartedly agreed with what he said.

Snepp himself took the stand, and I cross examined him.

MS. KAGAN: So this is your first real cross examination?

MS. GERE: This is my first trial cross examination, except with Barbara Babcock, who was then Assistant Attorney General of the Civil Division, mooted me. The defense lawyer kept objecting. When he objected to one of my questions, the judge looked over at him and said something like counsel, this young lady has not given your client as hard a time as she might have. She asked appropriate questions. Whereupon the judge decided he was going to conduct a further examination of Snepp.

MS. KAGAN: Before you were even finished?

MS. GERE: As I recall, I was finished. Because there was one of those “now, well, the court has a few questions, and counsel basically I don’t want you to be objecting to my questions” moments. I think at one point maybe, Mark Lynch may have objected unsuccessfully to one of the Judge’s questions.

It wasn’t a long trial. It was covered by the national news media. It was the subject of articles and editorials in the *Times*, the *Post*, the *Star* and papers across the country. Herblock, the famed editorial cartoonist, even drew a cartoon after the Supreme Court ruled on the case. At the end of the trial, the judge ruled in our favor. The opinion was 10 pages long.

MS. KAGAN: Did you have to do closings?

MS. GERE: That’s a good question. I believe we had brief closings, but it was a bench trial, so the Judge was not interested in hearing much more after the evidence was in. The Judge said let me hear briefly what people have to say, but I

don't need to hear the lawyers' take on it because I can pretty much guess.

After I retired, I purged most of my work papers, but I did keep a copy of the trial transcript.

So Judge Lewis ruled in our favor, both as to breach of contract and to the imposition of a constructive trust, which, as a legal matter, was probably a bit more of an argument, a bit more of a stretch. This wasn't traditional contract damages. *Snepp* appealed to the Fourth Circuit, and we had oral argument in the Fourth Circuit. The Department at that time had, and still has, very talented and gifted appellate lawyers whose job it is to step back, take a look, and re-evaluate and decide on the merits of taking or defending an appeal. Obviously, it didn't have a choice in *Snepp* because the other side had appealed.

MS. KAGAN: Would you have liked to have done the argument?

MS. GERE: Yes. I would have. But I knew that the Department was going to be having the best and brightest on it, and it did. Bob Kopp, who was the head of Civil Appellate did the argument. So we went to the Fourth Circuit. I recall sitting at counsel table in the Fourth Circuit and shaking the judges' hands after the argument as is the Fourth Circuit practice. Maybe we should stop at this point.

MS. KAGAN: Whatever's good for you.

MS. GERE: Why don't we, before I launch into the rest.

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.

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 on Monday, June 15, 2020, over Zoom. This is the third interview.

MS. KAGAN: Hi Sally. We should return to finish our discussion of the *Snepp* case. You were going to provide some more information on that.

MS. GERE: Good afternoon, Barbara. It has been a while since we talked about *Snepp*, and there have been many changes in our lives and in our world, and one of them is that we now are doing this interview virtually as opposed to sitting together at the table in your home because of the COVID-19 pandemic. So we will make our adjustments and go forward.

So, last when we spoke, we were talking about the Frank Snepp case. I mentioned, I think, the trial during which we were successful in presenting the case for the United States to obtain an injunction to require Mr. Snepp to submit any further writings that he did based upon his time at the CIA to the agency for pre-publication review. We also had asked the court to impose a constructive trust over the proceeds of the sale of Mr. Snepp’s book and to turn such proceeds over to the US Treasury. The case then went forward to the Fourth Circuit, the United States Court of Appeals for the Fourth Circuit. Mr. Snepp, obviously, since the government had been successful on all counts in the case, it was Mr. Snepp who sought an appeal from the Fourth Circuit, and the government and Mr. Snepp briefed the case. We had oral argument in Richmond, Virginia. As I think I mentioned, the way that the Justice Department was structured at that time, and I believe probably still is,

the Appellate Section argued anything that went forward in an appellate court, so I did not get to argue the case, nor did any of my trial-level colleagues. Instead, it went to the appellate staff.

The argument was very interesting in part because the Fourth Circuit was at the time, and I think it still has, the tradition of the judges coming down off the bench after oral argument and shaking hands with counsel. It's very civilized. I was, although not arguing the case, sitting at counsel table in the event the appellate lawyer needed advice on any of the facts or anything that happened at the trial.

So it was very interesting, and in 1979, I can't believe it was that long ago, but in 1979, the Fourth Circuit issued its opinion in which it upheld the injunction that had been entered by the District Court but did not agree that imposition of a constructive trust was the appropriate remedy, and so it was kind of a split decision. The government was successful on what was the more critical piece of it, which really was the enforcement of the contract to obtain pre-publication review, but the remedy, the Court of Appeals found that a more appropriate remedy for something that was partially a contract issue and somewhat a fiduciary trust issue was the government could seek nominal damages, and, in an appropriate case, perhaps punitive damages. So that left, frankly, both sides unhappy. Snepp, because the injunction remained in place, and the government, because it viewed removal of the constructive trust as really taking away the financial power of the requirement of review. In other words, if the only thing that was going to

happen to you was you were going to have nominal damages of, you know, \$5,000 assessed for selling your book without pre-publication review, that did not seem to be much of a deterrent.

MS. KAGAN: No. I would have hoped they would've at least made it whatever the profit he made off the book.

MS. GERE: Well, and that's essentially what the imposition of a constructive trust would be. That was sort of our argument. The punitive damages are extraordinarily difficult to obtain, and you'd have to prove things that were going to be very difficult to prove.

MS. KAGAN: But he was still able to continue selling the book?

MS. GERE: Yes. He was able to sell the book, but he could not depend that he would be keeping any proceeds. So by the time it got up on appeal, I think the proceeds were in the neighborhood of \$140,000 as his profit. Obviously, the book had gotten a tremendous amount of free publicity. The case got a lot of comment in newspapers, magazines, and law review articles, which probably boosted the sale of the book.

I should say that the Fourth Circuit decision on the injunction was on behalf of all three of the judges. It was Judge Winter, Judge Phillips, and Judge Hoffman, who was a District Court judge, and he was sitting by designation. As to the constructive trust, Judge Hoffman dissented and said the government should be allowed to have a constructive trust as the measure of damages. So the government had some good language in the dissent to support our position on constructive trust, but there was some concern, at

levels above mine I'm quite confident, given that I was the lowly trial lawyer in the case. But, by the time the decision got to the Solicitor General's office, and that's where the decision would be made as to whether the government was going to seek certiorari and have a further review by the United States Supreme Court, I can remember a lot of discussion back and forth about whether it would be appropriate to seek certiorari. Part of the concern was if we sought certiorari, perhaps the Supreme Court would on our instance look at the entire case then and reverse on the injunction. And so how much of a risk was there if we ask the Supreme Court to review just part of it. As it turned out, that sort of became somewhat moot because Snapp sought certiorari, and once he sought certiorari, then the United States filed a conditional cross-petition for certiorari. So Snapp was seeking review of the injunction, and we were seeking review of the measure of damages.

It was a very interesting time to be working with the Solicitor General's office to help craft a cert petition. There were a lot of different views on how the case should be presented, what the argument should be, what the likelihood of success was going to be, but there were cross-petitions for certiorari. To everyone's astonishment, the Supreme Court granted certiorari and issued a ruling on the merits based solely on the certiorari petitions. So there was no full briefing on the merits and no oral argument before the United States Supreme Court. Yet the Court issued a very comprehensive and fairly lengthy decision upholding the injunction and reversing the Fourth Circuit on the constructive trust.

MS. KAGAN: Nice.

MS. GERE: So, in essence the Supreme Court reinstated the District Court's opinion and order because that was the District Court's initial ruling in the case. That caused quite a lot of controversy and comment by lawyers and by commentators about whether what the Supreme Court had done was appropriate. It certainly did what it did, and I think that remains a pretty extraordinary step. Not that I've gone to any great lengths, but I don't believe the Court has done such a thing again, both substantively and procedurally. The Supreme Court decision was per curiam in 1980. There were three Justices who dissented. Writing for the dissenters was Justice Stevens, and he was joined by Justices Thurgood Marshall and William Brennan. As one might expect, there were, depending on which side of the case you were on how you looked at it, this was a significant First Amendment issue question for some people. The government, of course, had tried to stay away from that and make it simply a breach of contract. You signed an agreement to submit any manuscript, you didn't do it, you violated your contract. That's not First Amendment. That's essentially employment contract law.

So it was very interesting, and kind of as a side note, I, many years after that, ended up buying an apartment in the Woodley Park Towers condominium building. That very apartment had been the home of Justice Brennan for many years, and so it was kind of interesting to go from, here I

am a lawyer to now I'm a homeowner and I'm taking a shower in the same place that Justice Brennan did. Or having dinner or whatever.

At one point, again, many years later when I was teaching at Georgetown Law School, my husband and I were at some kind of a reception for the law school professors. Justice Brennan had an honorary teaching position. I believe he was teaching a course for one semester at Georgetown, so he happened to be at this reception. My husband and I were talking with him and his wife and saying it's a small world. We live in the apartment where you used to live, and then Mrs. Brennan, who was his second wife, said, "Oh my goodness, I wonder what you did with that kitchen in that apartment. I hated it. So when I married the Justice, we moved out of Washington, and we moved over to Virginia." I said we redid the kitchen. She said I'd love to see what you did to it. So my husband said, "Why don't you come over for dinner." Did we just invite a Supreme Court Justice over for dinner? Yes, we did. And so we actually had the Justice and Mrs. Brennan over for dinner.

MS. KAGAN: Wow. What year was that?

MS. GERE: That would have been, I'd have to go back and look, but probably 1994 or 1995. We were very close friends with Barrett Prettyman, a renowned Supreme Court advocate at Hogan & Hartson and mentor to Chief Justice John Roberts. Barrett had clerked on the Supreme Court and obviously was a very well-regarded Supreme Court advocate. Barrett knew the Justice and his wife quite well, so our dinner included Barrett Prettyman and his wife,

Noreen, the Justice and Mrs. Brennan, and we sat in our dining room and just listened to him tell stories about living in the apartment, about the Court.

That was the only time in my life that I ever had a dinner or any other meal catered, but I didn't want to spend time worrying about what I was going to serve for dinner.

MS. KAGAN: And running back and forth to the kitchen.

MS. GERE: Right. By the end of the evening, the two young men who had been sent to cater the dinner by the company were ready to pay us for having had the opportunity to serve a Justice of the Supreme Court and to hear half the stories. It was definitely a memorable evening.

MS. KAGAN: Yes.

MS. GERE: Another one of those Washington is a small world stories.

MS. KAGAN: Yes. That's terrific. I guess we can continue to go on until Zoom kicks us off.

MS. GERE: Okay.

MS. KAGAN: So I know that was your first big trial, and what a big trial that turned out to be. Not just some small potatoes kind of let me get my feet wet. You were totally immersed.

MS. GERE: Right. It's not many times that your first trial is covered by Dan Rather and others.

MS. KAGAN: Right. But was the book allowed to continue to be sold.?

MS. GERE: Yes. I believe it's still available, but Snapp is not allowed to keep the proceeds. He challenged the injunction again probably ten years later, long

after I left the Justice Department, but I know other people at Justice defended the injunction, and it remains in place. Meaning if he writes anything about the time while he was employed by the CIA, it has to be reviewed before he can publish it.

MS. KAGAN: What's the penalty for breaching the injunction?

MS. GERE: Well that would be up to whatever court in which the government sought to bring an action for enforcement of the injunction or some sort of damages. I don't know. Fortunately he didn't do that.

MS. KAGAN: Right. I was thinking perhaps someone in the future who doesn't care about the proceeds and just cares about getting the book published.

MS. GERE: Well you may find out soon enough if former National Security Advisor to President Trump John Bolton publishes his book in the next few weeks. I think it's already been delivered to bookstores. It's embargoed until the release date, but as of last week, according to accounts in the *Washington Post*, his lawyer was still engaged in discussions with the White House because he still had not gotten approval for publishing it.

MS. KAGAN: A lot of people are waiting on that book.

MS. GERE: And the same thing happened to Snowden with his tell all book. It's a ruling that retains its clout.

MS. KAGAN: Well good for you.

MS. GERE: Anyway, it seems like another lifetime ago.

MS. KAGAN: It's a positive that you've had many lifetimes since then.

MS. GERE: That was certainly a very exciting time period and an exciting case to work on, and one that I thought at the time would be hard to ever exceed the excitement and the notoriety and the challenging legal issues as *Snepp* was, but I learned not too long after that there was another case right around the corner, and one that I was also asked to work on as a trial lawyer.

MS. KAGAN: How long afterwards was that?

MS. GERE: Let's see. We actually filed suit in the *Progressive* case, that's the *United States v. The Progressive Magazine* in 1979, so the Supreme Court issued its ruling in *Snepp* in 1980. They sort of came back-to-back, although the trial in *Snepp* was 1978, so it took a while for it to get up through the Supreme Court.

The *Progressive* case was another interesting lawsuit because the United States was dealing with an issue again that was one of first impression in many regards. Basically what it involved was an author who was a freelance writer, a man by the name of Howard Morland, who wrote an article about how to build a hydrogen bomb. The article was going to be published by *Progressive* magazine, which was a long-lived publication in Wisconsin. The Department of Energy got word of the publication and there was a flurry of effort by a lot of people above my paygrade to try and convince the magazine that it should not publish the article because of the national security implications of doing so. The magazine would not agree. There had been, as I recall, contacts with the *New York Times*, the *Washington Post*, and others to ensure that if somehow they got a copy, they would not run it because of

the national security implications. Because the magazine was unwilling to agree to withhold publication, the Justice Department decided that we needed to file a lawsuit to prevent publication of this article. Of course, then people began looking at it is this another Pentagon Papers case because the government is trying to stop publication, and that is obviously a very difficult standard to meet. We brought the suit, and my recollection is we primarily brought it under the Atomic Energy Act. There was a provision prohibiting the release of restricted data that might injure the interests of the United States. "Restricted data" was a technical term in the statute, and essentially it was the information used by the Department of Energy engineers and scientists, so it's kind of secret information, if you will, that was afforded this special protection under the law. The lawsuit was filed in Wisconsin because that's where the magazine was.

MS. KAGAN: How broad was the magazine's audience?

MS. GERE: I don't recall how, I'm sure I knew once, but the point really was more frankly foreign states getting copies of it, and at the time, I can remember the person, the demagogue, that people worried about at that point was Idi Amin, a Ugandan despot, and there were some other foreign powers that would not be good to have a hydrogen bomb in their arsenal, so to speak.

So we ended up filing suit in the Western District of Wisconsin. The initial judge to whom the case was assigned recused himself. I've forgotten, he had some relations I don't know whether with the lawyers or the publication. I'm not sure. It ended up before a judge by the name of Robert

Warren. We had a hearing before him in 1979, I think March maybe, out in Milwaukee. I was one of the trial lawyers. Our team was led by our Deputy Assistant Attorney General, a lawyer by the name of Tom Martin. Another trial lawyer by the name of Bob Cattnach, and I were the trial lawyers on the case. Later on, another lawyer named Keith Werhan became part of the team because the issues kept expanding as we were going forward. In any event, we had this big hearing before Judge Warren. He wrote a decision shortly after the hearing and entered an injunction prohibiting publication of the article. That caused, back at that time, there were editorials in the *Post* and the *Times* about whether this was a good thing or a bad thing, considering what the legal issues were. The argument that the *Progressive* editors and Mr. Morland made was that the public needed to know how to build a hydrogen bomb in order to have an informed conversation about the use of and the wisdom of the use of nuclear weaponry.

MS. KAGAN: That's seems to be a stretch.

MS. GERE: Judge Warren was not too taken with that argument. He was, however, impressed with the affidavits that the Justice Department had obtained to support its request for an injunction. Much of the case was litigated under seal because in order to have a full and complete discussion of what was in the declarations or the affidavits, one would have to have a security clearance to be able to do that, and so, again, it was one of those issues that puts the government in an awkward position of trying to enforce a right without increasing the harm that results from an attempted enforcement. The

decision by Judge Warren was written publicly. I can recall the briefing was extraordinarily interesting for me because I wasn't a nuclear scientist, and trying to figure out how to draft a declaration that made the points about national security and the potential impact of this disclosure was quite a lesson in how to write a persuasive declaration without knowing all the nuances of the detailed information.

At one point there was some fear that an organization, a publication in Australia, was going to publish the article, and we sent a Justice Department lawyer to Australia to invoke, they have a Government Secrets Act or something like that, I can't recall. I do remember that the lawyer who was flying to Australia with these very highly classified documents traveled with an armed FBI agent who had the briefcase handcuffed to his wrist.

MS. KAGAN: Oh my goodness.

MS. GERE: This was not something to be trifled with that was being discussed in these various declarations. In any event, the publication did not come about in Australia, so that was good. But the case did continue forward in the United States in Wisconsin.

I should go back and say that a lot of what was filed was under seal because of its classification. We wrestled with how to accommodate the need for the lawyers on the other side to be able to see what the government was saying in order to make their legal arguments in opposition. So we ultimately worked with the Department of Energy and probably the FBI to obtain security clearances for a number of the lawyers who were assigned to

defending the magazine and the author. So that's kind of how they were able to continue to litigate.

MS. KAGAN: Do you remember what law firm it was?

MS. GERE: Yes. I do. The *Progressive* magazine was represented by a local Wisconsin law firm with a terrific history. The first name in the firm was LaFollette. I think he was the governor at one point. It was a firm of high esteem in the state, and so they represented the magazine. On behalf of the author, the freelancer, Paul Friedman, now Judge Friedman of the District Court, represented the author. That was one of the early opportunities I had to get to know Judge Friedman. It was one of the, unfortunately I can probably put on one hand the number of cases where over the years I would say that I developed not just a professional appreciation of opposing counsel, but a personal appreciation. In my view, a case can be fought as hard as can be, but it does not need to involve ad hominem attacks or making things personal, just stick to the law and stick to the issues. It's been what, forty years, and I'm still close friends with Paul Friedman. That was, like the *Snepp* case, sort of a side benefit. I made a good friendship with Judge Friedman as the result of working on this case, despite the fact we were on opposite sides and in a very highly contested and very emotional case for a lot of people.

So, the injunction was issued, and not surprisingly, the judge who was very much of a pragmatist, said honestly, I do not think that this is a case that a court should get involved in, and why don't you parties, why don't you go

talk and see if you can't reach some kind of a compromise, and then I won't have to issue an opinion. The idea, I think, in his mind was that there would be a negotiation in which the magazine and the Department of Energy would agree upon what was permissible to say publicly. That did not work. The *Progressive* then appealed to the Seventh Circuit and attempted to get the injunction overturned or set aside or whatever their ultimate wording was. I can't remember. I do remember very vividly going out to Chicago and having the oral argument. Again, I did not argue the case because it was at the appellate level. Happily, however, the person who was permitted to argue was the lawyer, Tom Martin, who had been working on the case right from drafting the complaint because he was the Deputy Assistant Attorney General. But he had been, prior to that time, a Deputy Solicitor General, so no one could say Tom didn't know what he was doing in an appellate court. He was a fabulous lawyer. The argument was I want to say in September of 1979. A few short days later, the article, well first the substance of it and then essentially the article itself, were published in violation of the injunction. But, of course, the injunction ran only against the *Progressive* magazine or any one of its agents. So the publication was done by, I think some publication in Wisconsin and then in California.

MS. KAGAN: Where would they get the article from?

MS. GERE: Good question, and there was an FBI investigation opened to determine how it was leaked or where it came from. To my knowledge, nothing came of it. And then the decision for the Justice Department was what do we do and

essentially we didn't have a lot of options left other than to move to dismiss the appeal as moot. I don't even remember whether we were the moving party or whether the *Progressive* was the moving party. So that was a very exciting case.

MS. KAGAN: Who was the author? What kind of background did he have?

MS. GERE: As I said, Howard Morland was a freelancer.

MS. KAGAN: But how did he figure out how to build a bomb?

MS. GERE: That was the other part of their argument was that this could not be as secret as the government argued that it was because he had found out his information simply by going to public sources. So going to libraries that had declassified DOE documents. We ended up, I remember this too, I ended up going to a lot of the nuclear installations around the country that had libraries both to see what was in the library and to talk with employees about what in their view was in the public domain. There were a lot of issues that we had to come to grips with on that argument.

The government's position was that, first of all, I don't think we ever conceded it was all on the public record, and even if it had been, there would have been no way that he had the ability to put all this together without the assistance of a scientist. Sort of an eye-opener, or more of a door opener, into a different world, and that was one of the scientific community for me because there were very strongly held views after we dropped the atomic bomb about what United States scientists should be doing, what should be disclosed to the public, what should be withheld, and so it was hard to tell

from whom Morland might have gotten additional information or guidance. I'm really stretching my memory here, but I want to say that Morland, his first name was Howard, and I think he had a brother who was a lawyer in D.C. at the time with one of the firms, and I don't remember any more than that. I'd have to look it up and see if I can find him. I don't know that I've ever asked Judge Friedman how he happened to come to represent Morland. I don't know.

MS. KAGAN: What did Judge Friedman say about the magazine going ahead and publishing it?

MS. GERE: He was, of course, his position was that Howard Morland had a First Amendment right to express his views in an article and that it should be published.

MS. KAGAN: But while the proceeding was going on?

MS. GERE: While the proceeding was going on, that was the subject of a lot of the argument back and forth about whether it was in the public domain, should it be, what in fact was the risk to the United States of publication. All of these issues, looking back at the Pentagon Papers, there was an extraordinary burden to meet to have the publication withheld. I don't know what the Seventh Circuit would have done. We'll never find out. I don't even remember honestly if there was a sense of the panel, from any of the questions, I don't even recall.

MS. KAGAN: But there was an injunction in place?

MS. GERE: Yes.

MS. KAGAN: So, he went ahead and violated the injunction?

MS. GERE: No. He did not. Somebody else published it.

MS. KAGAN: Oh right. But they could never tie anybody to it.

MS. GERE: Right. No one ever tied the *Progressive* to it, which would have been the strongest case we could have had. But really the injunction, as injunctions are, are directed to certain parties who are under their enforcement.

MS. KAGAN: That was very interesting.

MS. GERE: Yes, it was very exciting.

MS. KAGAN: And then what happened?

MS. GERE: And then after that, this now takes us up to 1980, just about, or the end of 1979, beginning of 1980, and at that time, my then-husband and I moved to Cincinnati, Ohio, from Washington in the summer of 1980. My husband was from Cincinnati and very interested in going back home to practice law. His parents lived there. He had an offer from a law firm. He had been working at the Justice Department as well with me. He had an offer from a firm that was really, in our young lives, too good to be true, so we did not pass up the opportunity to move, and that was all terrific for him. As Mark Twain said, "when I die, I want to be in Cincinnati, Ohio because everything happens there ten years later." As I found out very quickly upon trying to get a job myself in Cincinnati, there were very few, very very few, women who were litigators or went anywhere near a courtroom. I sent out many resumes. I don't recall exactly, I might have had some nibble, but not much. This is despite coming off two extraordinary successes in the courtroom.

MS. KAGAN: But it was Cincinnati.

MS. GERE: So what did happen, though, was that with the change of administrations, there was a new U.S. Attorney for the Southern District of Ohio. I don't even remember how I happened to learn that or think about it. So I applied to the U.S. Attorney's Office where there was an opening. Apparently this U.S. Attorney thought it would be really helpful to the Office, which was the Southern District of Ohio, and included Cincinnati, Columbus, and Dayton. So some pretty big cities in Ohio. He thought it would be beneficial for the Office to have someone on its staff that could talk to people in Washington at the Justice Department because every U.S. Attorney's Office needed to be in good stead with the Department because the Department itself had such control over the U.S. Attorney's offices. I did not disabuse him of the fact that I really did not think I had a direct phone line to the upper echelons of the Department.

MS. KAGAN: That was going to be my next question.

MS. GERE: Or that there was some secret language or handshake that I had that was going to be helpful. I wanted the job, and so I said, of course I'm the perfect person for establishing that relationship with Washington, D.C. I laugh about it now, but it was another one of those serendipitous things that turned out to be just terrific. I loved being in the U.S. Attorney's Office. It was a whole different experience from being in the Justice Department. The Justice Department, at least the work that I did, tended to be more, I want to say cerebral and dealing with issues of legal import, first impression, notoriety,

precedent-setting, whatever all those big words were. But being in the U.S. Attorney's Office was, at least at that time in the Southern District of Ohio, was like going to a general practice law firm. You not only had to be cerebral, but you had to be able to run up to the courtroom on five-minutes notice and do whatever it was that some judge wanted you to be there to talk about. So it was a very different experience, but one that I really enjoyed. It gave me a lot more time in the courtroom and trial work that I would not have had had at the Justice Department.

MS. KAGAN: That lucky streak probably couldn't continue forever.

MS. GERE: Right. So the work ranged from—I did a lot of medical malpractice because there were military hospitals under our umbrella, so I did wrongful death. I did bankruptcies.

MS. KAGAN: Some of that you need to develop a certain amount of substantive expertise or at least working knowledge.

MS. GERE: Yes. And I had to, of course, first of all gain some working knowledge of a court, the office I was working in, and the lawyers who were my opposing counsel. That was an experience because virtually everybody in the Office when I joined it, they were all from Cincinnati. They all had some kind of political tie to the U.S. Attorney or the Office or somebody, and so I was definitely a fish out of water. When it came to the judges, there were three active judges when I went to the Office, one of whom had a hearing on the census that had just been taken, either it was in the process of being taken and it was being challenged. That was one of the first arguments, as I recall,

that I had in the Office. The judge wanted to have the hearing in his chambers as opposed to in the courtroom, which I didn't quite understand, particularly because there must have been twenty lawyers at least who were involved. All these different parties that were challenging the census or had some stake in how it was being conducted. I don't remember all the ins and outs. So we got the judge's chambers, and I sat down, and the judge called on me. I started to talk, and he said, young lady, I could hear you a lot better if you'd come and sit on my lap, at which point I pretty much thought get me out of this place.

MS. KAGAN: Wow. Were there other women attorneys in your office?

MS. GERE: Yes. In the Office. One was, I can't remember whether she was there when I got there or whether she started shortly after I arrived, but women were definitely the exception. There were no, at this hearing with all these lawyers, there were definitely no other women in the hearing. I can remember going home that night and saying I don't know if I'm going to be able to practice here because this is just a different world. My husband at the time said oh, it's the same world, it's just that people in Washington learn to be more subtle about it. I thought I'm not sure this is a big improvement. Maybe. I don't know.

So that was one of my early introductions to the judges.

MS. KAGAN: You were handling that case by yourself? No team?

MS. GERE: Yes. Usually in the U.S. Attorney's Office, in that office, most of the person power, I was going to say "manpower" because most of it was, but most of

the emphasis was on the criminal case load. At that point, Cincinnati was on the raceway up from Mexico to Detroit and Chicago on the drug delivery speedway, and so we ended up with a fair amount of drug-related cases and that took a fair amount of the office's resources.

MS. KAGAN: How many attorneys were there in the office?

MS. GERE: I would say there were, well in Cincinnati there were probably a dozen maybe, fourteen maybe.

MS. KAGAN: And everybody handled whatever case came to their desk.

MS. GERE: Yes. Until I got there, and then gradually we developed a specifically designated civil division, and so there were lawyers that did only the civil work, and then others that did the criminal work. And that held true. We then kind of had to bring all of the three offices (Cincinnati, Columbus, and Dayton) together so that everybody was handling things the same way, so that would have been the folks in Columbus, which at that point was a smaller office. I think after I left, a couple of U.S. Attorneys have actually sat in Columbus as opposed to Cincinnati, and then that kind of shifts the personnel.

One of the other things that I recall about being in Cincinnati and the difference in practice, certainly from the Justice Department and in most of the cases that I handled, because they were pretty sensitive cases, and everybody wanted to make sure everything was appropriately documented, there always was when you reached an agreement with an opposing counsel, you always reduced it to writing just to confirm that you and I talked and

agreed to something. These are the days before email, of course, but just so that everything was documented. When I got to Cincinnati, and one of the first cases that I worked on, again I don't remember which one it was, but I think I must have asked the opposing lawyer, or he asked me for an extension of time to file something, I don't know, whatever, an answer or response to a motion, and we had a nice conversation and he said okay, I agree let's do that. I very dutifully wrote him a letter and said this is what we agreed, and he picked up the phone and said I know you're new to this legal community, but you really don't want to do this because it will essentially set you apart, and he said lawyers here, if they tell you they're going to do something, they'll do it. You can depend on their word. I thought, what a novel concept. It's different from what I had been accustomed to, but, of course, at Justice, I was litigating with lawyers from around the country, and everybody had different ways of doing things, and you could know people not nearly as well as if you were in a relatively small legal community, kind of what goes around comes around. So after that, I stopped sending letters and relied upon people's word. Until I couldn't, when somebody crossed you, and then obviously you'd know.

The other kind of story that, well a couple of them, that were I think interesting and reflective of being a woman in a smaller city in the early 1980s when women were not very numerous in the bar and certainly, as I say, not in the courtroom. One of the judges had this system where he would have what he'd call settlement conferences. Of course one question is should

the trial judge be overseeing a settlement discussion in a case over which he was presiding. Anyway, the judge had this whole system that he referred to as the Lloyds of London system. Every time for the first, I don't know, couple of years that I was in the U.S. Attorney's Office, every time I would go to one of these things, the judge would turn to me and say, "Counsel, maybe because you're new to the community, maybe you don't know Mr. So-and-So, but he is an outstanding lawyer." He was always kind of putting me in my place, that whoever was across the table was the hometown hero.

MS. KAGAN: And all three judges?

MS. GERE: Well the third judge, the story about him was that his goal for a new lawyer who was a woman was to make her cry during a trial. That was his goal.

MS. KAGAN: Did you know about that in advance?

MS. GERE: I knew about it partway through my first trial in front of him when he was just very difficult, exasperating. He used to refer to Washington, he would always say to me, yeah but you're from Washington, Baghdad on the Potomac. Anyway, he was definitely difficult, and he was the chief judge. Partway through my first trial in front of him, his then, I can't remember whether she was his courtroom clerk or deputy, we were on a break, and she came up to me and said, "Don't do it. Don't cry." And I said, "Cry? I'm not going to cry." And she said, "He's going to make you." No he's not. So it was like this game of cat and mouse.

MS. KAGAN: It wasn't his law clerk, it was his courtroom clerk?

MS. GERE:

Yes. It was I think she was his courtroom deputy. So she'd seen it all. Anyway, I had my work cut out for me just kind of fitting in with the court and the rhythm of the office. There were two women who did criminal work, one who was there I think when I started, and the other one I think, as I said, she came shortly after I did, but the guys that did the criminal work all teased me because most of the civil work, if it went to trial, it was a bench trial, and so they would forever be teasing me about oh, you civil people, you don't know how to stand up in front of a jury. They teased me and called me the Main Skirt because I was the Chief of the Civil Division. So one day I remember saying to them, okay, give me some of your cases. Let me try some of your criminal cases. So for the next probably three years, I did some criminal work as well. I probably did a half a dozen criminal cases, prosecuted them. It turned out that I did way more than anybody had anticipated because one of the cases involved a female lawyer in Cincinnati who set up this ring with her mother and her coterie of boyfriends. They set up all of these staged automobile accidents and thefts to collect insurance proceeds. So we indicted her, her mother, and her then-current boyfriend who was the lead guy among the boyfriends. The judge granted a motion to sever, so we had three trials instead of one. So I did some criminal work, and that convinced me that what I really loved was civil litigation. The whole notion that you couldn't game things out and take depositions and look at documents beforehand was not my cup of tea. I can remember these criminal trials, I co-tried them with one of the more senior male lawyers in the office.

I remember the first trial when it came to be the defense part of the case and he looked at me and he said okay whoever comes through the door, I'll cross them, and you take the next one. And you would have no idea who was coming through the door next. You didn't really do a lot of *Brady* disclosures back then. So whoever walked in the door, that was who you were going to cross-examine. That was for me—I am sure exhilarating for a lot of people to do that and find it exciting—but I found it too nerve-racking. So I became the chief of the civil division, which is for what I remained for the five years that I was there.

The cases that stick out most for me were the swine flu cases. So back in the late 1970s or early 1980s there was a fear of a swine flu pandemic. The United States indemnified all of the makers of the vaccine. When people became ill after they got the swine flu shot, they would sue the United States. There were hundreds of cases around the country, and they were consolidated into a multi-district litigation panel and a general set of discovery done, but then at the end of that, each of the cases would be sent back to its home jurisdiction for trial.

For whatever reason, the Southern District of Ohio had a disproportionately high number of cases. The chief judge decided he would assign all of the cases to the newest judge to handle them. He was the one who had this “let me tell you about your opposing counsel who's so hometowny.” He was assigned all the cases, and as the newest AUSA, I was assigned all of the cases. I got to know the judge quite well, and the cases

were fascinating as medical issues, legal issues, and how to handle MDL litigation. They were complicated, and I had a lot of them. Several of them went to trial. I traveled around the country doing depositions, getting expert testimony lined up. So that was a real education.

MS. KAGAN: How many cases did you have?

MS. GERE: I think we had at least a dozen. Probably more like eighteen. As time went on and people watched what was happening, some people voluntarily dismissed, and other people would come up with creative medical causation proof, and others would say well I've come this far, I'm just going to roll the dice and hope for the best.

The sign that I had finally arrived in the office was in connection with one of these, I believe it was one of the swine flu cases. We had one of these settlement conferences, and the lawyer was from Columbus, not Cincinnati, who was my opposing counsel. He was a very well-known lawyer, but when we got to the conference, the judge turned to him and said you may not know Mrs. Whitaker (my married name), but she's an outstanding lawyer. So I knew that I had turned the corner and finally was going to be part of the home-town team.

MS. KAGAN: About time?

MS. GERE: Yes. About time.

MS. KAGAN: When you had your jury trials, because you were a woman, did the defense tend to excuse female jurors?

MS. GERE: No. I did not get that sense. Cincinnati was much more, people decided who they wanted as jurors based on their zip codes. This was all kind of news to me because I wasn't from Cincinnati. They didn't mean anything to me. I got the impression that jurors were very interested in seeing a woman in a courtroom because I don't think that was the day of women on TV law shows. That definitely was in its infancy. I remember, though, after one of the criminal cases that I tried, I was shopping for shoes at a women's shoe store near the courthouse, and I was in there just kind of browsing, and all of a sudden this woman came up to me in the store and said I just knew you bought your shoes here. I thought, Who are you? I don't recognize you. I don't know you. She said, I was a juror in one of your cases, and we used to talk about your clothes, and I always thought this was where you bought your shoes. This was a lesson on so many levels, that how really focused jurors can be and how they look at and take cues from lawyers. I always used that story when I was teaching at Georgetown, that you are kind of walking a tightrope. You want jurors to pay attention to you, and you be the reliable guide in the courtroom, but you can't be a distraction from your client. To me, that meant I wasn't going to go in with big gold chains on and a bunch of fancy loud clothing. At that point I thought that would make me the focus instead of my client or that it was not necessarily consistent with what I was trying to convey to a juror that I was the people's lawyer. I represented them, the taxpayers, the United States.

MS. KAGAN: I have been told that women attorneys should wear dresses in front of a jury rather than a suit, that that appealed to jurors more.

MS. GERE: I think that so much has changed on that score. When I was in Cincinnati, one could not wear pants to court. When I was at the Justice Department, nobody would have even thought about it because that wasn't part of what the attire should be. As I taught, though, at Georgetown over the twenty-year period, I always made it a point of talking to my students, male or female, about the importance of being neat, the importance of not being distractingly dressed, the importance of being comfortable because you're going to be sitting in a chair and then up and moving around and you can't have on shoes that hurt your feet, you can't have on something you worry is too short. And so I would tell people my preference was for women not to wear pants, but if they wore pants, it should be a whole coordinated pantsuit, not a plaid jacket and blue jeans or whatever. But boy over the years as I continued to practice at the Attorney General's Office, that was not even an issue anymore. Women wore pants all the time to court. Jurors now have seen so many lawyers on TV in pantsuits they've decided that's okay.

MS. KAGAN: Right.

MS. GERE: Over the years, I've appeared before a lot of judges. One judge in Columbus, Ohio banned open-toed shoes because that was beach attire. There were judges before whom you could not wear pants. I think there were judges that would not look kindly upon men who wore earrings or a stud in their ear.

Just again sort of the whole distraction factor. You don't need to call attention to yourself.

MS. KAGAN: That's interesting.

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 on Zoom on Wednesday, July 1, 2020. This is the fourth interview.

MS. GERE: As you just noted, we talked a little bit about what’s going on now in our lives during the pandemic. Now we’re going to take a turn back and resume my discussion with you. Last when we left the story, as it were, I was telling you about my time at the U.S. Attorney’s Office, which was just terrific. It was one of the best jobs that I had in my career. I’ll never forget listening to United States District Court Judge Stan Harris here in D.C. give a talk and say the best job he ever had was being a part of the U.S. Attorney’s Office. I thought, wow, that’s something coming from somebody who’s a federal judge and he’s looking back wistfully being in a U.S. Attorney’s Office. But now that I’m to the point of looking wistfully back, I can certainly identify with that.

MS. KAGAN: Would you have ever wanted to be a judge?

MS. GERE: Yes. I did. And that was one of the significant disappointments in my life. I got very close. We’re not quite to the stage where I started applying, so I’ll talk a little about that as it comes up.

There came a point in Cincinnati where my then-husband and I concluded that our marriage was not working out as each of us had hoped or expected. We both had left Washington with the expectation and the hope that we would have children, and we thought that going to Cincinnati, which is where he was from, would be someplace with a slower pace and for us a family

network because his family, his parents, with whom he was very close, were in Cincinnati, so that was one of our motivations for going there. But things didn't work out for us, and we divorced in 1985. At that point, I had to reevaluate my life. I was living in a place that really was not my hometown, and as much as I liked the U.S. Attorney's Office and began to feel like an insider, I never really felt like an insider in Cincinnati. It was a very insular legal community in particular, and there were very few women who were in litigation. So it occurred to me that if I wanted to kind of start my life afresh, staying in Cincinnati in a small legal community, I would never make a break from my husband, and I needed to be who I was. So fortunately there was a program at the Justice Department that was available to Assistant U.S. Attorneys where your U.S. Attorney's Office would loan you to the Department in Washington, D.C. for a year to teach at the Attorney General's Advocacy Institute. The incentive for an office to do that was they got to hire somebody in your stead, but they didn't lose the slot because you would go back to the office after a year. One of my colleagues in the U.S. Attorney's Office in Cincinnati had done it years earlier, and he was very positive about the experience. He also said from a personal point of view, you're in a position where it would help you sort things out and make decisions about where you wanted the next phase of your life to go.

So I applied to be the Assistant Director of the Attorney General's Advocacy Institute, which at the time was located in Washington, D.C., and now has a new name, the National Advocacy Center, and it's in

South Carolina. It made a big move for a lot of political reasons. I'm not sure they were necessarily good ones. While I was there, and I applied and I got the job, so I moved from Cincinnati to D.C. in the Summer of 1985 and began working at the Department in the fall, I believe.

Essentially what the advocacy program involved was bringing all of the litigating attorneys who worked for the Justice Department, whether in the Department itself or in one of the 94 U.S. Attorney's Offices in for a two-week training period. It was a terrific program.

MS. KAGAN: That must have been a big cohort.

MS. GERE: Well we usually had, and I can't even remember back in those days, we probably had thirty or forty people at a time, but we would run these programs several times a year. There was a civil program, and there was a criminal program because the training for each was different. The people who taught the courses were experienced Assistant U.S. Attorneys. In the civil courses, we had sessions on how to cross examine, how to do a direct examination, how to take a deposition. Back in the early to mid-1980s, we had very elaborate video systems, so we videotaped all of the students who were coming through and then you would sit down with an experienced AUSA and walk through what you saw on the screen. There were not a lot of training programs at that point that had taken advantage of something like video and being able to watch yourself. It was very much a hands-on program, a terrific learning experience. The last two days of the two-week course period you would actually try a case. We flew in judges, federal

judges from all around the country, to sit as judges for the trial so by the time you finished your two weeks, you had actually tried a case before a federal judge.

MS. KAGAN: Any juries?

MS. GERE: We had juries where we could find people, whether it was through contacts that people had in the community, and we would have people come in and sit as jurors. As I say, it was a terrific experience for the students. I think mostly the feedback came from the judges because they knew that was part of what their role was and to preside over some of these trials. It was a great experience for the students, and the judges clamored to be invited to come and teach because it gave them an opportunity to have a paid-for trip to Washington, and it was always good for them. They had all been appointed via a Senator. They kept up their political ties. They had friends in the Department and so forth, so we never had trouble getting judges to come in and assume that role, which was really gratifying. I got to meet all kinds of judges and work with them on their schedules and when they could come in and what they could do. So it gave me a different perspective on the federal judiciary.

MS. KAGAN: How many AUSA trainers were there?

MS. GERE: We would probably have at least another two dozen people coming in during that two-week period. People usually came in for a one-week segment and then they would go back to their offices. So we constantly had people coming in and out. We would try and have group dinners, opportunities for

the AUSAs to get to know each other too because that was another invaluable resource where you'd meet somebody and say, gosh, I have a case involving swine flu or whatever the topic might be, and that helped develop more resources internally with Department contacts.

MS. KAGAN: How many of you were in charge of running the Advocacy Institute?

MS. GERE: I was in charge of the civil programs, and one of my colleagues who was an AUSA in Bridgeport, Connecticut, ran the criminal program.

MS. KAGAN: That's a lot.

MS. GERE: We had a terrific staff. We had I think two to three people who were sort of staff/paralegals, and they did a lot of the work in scheduling things and making sure rooms were set up and that we had hotel reservations, we had restaurant reservations, all that kind of thing. So it was a lean operation looking back on how much we were able to accomplish. And then there was a director over us who was the liaison to the attorney general and to the hierarchy of the Department to make sure we were training people on topics that U.S. Attorneys thought were valuable.

I taught some of the courses myself. Of course you would always encounter times when somebody at the last minute had an emergency and didn't show up or whatever. I very much enjoyed the actual teaching, which fast forward many years later, I did end up teaching for twenty years at Georgetown Law School, so that was sort of the beginning of my teaching career.

MS. KAGAN: Did you have a curriculum for the visiting teachers?

MS. GERE: Oh yes. We had a curriculum. We had materials that they were supposed to teach from. We had tips on how to give a constructive evaluation of somebody's performance. We had all kinds of things. We had outside lecturers come in to talk. One woman in particular who was a regular who taught essentially how to read juries. She was always interesting and very provocative on how you decided who you wanted to have as a juror and then how you asked questions if you were permitted to do the voir dire to get to the information that you wanted. That was always very interesting.

MS. KAGAN: Did issues of race and gender play into that in any subtle way?

MS. GERE: She was, and again, this was in the mid-1980s, so we're talking some time ago. One of the things that she did that I thought was very revealing is she would take somebody from the audience among the AUSAs and have them come up to the front of the room and say their names and say which office they worked for and how long they worked in the office and where they lived. Very minimal information. And then she would go around the room and say do you think this person reads *Time* magazine. Do you think this person reads books? Do you think this person has views on who should be our next President? And inevitably people would say oh yeah, just look at him. He drives a Corvette. That's clear. So it was sort of an implicit bias teaching just based on how somebody looked and the few five facts that you gleaned, and all of a sudden you were making up a whole backstory about somebody that may, of course, may have had and likely had very little basis in truth. So that's what she was saying. You have to be much more

measured in your assumptions about people based on what information you have, and back then, really when you got your jury list, you look now, and I haven't done this in a while, but it's really pretty bare-boned information, where somebody lives, what their occupation is, what their marital status may be, their address. And so you have to take that and think about it but not in a way that allows you to pre-judge based on whether it's a man or a woman or what their ethnic background is.

MS. KAGAN: Were the folks that came in to do training, were they mostly local attorneys?

MS. GERE: No. They came in from around the country—both people being trained and the trainers. We did take people from Main DOJ here in D.C., people from the Civil Division, people from the Criminal Division. People who actually got into court. This was much more, we didn't have appellate lawyers or environmental lawyers, unless they were people who went to court.

MS. KAGAN: So not every AUSA took this training. It's only the ones who would be litigating.

MS. GERE: And then it was all voluntary. It was a two-week commitment of time for those being trained and at least a week for the trainers and travel, and most of the time, people carried on whatever their responsibilities back in the office were at the same time. Of course back then we didn't have computers, we didn't have the Internet, so it was a little more difficult. You'd have to get somebody to basically be a stand in for you. It was a great program. I'm sure it still is a good program, just in a different place and in a different way.

It was a great experience but having that disconnect from Cincinnati for a year allowed me to decide that I did not want to go back to the U.S.

Attorney's Office.

MS. KAGAN: Did you have a network of people that were still in D.C. from your time here that you were able to reconnect with?

MS. GERE: I had a number of friends because as I mentioned my husband too had worked at the Justice Department before we moved to Cincinnati, so we had a lot of friends who had been mutual friends of ours, but when I came back to D.C., I resumed – well, I hadn't really ever stopped being friends with a lot of people, and kind of resumed that. One of the ties that I had continued to keep was with all my friends in the Civil Division at Main Justice. When I started thinking about not returning to Cincinnati and talking that over with my friends in the Civil Division, they all said great, good idea, why don't you come back to the Civil Division. Part of me resisted that notion because I didn't want to feel as though I was going backward in my life. I wanted to feel still that I was making progress in my life. I was making a fresh start, and so I thought about that pretty carefully. I concluded when I was offered a position as senior trial counsel, that was quite a different position than I had had when I left. The Civil Division had grown substantially, and I felt that it was different enough that I thought I was making a forward step. I also was just not ready to cut the cords with my federal service. I loved working for the United States of America, and going to the Civil Division allowed me to maintain that tie. So, in 1986, I finished my year with the Attorney General's

Advocacy Institute. I then went as senior trial counsel to the Civil Division at Main DOJ which was a fascinating move to make because the work there was so interesting. It was interesting when I left, and it was just as interesting when I went back. A lot of different kinds of cases that I was being given because of my new title and role.

MS. KAGAN: I'm trying to quickly think about changes in administrations and whether there was any change in policy and direction, cases that were thought to be once pursued.

MS. GERE: Good question. I would have to go back because when I left the U.S. Attorney's Office, I believe that it was still President Reagan who was President.

MS. KAGAN: Yes. This was in the early 1980s.

MS. GERE: I'm trying to remember what the dates were. So he was President from 1981 to 1989. Yes, I should remember this because I have a picture of Attorney General Ed Meese and me. The Attorney General's office was on one of the upper floors, and the Advocacy Institute was on the first floor of the Department. For each one of these sessions, typically the Attorney General himself would come and give either, depending on his schedule, welcoming remarks to the people coming in or closing remarks as they had completed. So I do have a picture of myself with Ed Meese.

So anyway, when I went back to the Civil Division, that still would have been during the Reagan administration back in 1987. To the very much good, my recollection of times at the Justice Department, at least at my level

as a career lawyer, there was not a lot of politics brought to bear on the decisions that I made in litigation or that my immediate supervisors made. Clearly, we knew that there were programs and goals that each President had, and each Attorney General would run the Department somewhat differently, but I don't remember a lot of politics being involved. But whether that's because I was at a career level, but I don't remember any of my superiors ever thinking that they were being forced to take positions for political reasons. Mostly to the credit of the Attorneys General under whom I worked and whether it was just because it was the Civil Division, but people were not pressured unnecessarily, and I think there was a fair amount of deference given to lawyers who had been in the Department and had great institutional knowledge, which, to me, was very important to keep the continuity of the Department and the independent integrity of the Department intact.

MS. KAGAN: Although there obviously are always choices to be made, what areas to pursue, what cases to go with, and that, I think, you can't help but be perhaps somewhat affected by who's running the show.

MS. GERE: Yes. Because there are certain overarching goals that each President establishes, and each Attorney General has his or her goals as well. But I just don't feel that political pressures of those days are anywhere near what they are today. I'm not there today, but I am a sentient human being, and I don't know for certain what my colleagues are experiencing, my colleagues who still are at the Department.

MS. KAGAN: You probably don't want to know.

MS. GERE: There's been a great deal of concern among former DOJ employees, and we have written several letters recently about the actions of the current Attorney General, William Barr, that are inconsistent with the way so many of us recall our experience at the Department.

MS. KAGAN: That's been covered pretty widely in the press.

MS. GERE: Yes. So, there I found myself in the Civil Division of the Justice Department in another one of the small world stories that one can only tell in Washington. While I was in the U.S. Attorney's Office in Cincinnati, I had the great good fortune to have a law clerk, Rick Morgan, who worked in our office, particularly for me, and very closely with me, on a lot of the swine flu cases, which were taking a great deal of my time for a period at the office. Eventually, Rick graduated from law school, and I think we had a lot of conversations about what would be a good thing for Rick to do, and I'm sure I persuaded or, at least I like to think that I had a hand in convincing him that going to the Justice Department would be a great thing for him to do as part of his legal career. So lo' and behold, he applied to the Department of Justice Civil Division and was hired. When I returned to the Civil Division, the person who had the office right next to mine ended up being Rick Morgan, my former law clerk from Cincinnati! It was terrific to have someone that I knew, someone whose legal acumen I very much admired, just a terrific lawyer, and it was just great fun to have somebody that I shared a different part of my life with but that I could then continue to share my life with. So we had great fun. I did not work any cases with him while I was at

the Department, but nonetheless, that too was a pretty close-knit group, so I got to see him regularly.

MS. KAGAN: Were you involved with Divisions other than Civil?

MS. GERE: No. I was just Senior Trial Counsel in the Civil Division.

MS. KAGAN: No, I mean in all the various types of cases? There's a range of substantive subject matters in Civil.

MS. GERE: There's a range of substance. It appeared, at least as I was trying to go back and reconstruct the time that I was there, there were a couple of cases that took a good deal of my time in part, I think, because when I previously had worked at the Department, I had been involved in the cases that we've talked about—matters relating to classified information, working with intelligence agencies, working with the State Department. Two cases in particular came along that were assigned to me. They were very unusual cases that involved in one way or the other the USSR back in the day. Again, we're talking 1987. One of the cases to which I was assigned was a case that was brought by an American broker of some sort who sued *Izvestia* for libel and breach of contract. *Izvestia* at the time was the Soviet newspaper that was actually considered to be an arm of the Soviet government, so in effect, it was like suing a sovereign state. It was private litigation, but the Department was involved to protect the interests of the United States. It was a case that really, I mean these two cases that I want to talk about were ones that only lawyers could love because they were extraordinarily technical. Each of them really begins with issues of service of process.

MS. KAGAN: The U.S. government was an intervenor in these cases?

MS. GERE: Well, we were an intervenor in one case. We on behalf of the State Department, as I recall, moved to intervene to make the views of the United States known to the Court.

In the second case, my recollection is that the judge, before we even filed a motion to intervene, issued an order asking for the views of the United States. So, in any event, the Justice Department got involved, and primarily, it was I would say to present the views of the State Department, which were in essence the views of the United States on how best to deal with a foreign sovereign, whether our courts were going to entertain cases against a foreign sovereign. The Foreign Sovereign Immunity Act is what was applicable, and there are very limited opportunities for a private party to sue a sovereign state in a United States court. But before you could even get to that point, you had to figure out how do I serve this foreign state, and the Act and rules are very complicated. You have to serve the embassy of the foreign state.

Well, long story short, in the first case, which is called *Gregorian v. Izvestia*, the Soviet embassy refused service of process and therefore no one responded. The case had been filed in the Central District of California, which is where the plaintiff was located. The attempted service was made, but then the judge had a hearing, and no one showed up on behalf of *Izvestia*, and so the court entered a default judgment in the amount of some, I'm trying to think if I made a note of it. The Court entered a default judgment for \$413,000 and entered an order allowing the plaintiff to begin seizing bank

accounts and any other property that he could get his hands on. He did get his hands on a Cyrillic typewriter as part of his efforts to make good on collecting on his default judgment. But at some point, there was a motion to vacate the default judgment by the Soviet *Izvestia*, and that was where the United States got involved. Basically, we agreed that the default judgment should be set aside in order for the Soviet government to come in and make whatever argument it wanted to make substantively.

MS. KAGAN: Because you would want the same courtesy in a reverse situation.

MS. GERE: Right. And we were not taking a position at that point on whether an interpretation of the Act allowed the ultimate relief that the plaintiff sought. Simply we were trying to preserve the opportunity for the foreign state to be heard in our court to say no we don't belong here, or yes we do, and here's what we have to say.

Eventually, the Court agreed that *Izvestia* should be permitted to appear. The case went on. I no longer worked at the Department, but the case did go up on appeal, and there's a whole opinion on appeal, and it's very, the whole case is, very detailed on the precise contours of the Foreign Sovereign Immunity Act. Anyway, so that was the case that took up a lot of time for me, very interesting to delve into the diplomacy that the State Department was charged with conducting and how it intersected with our judicial system.

MS. KAGAN: What division within the State Department were you working?

MS. GERE: Our primary contact was with the Legal Adviser's Office. I know that I had to get affidavits from people at the State Department about the consequences

of not at least affording an opportunity for a foreign state to be served properly.

MS. KAGAN: What year was this?

MS. GERE: This was 1987. So I'm trying to think. I think Judge Sofaer, I think, was probably still the Legal Adviser at the State Department. I don't remember exactly who we had. I know I got declarations in both these cases from people at the State Department.

The second case, *Carl Marks & Co. v. USSR*, was a class action, or a purported class action, I can't remember whether the judge ended up certifying it as a class action. Again, it was a private lawsuit by bond holders of Soviet currency, and it was currency that had been issued prior to the Bolshevik revolt, so in any event, the suit was against the Soviet Union, and it was all about whether the bonds that these bond holders had purchased continued to have value. It was a very interesting trip through history. The judge who presided over the case was in the Southern District of New York. The judge who presided was the then-Chief Judge, Judge Brieant, I think. He was quite a character, and I say quite a character in a kind of admiring way because his opinion is a real testament to the breadth of his learning, beyond being a judge. His opinion starts with a quote from the book *JR*, by William Gaddis, and it's a very tongue-in-cheek quote that is a play on words of class action, and this was brought as a class action. The judge gives a lengthy discourse about William Gaddis and his literary career, how brilliant Gaddis was, with which I agree, but how the judge weaves this all into this opinion is

quite remarkable. And then the opinion goes through in remarkable detail with terrific footnotes all of the evolution of the Russian government following the Russian revolt, and he talks about the Bolsheviks and Lenin being hidden in a boxcar so that he can get to Moscow to lead the government. It's fascinating, and it's all germane to the case and without it, you would be definitely scratching your head about what are these people complaining about again, and what does this have to do with whatever is going on. The opinion itself is a tour de force, honestly, and I was very glad for this opportunity to go back and read it because I honestly hadn't looked at it for decades. Again, it ultimately devolved into who did the United States recognize as a legitimate government, and who could dismiss the bonds and their value, all of which the judge had to grapple with, and he was the one who said I'd like to get the United States' view on how important this decision is to our diplomatic relations with the USSR. He's trying to say I want to hear from the government on the impact of our diplomatic and foreign relations, what kind of an impact is this case going to have, how important is this to our government, what do you all have to say about it. We went to the State Department, and we again said this was another situation where there was an attempt by these bond holders class members to serve the USSR. The USSR claimed that service was not effective or not proper, so they didn't show up, so Judge Brieant did what the judge in Los Angeles had done and entered a default judgment, and it was kind of once there were teeth and an order saying there's a judgment against you, you need to step up and

do something Soviet Union, and we United States need to step up and say how far should the United States be pushing for use of its courts to hold accountable a foreign sovereign. So Judge Brieant ultimately set aside the default judgment and allowed the USSR to come in and present its defense. Again, the United States was not involved in the nub of the dispute whether the bond holders recovered or not but rather could they take advantage of United States courts to seek relief from a foreign sovereign. The substance again, that was not my role, and I then left the Department. My recollection is that that case too went up, that one would have gone to the Second Circuit. The first one went to the Ninth Circuit. And, of course, at DOJ, when something went up on appeal, the trial lawyers lost their hold on the litigation because we had an independent appellate staff, which was a good idea. They were able to bring perhaps less emotion and more distance in analyzing which cases the United States should be seeking appeal on and how to frame any appeal that we were being asked to defend.

MS. KAGAN: Do you know what the upshot of the case ultimately was.

MS. GERE: I know that the case in California, the Ninth Circuit affirmed in part and reversed in part, and remanded it, so I'm sure it went on. My recollection is that's kind of what happened in the, I didn't make a note about what happened in the Second Circuit, but again, in the small world category, my recollection is that the cases on appeal were handled by Doug Letter, who worked in the Civil Appellate Section of the Civil Division, and Doug is now counsel to the House of Representatives, in this very interesting and

tumultuous time in the government. Anyway, Doug was another one of the just absolutely brilliant lawyers that I had an opportunity to work with at the Justice Department. And fortunately, the government is lucky enough still to have his services.

So that, and obviously I had other cases that I worked on. I stayed as Senior Trial Counsel for about a year and a half. I was approaching my 40th birthday. I had never been in private practice. I'd never interned in a law firm. That was a world that was foreign to me and yet here I was pretty substantially into my legal career, and I always thought I ought to try that private practice thing sometime, maybe. Very serendipitously, I had been back at Justice for a while and, within the space of a week, I had two of my former DOJ colleagues call me from two different law firms and say we're looking for somebody, we think that you would be great, would you ever think about leaving the Department and going into private practice. And I thought this is really a signal. Two people in one week, just before my 40th birthday. Is somebody sending me a message that it's time for a change? So I interviewed with each of them. I was very impressed with both. One firm that I interviewed with was Jenner and Block, and the person who had been the Assistant Deputy Attorney General in the Civil Division at one point, Tom Martin, was the person who had contacted me. Another truly brilliant lawyer, and he had been at Jenner for a while. So he called, and I said sure I'd be happy to come and talk to you. It sounds interesting. No promises, of course, on either side.

The other person who called me was Becky Ross, who was one of my contemporaries, colleagues, at Main Justice and also an outstanding lawyer. She had left Main Justice, had gone to the U.S. Attorney's Office in D.C., and then had left to join a start-up law firm here in D.C., and she had been there about a year, I think. She was very enthusiastic. She said this is a great group of people, they're vibrant, they're entrepreneurial, they split off from Hogan and Hartson, which was a big deal back in the mid-1980s. You didn't just take part of your executive committee and walk out of Hogan and Hartson. These people did. There were a number of women at the firm already. I interviewed with that firm, Ross, Dixon & Masback, as well. I was very taken with the plans that they had for the future and the thought of being someone who could come in very early in the firm's foundation or formation and help get this organization off the ground. They had at that point no one beyond Becky who had any litigation experience, any real courtroom experience. They had way more business than they could handle, and so they said to me we don't want you to do any business development. We want you to just be able to come in and start taking depositions, start preparing matters for trial.

Jenner, obviously, had a somewhat different mix of people, and I thought I don't want to bite off more than I can chew, and the notion that I did not need to be responsible for business development right away, which wasn't my highest and best use, appealed to me a lot. So I met with the various people at Ross Dixon and then finally decided maybe I should make this leap.

MS. KAGAN: How large was the firm at the time?

MS. GERE: At the time, I'm not sure there were even twenty people in the firm. Probably fewer than that. I remember in the interview process, because a group, or a concentration of the clients that the firm had were insurance companies. During one of the interviews that I had, one of the name partners said to me, "Are you sure you have the grit to come here and represent insurance companies? Insurance companies are (a) always viewed as having deep pockets, and (b) always viewed as the bad guy." I said and what do you think I've been doing working for the United States government for the last fifteen or more years. We too were always the deep pocket and usually somehow the bad guy. So, again, that sort of, it was an interesting way for him to present it, but it also made me think this is a place I probably can use my skills.

So I talked about it with various friends and people at the Department who all knew that this was something that was just time in my career to try. I don't think anyone begrudged me or thought me, at least I certainly hope they didn't. I, in my heart of hearts, thought that I could be at the firm for a couple of years and then I'd go back to Justice. I thought I'm going to get there, and I'm going to find out that my heart is really in public service, and I will want to go back. It was twenty four years before I left the firm. Almost twenty five years. And perhaps a good way to start our next session is to talk more about what that transition was like and particularly how I filled what I

viewed as the void of public service and giving back to the profession that I felt when I went into private practice.

MS. KAGAN: It was that much of a change for you?

MS. GERE: Yes. And in my view of myself and what was important to me. People who at that point, again we're talking the mid-1980s, people who left Justice often left for money. I was a single woman. I didn't have a family. The money was not what mattered to me. What mattered to me was the people that I was working with and the caliber of work that they were doing, but also, again, this piece of me that wanted to be sure that I continued to give back to the community and to the profession. And it took me a little bit of time at the firm to kind of figure out, how do I do that. How do my partners let me do that?

MS. KAGAN: You came in as a partner?

MS. GERE: I came in as an associate. The firm was so new. They said we'll bring you in as an associate, and then in two years, we'll consider you for partnership. I was so naïve, I knew nothing. And the money didn't matter. The title didn't matter. It was just—I want to try this private practice thing. I don't care what I'm called. I don't really care what they pay me. So they paid me way more than I was making at Justice, and I got a signing bonus, by which I was just very taken aback. I was there for about a year, and they came in one day and said okay, we just made you a partner. So it was something that I wasn't staying up at night trying to figure out, am I going to be a partner and when is it going to happen, and what do I need to do. It definitely worked out. So I

became a partner within the year after I had started at the firm. It was a very interesting many years, and again, among the best of my life as a lawyer and I still have my closest friends who were my colleagues from the firm. I think I was telling you earlier, I have not been out of my apartment for anything non-essential since March. Last night, my first time out, was to go and sit in the backyard, socially-distanced, with one of my former Ross Dixon partners, Bill Briggs and his wife, Gail. It clearly was a very close-knit group, and I'm eternally grateful for that.

MS. KAGAN: The firm then grew quickly.

MS. GERE: Yes. It did grow quickly. We had, as I said, when we started out way more work than we could possibly handle, so we were pretty aggressive about hiring. Although the word aggressive might be too strong. Balanced with the we need to have new people come in, the people that we hired were very, very rigorously selected, and we were a boutique firm that did a lot of interesting work and law students and young lawyers really, really wanted to come and work at the firm. So we were so fortunate to have top-tier law school people come in as summer associates and then they liked the firm well enough that they stayed on. The firm, because we represented insurance companies, had a lot of different substantive areas that fell under the insurance umbrella. The one that I spent most of my early days, quite a few years actually, was representing attorneys, accountants, and executives and officers who were covered by professional liability or directors and officers liability insurance policies. These professionals were, under their insurance

policy, depending on the terms of the policy, entitled to a defense by their insurer and appointed defense counsel if they were sued, and so my firm was the go-to firm for a lot of insurers for what were really “bet the company cases.” This was during the bank and S&L failure days. We represented a lot of accountants and lawyers who gave advice to S&Ls and banks. When those financial institutions failed and they were the subject of lawsuits, we would be appointed as defense lawyers. They were multi-million-dollar cases and significant firms were at risk for their very existence. The work was very stressful. It was all over the country. It was exotic and heady in a way unlike the headline cases at the Justice Department. Not often that you were going to read about one of your cases in the *New York Times*. On the other hand, you certainly would read about the law firm cases in professional literature when you had a case that somebody got sued for \$45 million and the law firm gave notice under its E&O policy. So that was fun. For me, it was a good chance to be in private practice and still maintain the feeling that I was representing individual human beings. In addition to the insurance defense work, the firm also did a lot of insurance coverage work. That was, to me, extraordinarily analytical and you had to be way, way smart to do it. I did a fair amount of it, but I did not do it with the flair and insight that many of my partners did. On the other hand, if they had to take a deposition, they couldn’t run out of the room fast enough. So it was a good place for me to be able to do what I enjoyed doing and what I considered that I did well, which was the defense of real people.

MS. KAGAN: Right.

MS. GERE: So what do you think, Barbara?

MS. KAGAN: Up to you.

MS. GERE: How much more time should we go? Maybe this is a good place to stop because I would like to get my thoughts distilled for what I want to talk about in private practice, and I need to follow up on something that you said.

In making my decision to go Ross Dixon, I felt that it was a good place to go for me because there were women there, and that's something that I'd like to talk about the next time we get together because at that point, again, there were not necessarily, even in Washington, an abundance of women in litigation. I knew that was going to be a significant transition for me leaving the Justice Department, which had many more women, and they were in many more senior roles than in law firms.

MS. KAGAN: Sounds like a good plan.

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 by Zoom on Tuesday, August 11, 2020. This is the fifth interview.

MS. KAGAN: Hi Sally. This is a follow-up to our session last month. I don’t know how many sessions we’ve had so far, but they’ve all been wonderful. Good to see you again.

MS. GERE: Good to see you, Barbara, even if it’s only virtually on a screen, but you look very good. I’m happy to be here.

MS. KAGAN: When we left off last time, you were going to be getting into the world of private practice and why you came to it, how you came to it, what you did there, and how you liked it.

MS. GERE: Well, I think as I left my story, I was at the Department of Justice as a Senior Trial Counsel. I was very much enjoying the work, and then one random week, two of my former DOJ colleagues, who had gone into private practice, called me and said their firms were looking for someone with trial experience to join them. It seemed to me that as I was approaching my fortieth birthday and had never been in private practice that there must be some alignment of the moon and the tides and my birthday, and so I thought, you know, I ought to give that private practice a try.

I was very proud of the work that I did at the Department of Justice. I was immensely lucky to work with brilliant people at the Department of Justice, but for anyone who had not had that opportunity, I think people in private

practice tend to look down on people who have only worked for the government.

MS. KAGAN: Or had a small practice or a solo practice.

MS. GERE: Yes. And so I thought I need to test myself. I need to figure out is there something in my legal career that I have missed or in my own personal education that I've missed that I would gain in private practice. So I interviewed with two firms that my friends were working for. Both were very impressive. I thought it was an interesting exercise to talk with a private law firm about the next phase of my career, and the firm that I joined, Ross, Dixon and Masback, was a relatively new, I think maybe a three-and-a-half-year-old firm. It was a spinoff from the venerable Hogan and Hartson. A number of the people who left Hogan had been or even at that moment were on Hogan's executive committee, so it caused quite a kerfuffle when they left. They had an abundance of work and wanted to hire somebody who knew their way around the courtroom but didn't necessarily have clients because they already had too many clients. Those were the days. So I was in the right place at the right time with the right skill set.

It was exciting because all but one person, one of the name partners, all but one of the lawyers at the firm was younger than I, so I was betting on learning from people who were younger than I was, and I thought either that's going to make me run faster or I am going to say this is not a very good idea and go back to the Justice Department. I did not do that. Fortunately, the people that I worked with were terrific lawyers who just liked the fact

that I had probably more trial experience than just about any of them and government experience, but they were just immensely gifted lawyers. So as I had at Justice, I learned every day from my new-found friends at Ross Dixon.

My work at the firm primarily, particularly at the beginning of my practice –

MS. KAGAN: Let me just jump in. What year was that?

MS. GERE: I joined the firm in September of 1987.

MS. KAGAN: Do you want to talk about the runner-up firm?

MS. GERE: The other firm was then Jenner and Block. It was a much larger firm and had, as I recall, fewer women, and I, at the end of the day, was excited to be kind of at the beginning of a new business which Ross Dixon was. At this point, I can't even remember anything more than that other than I had some very good interviews at both places, but I decided to go with Ross Dixon.

MS. KAGAN: Did you have any way of discerning whether you were being paid the market rate being a female and out of government and at a small firm?

MS. GERE: As a government lawyer, I had no idea what anybody, and I wasn't at the time involved with anybody on a personal level enough to say so, what do you make as a guy or what do you make as a woman. All I remember thinking was that Ross Dixon paid me, and I can't even remember the amount, but at the time it seemed like a fortune and a signing bonus. But as a government lawyer, it didn't take a whole lot at that point to pay somebody a fair amount more than they had been making. And when I got to the firm, I went in as counsel, so I did not join the firm as a partner. They had told me I

think that they would consider me for a partnership in two years or something.

MS. KAGAN: It would be a lot longer today probably.

MS. GERE: Right. And at the time, honestly, I didn't even think I was going to be there two years. I thought I would go back to the Justice Department, so I thought I'd try this out for a year and see if I like it. I probably won't, so then I'll go back to the government. Of course that was naïve too, thinking that I can just pick up the phone and say two years later or a year later hey I'm ready to come back, and I'm sure the answer would not necessarily have been the one I wanted. But in any event, that was all academic because I was very happy being at the firm.

MS. KAGAN: What was the percentage of women in the firm at that time?

MS. GERE: At the time, I'm trying to think. There was one woman who was a partner.

MS. KAGAN: Out of how many partners?

MS. GERE: Out of I believe at the time there were six. It might have been seven. The numbers are a little fuzzy for me. But even one in 1987 was a significant number of women partners. In the firm itself, there were at least five or six women out of a couple of dozen, maybe thirty. So there was a good number of women in the firm, which I thought, coming from Justice where there were by the time I left, a number of women in the various parts of the Department. I thought this is a firm where they are more enlightened, shall we say. Being younger I think nobody had, well we always only hire men kind of mentality, but that simply wasn't the way it was. Certainly as time

went on and I was made a partner after I think I had been there a year maybe and then I was made a partner.

MS. KAGAN: Was it a surprise?

MS. GERE: Yes. I had no idea I was being considered, and I'll never forget either, when I became a partner, I called my mom who was still alive at that time, and of course there were no lawyers in my family, but I called and told her that I had just made partner, which was a big deal, and she was totally like okay but what did you have for dinner. I didn't really have a family where people understood the significance of that, and I'm not sure there was any reason why they should. I was still the same person, the same sister, daughter, whatever as the one who wasn't a partner.

So that was kind of the beginning chapter of how I got to the firm. The work that I primarily did was, this was in the time of the big bank failure crisis in the late 1980s, early 1990s. My firm represented a number of insurance companies. That was its stock.

MS. KAGAN: On the defense side?

MS. GERE: On the defense side. Well, yes and no. We were what's referred to as coverage counsel. We represented the company itself if it were sued for bad faith or if it got embroiled in issues regarding legal fees that it was being charged or asked to pay as well as giving legal advice to the company as to whether a claim that had been made for payment under the policy was in fact covered by the policy. So it was a lot of very sophisticated contract analysis, but that was not mostly what I did. At least I did some of the coverage work,

but then the other part of what we did when an insured was sued and had coverage under its policy, for some insurers, the company controlled who would be appointed as defense counsel to defend that insured, and so that was more the kind of work that I did. Most of the work that I did was in defense of either lawyers or accountants, professionals, and so, for example, you were representing a law firm against a complaint that they had committed malpractice. You were actually looking at the merits of the claim, but you were being paid to do that job by the insurance company. So there were all kinds of legal issues about should an insured get to choose their own counsel or not or as defense counsel, was your allegiance to the client or was it to the insurance company or was it some hybrid. It was, to me, an entirely new world. This was not government litigation. I knew the rules of the road. I knew what to do in a courtroom, but I had to learn how to speak a whole new language. And here's the other irony. My grandfather began an insurance agency in Syracuse, New York. It was the oldest insurance agency in Central New York. When my grandfather, whom I never knew, passed away, my father was asked by his mother to come and take over the business so that it could continue and would support my grandmother as well. I think I mentioned earlier that I have three sisters. My father would no more have thought about having a woman run or help him run an insurance agency than fly to the moon, and here after his death, of course, here was one of his daughters defending insurance companies, the very insurance companies he

represented in his insurance agency. So it took a while for the world to evolve in my family, at least.

MS. KAGAN: Yes. Coming full circle. In a lot of those private practice cases, were there a significant number more that settled than in your government work?

MS. GERE: A lot of our cases, a lot of it was just figuring out how to get the best settlement, but that's true with all civil litigation.

MS. KAGAN: Right.

MS. GERE: The other thing that I did a fair amount of was mediation and arbitration. Again as ways of attempting to avoid the courtroom, but at the same time, you could not be an effective advocate at an arbitration or a mediation if the other side thought you're going to eventually capitulate because you don't even know where the courthouse is let alone when to stand up or which side of the courtroom to sit on. So you had to be able to bring your bona fides along with you.

I was very engaged in that practice. I thought it was interesting. I thought it was exciting. The cases that I worked on were failures of huge banks that were putting law firms that had been in business for decades at risk of failure, as well as international and national accounting firms. These were no small stakes. So I never felt that I substantively took a step down from the types of legal issues that I had at the Justice Department. Now, obviously, they were of interest to a much smaller group of people than those reading the front page of the *New York Times* or the *Washington Post*. But to the clients, they were very important.

MS. KAGAN: And in some cases, as a practical matter, they had more of an impact.

MS. GERE: Yes. So, I did that kind of work at the firm and maybe what I'll do is kind of talk about the work that I did at the firm and then I want to make sure that I talk to you about or that I include in this oral history my effort to balance being in private practice with no longer being in public service at the Justice Department. So pivoting back to the kind of work that I did at the firm. So I did that, and over time, I did some of the coverage work at the firm, meaning I represented the companies themselves in their issues about whether some part of their policy actually provided coverage under their insurance policy.

I also, and I'm not sure how or why, but as time went on and as employment issues more generally became, or came to the forefront, including for insurers because they were now writing employment practices liability insurance, I ended up defending a lot of employment cases on the direct defense side. So a lot of trade associations, non-profits whose staff, typically the CEO, had done something that someone had either sent a demand letter threatening litigation or they actually filed suit. And I found that very interesting because of the human issues that were involved, and coming closer to the end of my time at the firm, I guess probably more through word of mouth and the fact that I had this employment experience, I ended up representing a good number of women who were being eased out of the workplace for lack of a better description because they had gotten older, they were more expensive, and they were frankly more vulnerable to

somebody coming in and saying we want new blood here, we want new faces. I loved working on those cases.

MS. KAGAN: You were still on the defense side in those cases?

MS. GERE: Well, I was representing, this was just a woman would call me, and I would be retained by the woman. It had nothing to do with any of my insurance cases.

MS. KAGAN: So you were doing plaintiff side work as well?

MS. GERE: Right.

MS. KAGAN: There are a lot of firms that won't go both sides.

MS. GERE: Right. And, of course, I always had to ensure that there were no conflicts for any of the firm's clients. A lot of the women that I represented frankly needed a voice for themselves because it's very hard to advocate for yourself, particularly when you are a woman of a certain age and that's not the way you've been trained, it's not the way that you've been expected to act, and if you did, that would be further confirmation of why you should be out the door. For most of those cases, what I attempted to do was to help women move on because I knew and could explain to them the risks of litigation, both financial and emotional, and could look at where they were and figure out where the pressure points were where I could get the best exit package possible for this person. I took pride in what I was able to accomplish. I think it kept me connected to being active in the practice of law believing I was doing something that I thought was for the good of another individual.

MS. KAGAN: I understand.

MS. GERE: Which sometimes in private practice, particularly when you're in a corporate practice, you, I think, sometimes don't even think about the personal prices that are being paid by people.

Anyway, so I did that, and that was very interesting. While I was at the firm, I also represented, and this was back through more often than not an insurance carrier but representing a lot of non-profits and trade associations on governance issues, on relationships, what's the role of the CEO, what's the role of the board, what's the role of the membership. What are the bylaws, how should bylaws be constructed. So I learned a lot about non-profit law and non-profits, which is also interesting. There's a theme here. I was a litigator. I was somebody who knew the rules of the road, if you will. I knew the Federal rules. I knew how to read the local rules. I knew how to read state court rules. But I always got to learn some new subject matter, which I thought was what kept the practice of law interesting.

MS. KAGAN: Yes. And with a lot of matters being fact-driven, it's always a new day.

MS. GERE: Right. And you really have to immerse yourself, and you really have to know the facts because so much turns on finding that one little piece of information the other side overlooked or never thought about. It makes a big difference.

During some of my time at the firm, I was on the firm's recruitment committee. I became the I don't know whether I was ever formally named as Ethics Counsel, by that title, but after a while, I became the person everybody

came to and essentially said well if Sally thinks it's okay, then you can do it.
If not, we need to think about it.

MS. KAGAN: But you didn't have every answer right at your fingertips.

MS. GERE: Oh gosh no. And after some period of time, my firm of Ross, Dixon and Masback merged with a firm in San Diego, California, and became a larger firm. It was a national law firm, and as we grew, of course, issues of conflict became more complicated, and the firm took all of those issues very seriously.

MS. KAGAN: What firm did you merge with?

MS. GERE: We merged with a firm that basically was led by a lawyer by the name of Roy Bell, maybe ten lawyers with him, but by then, Ross, Dixon and Masback had established an office in Orange County. We had an eclectic firm at the beginning. We had a very significant First Amendment practice, and we represented the *Orange County Register*, the newspaper. The *Register* wanted us to actually have lawyers in California. We opened an office in Orange County, and then our insurance clients said that's great because now we've got counsel on both coasts. Eventually we also had an office in Chicago, so the firm, during the period when firms were more flush, we were beginning to expand, and at that point, our ethics issues and other issues that might fall more generically under those of general counsel were coming more to the fore, and I, after a while, went to our management committee and said I would like to be formally recognized as general counsel, and here's what I think the duties should be and how this should

operate and have other partners work with me as needed on issues. So the firm agreed, and we did that. I did not get a break in my billable hours, but the idea was we have people who work on recruiting, we have people who work on the executive committee, we have all kinds of people doing all kinds of things, so this will just be your administrative contribution. At some point I kind of pushed back on that. Anyway, that's another part of the story, but as the firm grew larger and ultimately when we merged with Troutman Sanders, which wasn't until 2009. How funny. As we are talking, something just popped up from Troutman on my computer. It must be an alumni newsletter or something. Anyway, when we merged with Troutman, there was an established general counsel's office and there were representatives in each of the cities who were assistant general counsel. I was not at that point general counsel for the entire firm because I was not with the legacy Troutman people, but I remained the primary deputy general counsel in D.C. for the firm.

MS. KAGAN: Were you consulted before mergers to determine how difficult the conflicts that would arise would be to overcome?

MS. GERE: We had a lot of conversations, and at the time that we decided to merge with Troutman, my recollection is that I was on the executive committee at that point so I was quite actively involved in is this going to work and how is it going to work and who might be a beneficiary or who might lose business or who might be forced out. It was compounded because in D.C., we were the only physical Ros Dixon office where there already was a Troutman office,

so it was physically putting people together from the Ross Dixon Washington office and the Troutman Washington office. In all of the other geographic areas, Troutman had, and still has, a big presence in Richmond and it's an Atlanta firm. But in no other city were the two firms physically thrust together. Now we're married, here you go, figure it out.

MS. KAGAN: Did it require a physical move?

MS. GERE: Yes, which was probably a not insignificant part of our decision-making process for Ross Dixon was coming within reaching distance at the end of our lease at 2001 K Street, and Troutman had sufficient space at 401 Ninth Street, so Ross Dixon moved to the Troutman space.

MS. KAGAN: Was that the first really significant merger?

MS. GERE: Yes. In terms of numbers and the overlap in physical space. Troutman was significantly larger than we were. Troutman recently again has merged with Pepper Hamilton, and now it's really huge.

MS. KAGAN: Was there concern about a change in the culture, how the smaller firm, by your bootstraps kind of mentality, would be affected?

MS. GERE: Yes. The merger with Troutman was probably an economic necessity. This again was really when the market and the economy were doing very poorly, and it was also for the younger people in the firm to say we want to be sure that there's a structure that's going to carry on because those of us who were at Ross Dixon in the early days, this is twenty-some years later, and so people are aging, and the younger folks want to know okay, what's the next chapter look like.

MS. KAGAN: Had not many younger attorneys been made partners?

MS. GERE: Yes. But they were the ones saying okay, are we going to be able to expand our business, should we be looking to get into some new area, cyber law, whatever. I have to say it was very bittersweet, and not everybody was enthused about it, although I think that's probably true of any merger. People who are happy with it, and people who are not. And there was a whole concern I think particularly for a number of the women in the firm that we were marrying a southern white male establishment law firm. That really was not who we had been heretofore.

MS. KAGAN: The percentage of women went drastically down.

MS. GERE: Yes. But the number of people went up when we merged with the folks in California. I'm not even sure though if they had one woman in that office. So that was a question for us at that point too. I don't think any of these mergers are matches made in heaven, frankly.

So that's kind of as the firm evolved, my professional work evolved, and mostly I remained in the litigation area, although with the time that I represented a number of women, I would say that was more traditional legal counseling, but the end game, if there were not a resolution, was going to be litigation, so I didn't get too far away from it.

MS. KAGAN: What were some of the more interesting ethical questions that you had to face?

MS. GERE: Oh my goodness. Mostly they were without disclosing too much, but typically about whether we could take on a new client and particularly where

we represented this whole bevy of insurance companies who in turn had insureds. If we were looking at clearing a conflict, how did you do that. It was just the same kinds of issues that people come across today. It was not to me at the time so much the specific issues as there were camps of people. Do you want this firm to succeed as a business, we can't be turning clients down. There was a camp that said we can't be taking clients that we should not for ethics reasons be taking because we'll end up being disqualified as counsel or brought up on whatever bar charge. So it often was kind of negotiating with your own partners to enlighten them about how one should analyze the issues and what the risks were of making a wrong call.

MS. KAGAN: I assume that where there were client conflicts, we're talking about different substantive areas.

MS. GERE: Yes. Usually.

MS. KAGAN: And so were you able to get a lot of waivers?

MS. GERE: We did get waivers. I remember working on those and getting informed consent, and how do you get informed consent. I mean all those kind of traditional ethics issues. And I think to the credit of my partners, I don't recall ever being presented with a case regardless of whether it was the partner who brought in the most money every year saying damn it, we have to take this case. I never experienced anything like that, to the firm's credit and to the partners' credit.

MS. KAGAN: And nobody had to leave the firm because of conflicts?

MS. GERE: No. Our partners, that was before Troutman, our folks who had a First Amendment practice, eventually they peeled off because there were, from time to time, some conflict issues. They set off to form a new firm. There were, I think, four of them maybe who left the firm. I think they probably still have the top-ranked First Amendment practice in the country.

MS. KAGAN: Which firm is it?

MS. GERE: The partners were Lee Levine, Mike Sullivan, and Betsy Koch, so it was Levine, Sullivan, and Koch. Now I haven't checked lately as to whether people have retired, but it was definitely a thriving enterprise. Again, just brilliant lawyers, every single one of them. Betsy was one of the women who was at Ross Dixon when I joined. She was an associate. But again, she was one of the women who already was there, and obviously went on to do some very good work. I can remember getting, I hadn't been at the firm too long, I guess you have to kind of laugh at it. Lee Levine had an argument in the United States Supreme Court, and one of my partners, who shall remain nameless, or probably more than one, decided that befitting his new position, Lee really needed a wardrobe refresh, so I was tasked to go shopping with him and another partner. We decided what suits he should buy and what ties he should wear.

MS. KAGAN: Is this for the press?

MS. GERE: We have this person who's now going to be out in the public and the face of Ross Dixon, so let's spruce him up a little bit. This was not my idea. I was just the woman who was brought along on this endeavor. As I recall, we

went to, at the time, I think there was a big Britches, I don't know if you remember the men's store Britches of Georgetown, that's where we went to do the shopping. Anyway, the times in the early days of the firm were great fun. People were young. They were energetic, smart. They were hard-working, and we were making it on our own. So that kept me there certainly, and the idea of going back to Justice didn't cross my mind again for many, many years.

MS. KAGAN: How would you say the atmosphere, the culture, was different from the government?

MS. GERE: I would say that that was one of the things that drew me to the firm was because it seemed the culture was not significantly different. I did not feel at the firm, and maybe it's because I was made partner so early and I never really thought about that, but there did not ever seem to be competition with your colleagues. I didn't compete with my partners for business. I didn't compete with my partners for associates to do more work or for a secretary. It always felt as though we were in it together, and that's certainly the feeling that I had at Justice. It was different because while there was a great deal at stake in cases at the Justice Department, it was not as though you would ever have a client who would say screw that up, I'm done with you. And yet that happens in private practice. It was a different kind of pressure that, as my senior partner Stu Ross, repeated endlessly in giving advice to the younger and new lawyers. (I was younger than Stu, and he was the only one who was older than I was at Ross Dixon.) Stu used to say that "lawyers advise, and

clients decide.” He said you have to do your best to give them all the advice that they need to make a decision, that’s your job, and then you stop, and they have to make the decision based on your advice. Don’t ever mix yourself up with being the client.

MS. KAGAN: And then if a client asked what you would do, would you bow out of that?

MS. GERE: Or you would reframe and say if it were I, I would look at say, here are the risks, and you kind of try and do it that way.

MS. KAGAN: Being a woman, was it different being in the government versus being at the firm because there was more of a gender parity in the federal government than law firms.

MS. GERE: Yes. And there was, and this goes into the philosophy of running law firms, and that is among partners, whether you disclose to each other how much money everybody is making as a partner. In many firms at the time that was a highly-kept secret. Ross Dixon did not operate that way, so we knew what other partners made, but then, that opens another set of issues because people will say pick “x” partner and say I do the same thing that “x” does, and I’m not making the amount of money that “x” is making, and so compensation issues were handled by a compensation committee that was appointed by the partnership each year. It involved, along with whether to make somebody a partner, some very contentious financial issues.

MS. KAGAN: How many women were typically on the compensation committee?

MS. GERE: Until after I had been there for quite some time the women partners typically made less than the male partners. Everybody had a different way of valuing

their contribution. Did you look at billable hours, did you look at administrative work, did you look at the work in the community, the support of the profession, pro bono work, how did you make that calculation. I can remember many years people trying to sit down and come up with some way to objectify that.

MS. KAGAN: A formula.

MS. GERE: Yes. Some kind of formula. From time to time we did have formulas, but even a formula still has to have some elements put into the formula and has to have some latitude. And not surprisingly, either, until you're actually on the compensation committee, which I was multiple times, you don't really appreciate how difficult it is to make some of those comparisons and to make some of those decisions, particularly when these are people who are your friends and the colleagues that you work with. And sometimes the compensation committee got it right, and sometimes it didn't.

MS. KAGAN: Did partners do self-evaluations?

MS. GERE: After a while, yes, we did. And then we did, as part of your self-evaluation, you had to discuss what you did for the firm, what your plans were for the next year, what you plan to bring to the firm. That sort of thing. But it was always I think a difficult process, and I think that the women in the firm took longer to catch up financially, and I'm not sure that, frankly, they ever did.

MS. KAGAN: Was there any maternity leave policy?

MS. GERE: Not really. Not until D.C. law had some policies, but my three partners, one who was an original partner, had children, and the other two also. One who

was my DOJ colleague, she ended up having children, and then the third partner became a partner at the same time I did, she had children. All of them had spouses who worked. All of them had essentially live-in or functionally live-in childcare. All of my male partners had stay-at-home wives. I admire my female partners for what they were able to do in the face of the demands on them because there was no letup and no recognition of any additional role that all the women were playing.

MS. KAGAN: Were they at the firm when they had the children?

MS. GERE: Yes.

MS. KAGAN: So did they take time off without compensation?

MS. GERE: That's an interesting question. I don't remember. I'll have to ask a couple of them. I don't know. I should know, but I don't. And whatever it was, they were all such hard drivers themselves that I doubt they took anything more than whatever minimal amount, and probably continued working from home even though back in those days before computers that was a lot more challenging.

MS. KAGAN: Did you work harder when you were in the firm than in the government or work longer hours?

MS. GERE: I would say they were for the most part comparable, although overall I would say I worked longer hours at Justice. But again, I didn't have children, so if there was someone looking around for who can jump on a plane, who can stay late, for the most part I volunteered. But when someone simply says you

don't have a family so it's not as much an imposition on you, I think it's not a fair analysis.

MS. KAGAN: Right. It's not as though you were waiting for your life to be filled by more work.

MS. GERE: Right. Eventually, too, more women became partners and there were more of us to have a voice, which I think helped. Although, we had issues in the firm. I think there were, as in other firms, male members of the firm, that hadn't quite figured out the "me too" movement and being part of the structure of the office of what's appropriate, what's moral, what's ethical. People would come to me, and I developed a very close working relationship with our HR director, Terri Carnahan, so she would come to me with issues to discuss and how to handle things. I also was among the people that if there were any claim of harassment, I would do an investigation and determine what steps, if any, should be taken.

MS. KAGAN: How much sexual harassment was going on in the firm as far as you know?

MS. GERE: Probably about the same amount that was everywhere else, which, to me, was too much. I'm sure that people needed to have the curtain drawn back. People needed to understand that what they thought was a clever innuendo was in fact an unwelcome comment that potentially spoke of a bigger issue. But even at that, the founders of the firm, the people who controlled the most shares, were all men. I hope that it was a different era. I certainly found as I continued to travel around the country and go to courts in other jurisdictions and meet with lawyers in other jurisdictions that the fact of being a woman

became less remarkable and you were viewed more as a professional and that's the way you should be treated. I think even in the context of the firm, it took a while before some of these guys recognized I'm one of your partners too. I happen to be a different gender, but that doesn't give you either latitude to treat me unfairly or to harass me or whatever. It was dicey, I have to say, because there were people who left the firm and they were women.

MS. KAGAN: So you said that the partners who had children when they were already at the firm were very driven, so they really didn't care much about any kind of maternity leave. But was it also because they felt they would slip behind in their careers and in the way they were perceived at the firm if they took maternity leave?

MS. GERE: Yes. I would say definitely yes, with a healthy dose of they're just Type A personalities, that they were going to be the best that they could be regardless of their maternal state.

MS. KAGAN: And so the sexual harassment was less in the government?

MS. GERE: Yes. Definitely less. That's based on my observation.

MS. KAGAN: But you do get a sense.

MS. GERE: Yes. And, of course, back in the early days when I was at Justice, there wasn't any such thing as sexual harassment to anyone's observation or acknowledgement.

MS. KAGAN: Was the Women's Bar Association in existence by then?

MS. GERE: Yes.

MS. KAGAN: And so were these kinds of issues that came to the fore?

MS. GERE: But Barbara they came to the fore when I was clerking for Judge Green who was a woman, and she was treated very differently on the bench by the lawyers who would come into the courtroom than they would have ever treated Judge Gesell next door or Judge Jones at the end of the hall. I was clerking in 1972, 1973, 1974. These were times when there weren't women on the bench and there were a lot of older men in D.C. who could not accept the fact that there was a woman sitting up at a higher level on the bench telling them or their clients what they had to do.

MS. KAGAN: Well hopefully they did that at their own risk.

MS. GERE: Well, yes, which I always thought was crazy for them and their clients.

MS. KAGAN: Were they even aware of it?

MS. GERE: I'm confident it was on behalf of a number of them flat out intentional, trying to say can I get a rise. I guess that made me think about it because my judge was president of the Women's Bar Association years before she went on the bench. She was well aware, and I think was unfairly held to a different standard and criticized more than her colleagues for doing the same things.

MS. KAGAN: Criticized in evaluations, outside evaluations?

MS. GERE: People would, word of mouth, I guess.

MS. KAGAN: Probably in the hallways kind of thing?

MS. GERE: Yes. But I got to see up close and personal as the judge's law clerk, and I also took time during my clerkship to go and watch how other judges conducted their courtrooms just because it was something the judge encouraged us to do as part of our learning process.

MS. KAGAN: So did your judge talk with you a lot about that?

MS. GERE: Yes. She was definitely of the era that you simply had to work harder and be better prepared and have a very thick skin. Don't let it get to you, don't let them see you sweat, don't let them see you cry. And that's why I was so fortunate to have a role model. So many women in the courtroom didn't. I was thinking about that as I was reading this book that I was telling you about, *Shortlisted*. Looking back at my career how unique given when I graduated from law school and was looking for legal jobs that my very first supervisor was a woman. Two of the Assistant Attorneys General for whom I worked at DOJ were women, and of course I clerked for Judge Green before I went to Justice, so before I ever got to private practice, I had been in workplaces where women were in charge. There hadn't been a woman Attorney General, but the Attorney General would have been so many levels above me it wouldn't have mattered on a day-to-day basis. It was the Assistant General that ran the Division. One of the Assistant Attorneys General for whom I worked was Barbara Babcock. She was a formidable lawyer and definitely a formidable woman and somebody that I interacted with on virtually almost a daily basis in certain of my cases. And Alice Daniel, who was the next AAG, was as well. So I was really very lucky to have women that I could model myself after. Every single one of them was head and shoulders in my view above the men around them.

MS. KAGAN: There was some school of thought that women attorneys as supervisors were tougher on younger or less experienced women attorneys than they were on the men.

MS. GERE: I had heard that, and ironically, where I heard that most was when I went into private practice, that none of the secretaries wanted to work for the female partners because they were more demanding. I don't recall any of the female associates saying I don't really want to work with her because she's a woman or any of the male associates either. It was more the secretaries, and that seemed to be the rap. Of course I had at the firm three spectacular secretaries with whom I still stay in touch. We had some times, but we figured it out. With my last secretary, she'd been there long enough, she'd seen everything. She already knew it all.

MS. KAGAN: What other activities were you involved in while you were at the firm?

MS. GERE: This was, as I said, I regretted leaving public service when I left the Justice Department, so I started looking to do other things that I thought would offset private practice. So at the firm, I did a number of pro bono cases. When the firm first started, we were all about pro bono, and everybody got credit for every hour of pro bono that they worked the same as for a billable hour.

MS. KAGAN: That was enlightened back then.

MS. GERE: That was definitely enlightened. We ended up with one of our lawyers, David Dwares, being selected as Pro Bono Lawyer of the Year by the bar. We had terrific results for various clients. I handled both the supervision of some of the younger lawyers who were doing pro bono litigation, and I also

then took on some cases myself. One involving a very complicated custody and divorce case, and that went on for years and actually went to trial. It was quite something. Another case that my firm and this was I think to its everlasting credit took on pro bono was on behalf of a Justice Department lawyer who had not gotten his renewal notice from the bar to pay his dues and had then not paid his dues. He ended up through a set of circumstances where the judge looking at another issue found that the lawyer had been administratively suspended from the bar and so he had practiced for about a year without being licensed to practice law.

MS. KAGAN: I know this case.

MS. GERE: So we got a TRO on behalf of the lawyer that kept the Justice Department, which was about to make him file notices with courts around the country advising that he had been practicing without a law license. The bar also refused, even if he paid the dues, to retroactively admit him. So the period of time of unauthorized practice of law was always going to be on his record, hence the Justice Department couldn't continue to employ him. He had been at Justice at that point for 25 years and just been the subject of a federal opinion extolling his virtues and discussing what a great lawyer he was and what a fine job he'd done on behalf of the United States. It was not the bar's finest hour, shall we say. It was the bar's system of keeping track of lawyers and dues that was the problem. It was antiquated, it didn't operate properly, and then they had this notion that if you missed the deadline, you were just out of luck—there was no way to make a correction. Michael Sitcov was the

name of the lawyer at Justice. The system was unfair at best, unconstitutional at worst. There was another situation involving a lawyer who had been serving in, I don't remember which war, maybe Iraq. He had failed to pay his dues, and his father tried to pay them, and the bar wouldn't reinstate him retroactively. In any event the case involving Mike Sitcov became a federal case when it never should have been. It was before Judge Emmet Sullivan in the D.C. federal court. Judge Sullivan had, as you probably know, previously served on the D.C. Court of Appeals.

MS. KAGAN: And Superior Court.

MS. GERE: Yes. And Superior Court. But it was his time as a D.C. Court of Appeals judge that influenced him in the *Sitcov* case I believe. The D.C. Court of Appeals oversees the admissions process of the bar. And so Judge Sullivan basically said I think you ought to go over to that court and ask for its view. All this did was increase exponentially the cost to my client at which point my firm, as I say to its ever-lasting credit, handled the case pro bono and allowed us to continue litigating. In any event, the Court of Appeals said well, we can't address the constitutional issues that you raised here and so at the end of the day we're going to send it back to Judge Sullivan. And so it went back to Judge Sullivan who said, really, can't you settle this case. This is getting crazy. And so we ended up going to mediation with a court-appointed mediator from the D.C. Circuit Mediation Panel who was phenomenal and settled the case with Sitcov being retroactively admitted and wiping clean his bar history and restoring his record without blemish, as it

should have been. The bar thereafter has definitely cleaned up its antiquated processes. It was a “bet the company” case for Mike, this man who had worked tirelessly for his whole professional life at Justice was going to have it all taken away because the bar did not send him a notice. Yes, we should all remember all kinds of things. But, if you want my money, you need to send me a bill and tell me it’s time to pay. If you don’t do your part, I cannot do mine. So that was a fascinating case. But that was only one part of my relationship with the D.C. Court of Appeals, that was my pro bono litigation. But several years before that, one day I got a call from the Chief Judge of the D.C. Court of Appeals, Annice Wagner, who asked me if I would be willing to serve on the court’s committee on admissions.

MS. KAGAN: Who was the judge?

MS. GERE: Chief Judge Annice Wagner. I knew who Chief Judge Wagner was, but I didn’t know her well, and I had truthfully no idea what the committee on admissions did. She made it sound very engaging and my thought was since when do you ever say no to the Chief Judge who calls you to be on a committee. So I thought okay, I’ll figure it out. As it turned out, the Committee on Admissions, which is an arm of the D.C. Court of Appeals, is responsible for the administration of the bar exam and recommendations to the court on the character and fitness of bar applicants for fitness to practice in the District of Columbia. When I first was appointed to the committee, that meant I wrote the questions that were asked on the bar exam for certain topics and I graded the exams and I sat essentially as a trial bench with the

other members of the committee on character and fitness issues. For example, if you passed the exam, were you fit to practice law—had you committed a crime, did you have issues with bankruptcy, had you abused your spouse, all manner of issues, each one very interesting but each one very troubling, and it took a fair amount of time.

MS. KAGAN: Was this after the *Sitcov* case?

MS. GERE: No. This is years before. But having been on the Committee on Admissions for two terms and my ethics role at the firm, I then represented a number of people who were trying to be admitted to the D.C. Bar and had something in their background they knew was going to be a problem. I developed another niche area of practice as a result of court service.

MS. KAGAN: Yes. A niche practice.

MS. GERE: Right. But this would have been fairly early on. I'm trying to remember what year. I was on the Committee on Admissions for eight years. It was very time-consuming. There would have been back then, probably a couple of hundred people who took the bar exam, maybe 250, so you would have that many bar exams to grade. And the way it was done was we divided up who graded which questions.

MS. KAGAN: Internal consistency.

MS. GERE: Yes. And grading consistency. And then we would go to Chicago and have organized trial runs on grading because the National Conference of Bar Examiners started writing uniform national questions and attempting to impose some consistency on how questions were graded. But the grading of

bar exams was quite time-consuming. And then the number of people who had issues with their admission to the D.C. Bar even after they passed definitely took a lot of time. I was on that committee, so basically, I was a bar examiner from 1995 to 2002. We had during the time that I was on the committee we had a very senior partner from a very well-known firm who had been practicing law in the District of Columbia for about a decade at a D.C. law firm without ever getting admitted to the D.C. Bar. By the time somebody said to him you may think you're pretty hot stuff, but you have to be a member of the D.C. Bar, he had a problem. It might have even been an opposing counsel who complained. I don't know how it came to light. He may have actually filed an application after somebody suggested that he seek admission. We had expert witnesses. We had the name partner of the firm who came in and testified. And I think as a result of that, of course, the Committee on Admissions has no authority over a law firm qua law firm, but it sent a signal to the legal community and to law firms that you don't want to be held up to this embarrassment, so to the extent as a firm you are paying for the lawyers in your firm to belong to the bar, you better be checking that they actually belong to the bar as well as paying their dues.

We had so many interesting matters. Another one that was a real cutting-edge issue is that we had an individual who had been involved in the murder of the first female officer killed on duty in the District of Columbia, and he applied for admission to practice law in D.C. There are a number of jurisdictions which have automatic prohibitions against admission. If you've

been convicted of a felony, don't even think about going to law school because you won't get admitted to the bar. D.C. has a somewhat different standard, and back in the day, I don't know, I haven't looked at the cases in a while, it used to be an eleven-factor test as to whether you had taken responsibility, how long ago the crime was committed, how old you were, what your role was, what you have done with your life since. There is a question whether you have rehabilitated yourself. In the matter before us, the person who had applied had done meaningful work while he was in prison and had been admitted to law school with the full knowledge of the dean of his background. The students elected him president of his law school class, and so if one believed in redemption and followed the case law, you had to give careful consideration to all of it. At the end of the day, my recollection is that he was on parole, and that was one of the disqualifying factors for admission in D.C.

MS. KAGAN: He was still serving a sentence?

MS. GERE: Yes. He was released but still under sentence. I believe he applied for his parole to be concluded. After I was off the committee, I lost track of it. But we had all kinds of issues with all sorts of people. Sometimes you would just sit there and say to yourself, how did you think you were going to be a lawyer. You lied on your law school application, you cheated on the bar exam or whatever the transgression.

MS. KAGAN: How do you cheat on the bar exam?

MS. GERE: Oh my. We had lots of those cases. People were very ingenious about writing things on paper, on themselves. This is of course in the day before computers. You couldn't even use a computer for the bar exam, but people would write codes to themselves on parts of their body and then go to the restroom or try and take a backpack into the toilet stall. We had people who worked out with somebody else, turn your test paper a certain way so I can see it, but we'll sit next to each other. People are creative, and not in a good way. What makes you think you would ever be a good lawyer. A client is supposed to be able to trust you.

So fast forward, not only was I then for two terms on the Committee on Admissions looking at people at saying I'm not sure we should admit you because you know what, we're going to see you down the road before Bar Counsel because you will have done exactly what we feared you would do. So then I served two terms on a hearing committee for the Board on Professional Responsibility, another court appointment. In other words, the trial court that hears Bar Counsel complaints against lawyers who have been charged by Bar Counsel. Again, fascinating cases. Sometimes you would look at them and say there but the grace of God, and others you would look at and say what were you thinking.

Of those cases, the most interesting case that I worked on involved a former federal judge, Abraham Sofaer, who was the Legal Adviser at the State Department when a Pan Am airliner was downed by alleged Libyan terrorists. Sofaer left the State Department and went to work at a private firm

and was representing Libya in connection with the downing of the plane. So then-bar counsel Len Becker, another brilliant lawyer, decided that this warranted a sua sponte charge, so he, as Bar Counsel, filed the charge for violating the District's Rules on Professional Responsibility. I was on the hearing committee that was assigned to hear that case. There were very high-powered lawyers and considerable testimony. I think it went on for two weeks maybe. Meanwhile I was still trying to juggle my law firm work. These are things I was supposed to be doing in my spare time and not my billable time. At the end of the day, we concluded that he had violated the D.C. Rules on Professional Responsibility and should be sanctioned. We wrote a very lengthy, I want to say sixty- or seventy-page opinion. I should give due credit. The person who had the heaviest pen because you sat in panels of three, two lawyers and a non-lawyer. The other lawyer on my panel was Glenn Fine, whose name you may recognize because he was the Inspector General at DOD who recently was asked to resign from the position—solely for political reasons. Glenn is a brilliant, brilliant lawyer. So obviously it was a pleasure to work with him. He was so smart. We, mostly he, crafted a terrific opinion that I thought was exactly where it should be. Our non-lawyer member was not in agreement. The bar member, Judge Sofaer, appealed, but was not successful. The appeal goes from the hearing committee to the Board on Professional Responsibility, which adopted our decision. Then, if it is appealed further, it goes to the D.C. Court of Appeals. The D.C. Court of Appeals upheld the decision by the Board on

Professional Responsibility against Sofaer. He then appealed to the Supreme Court but was unsuccessful there as well. I don't think the Court even took cert. So that was very interesting.

I always had a lot on my plate because that was not all I did. I was on a number of other court committees at the same time. And then along the way, tell me to stop when you're ready, but along the way, I also decided that it would be very good to teach, particularly at the time, and this would have been in the mid-1990s. The person that I was dating, Bill Causey, had been teaching. First, he taught at AU, and then he taught at Georgetown where he taught a trial practice course. I remember saying to him, do you have women in your class, and he said yes. I said what kind of role model are you. You need to have a woman in there. So one thing led to another, and I applied to become an Adjunct Professor. For many years, we co-taught a course on trial practice, and eventually, the dean asked us to come up with a course that was two semesters long. So the first semester was basically the building blocks of civil litigation, doing discovery, interviewing witnesses, selecting your client, figuring out which court you're going to be in. And then the second semester was the traditional trial advocacy, how do you do an opening statement, a direct examination, a cross examination, a closing argument. But this was putting the two pieces together so people understood there was actually a good reason to think about what kinds of interrogatories you were sending out or what questions you were asking in a deposition because those were the underpinnings for when you had to go to trial. I think

there's a real disconnect for young lawyers who want to litigate to understand how that process really all fits together.

So I taught at Georgetown for a couple of years with my then-significant other, now my husband, and then he moved on to teach other things. Teaching together was not the best thing for our relationship anyway. We have very different styles, which was one of the things I think that the students liked. So I set about finding another professor to teach with, and, over the years, I taught with several of my male partners at the firm, each of whom had very varied careers and strong communications skills and would introduce a different perspective from mine. I think the students in the class enjoyed that, and seeing that trial practice, the rules are the rules, but how you use the rules and how you personally present something to someone, there's discretion, there's flexibility. You've got to figure out what works for you as much as anything, figuring out how to be a good lawyer in the courtroom.

MS. KAGAN: Did you talk to the women about how they should dress in court?

MS. GERE: You bet. Because when I first started, and the way that the class culminated, the two-semester class, was that the students would actually try the case that they had been working on all year before a real judge. Sometimes I was able to talk a federal judge into it. Sometimes it was a Superior Court judge. Either way, they were terrific people and saints for taking a Saturday to help train new lawyers, because it took a whole day to preside over one of these trials.

MS. KAGAN: Did you have a jury?

MS. GERE: Yes. We would have a jury. We frequently asked the students to, at the beginning the year, we would say each of you, and we had maximum enrollment of eight students in the class, each of you will be responsible for at the end of the year for putting two people on the jury for an entire Saturday in the springtime with whom you have not discussed any of the case over the preceding year. We had one student who got his high school English teacher, who had been such a role model for him and encouraged him to go to college and then to law school, to come and sit on the jury. We had people's parents, we had other students. So it really was good because we had a whole collection of people, and then as part of this exercise, the jury got instructions from the judge, they went back to the jury room, they deliberated, and while they were deliberating, the judge did the constructive critique of the performance of each of the students, and then we would bring the jurors back in, and they would render their verdict. Sometimes there were some shocking results. People who thought I put my friend on there, my friend wasn't supposed to vote that way. Then we would all go out and have a drink and debrief and talk about the trial and the class. The other professor and I, whichever person it happened to be, would wish the students well. I was uncannily lucky that two of my star students, Brant Martin and Matt Blecher, from my entire teaching career came to work for me at OAG. One of them, Matt, is still there.

MS. KAGAN: Did you try to recruit them?

MS. GERE: Yes. I told them this would be a good place for you to work, and that was at the beginning of when we had what was, and still is, a very active legal fellowship program, the Charles F.C. Ruff Fellows Program, that Attorney General Irv Nathan began. It was a one-year fellowship that was offered in local law schools. We, the Office of Attorney General, put up part of the money, and the law school put up the other, and then the students came to the Office for a year. If the Fellows had done a good job and they happened to get lucky and there was an opening, a number of them got to stay on at OAG. Life works in strange ways.

I enjoyed teaching. I was very gratified that Georgetown, which every year gives out an award for the best adjunct professor, awarded it to me one year. It's always nice to have an accolade.

MS. KAGAN: When did you stop teaching?

MS. GERE: I was diagnosed with breast cancer in 2012, and I did go back, as I recall, and I taught a couple of years after that, so I think I had a hiatus. I think I missed one year with treatment and so forth, but I did go back. I ended up teaching until 2015. A good, long run, 1994 to 2015.

MS. KAGAN: Where'd you find good replacements?

MS. GERE: Never letting any prior tie get too cool, one of the people that I got was Jimmy Rock, an associate who had worked with me at Ross Dixon. He left the firm to join the Office of the Attorney General before I did, before I had even thought about it. So he was there at OAG when I joined in 2011, and he's still there to this day. Another brilliant lawyer. He was, I had watched

him in court. I had obviously grown up with him from the firm to OAG. He did work for me, and I just knew that he was the next generation, the new technology, the new techniques, so I was very excited. I taught with him toward the very end, and then I decided to step back. There was another young lawyer who had worked for me at OAG who was extremely impressive and had tried a lot of cases, so I knew that she, Esther Yong McGraw, and Jimmy Rock would make a great teaching team as they also had worked together at OAG. They were in different parts of the Office, but through circumstances had ended up working on something together, so I knew they could get along. They kept up the teaching for several years after that. Esther then had a baby and just didn't have the time to work, raise her child, and teach. Then Jimmy got promoted, and he got too busy. Oh well, but we all had a good long run.

So that was good. And I had some other things that I did, at least during that time period, more for the District Court. There was a Lawyer Counseling Panel which I think the court now has let go dormant, in part because the bar has picked up and has so many resources. But the Lawyer Counseling Panel at one point was very active. Lawyers who practiced in the district court were referred to this committee, and we were tasked with working with lawyers before they made egregious law practice mistakes—or after having problems, helping to teach and correct them. They needed help figuring out how to balance their practice or refreshers on some of the substantive areas, so it was sort of like a super-mentoring role. I worked with

three or four lawyers over the time I was on that panel. Some of the issues the Committee handled, the bar has a lot of resources on now, practice management, and they have lawyer counseling that is staffed by professionals with counseling degrees and experience, that sort of thing. So that was another interesting committee assignment. You look at some of these lawyers and say oh my gosh. Others you go there but the grace of god because I could have gotten crosswise with that judge too.

During that time I was regularly asked to be a member of the D.C. Circuit Judicial Conference, which is the conference that meets every other year with judges and lawyers. It's an honor to be asked to attend, and it's all by judicial invitation, unless you hold some position, for example, you've been chair of a court committee. I always felt that it was necessary to give back to the profession and to do pro bono work because I was no longer in government service. These were some of the ways that I made sure that I didn't lose touch with how real people and real lawyers dealt with the world. I think that contributed to my satisfaction with private practice, if you will.

MS. KAGAN: Did the firm continue to give full credit for time spent on pro bono work?

MS. GERE: No. And then we went through various iterations of who would get it and was it a percentage of the hour. It got fairly sophisticated. I can't speak for now. I don't know, and I did what I was doing for the couple of years that I was at Troutman, but that would have been carried forward to what already had been pending. That was part of I think the appeal of the firm in the first instance too was that when it was young, it was very committed to pro bono,

to the point that we used to sometimes laugh that the people who would apply to us, the first question would be when can I start working on pro bono cases, and you'd have to say well there are a couple other things that you also have to do at the same time. People were somewhat naïve, and we may have overplayed the stock and trade of our firm, but not exactly.

MS. KAGAN: It would go in cycles, and depending on what the job market was like, students might not even raise the issue.

MS. GERE: Right. And while I was at the firm, because I really wanted young women to join the firm and once they joined, to succeed, I did, not to the exclusion, because I always had close relationships and some of the best associates that I worked with and the ones I remained close to, were men, but I really tried to make sure the women were treated equitably and became partners when they should have and got the work that they should and were treated by the same tests or actions that the men were. Unfortunately I was not always successful.

MS. KAGAN: Did you have a lot of associates come in, close the door, and complain to you or look for your advice?

MS. GERE: Yes. Regularly. There came a number of times when I would have to say to people stop, I'm a partner, and what you tell me, I know you want to keep it confidential, but as partner, I have an obligation to the partnership too. It was always very difficult. I thought it was important for any lawyer, and I had staff who came to me, men as well as women, and close the door. I never wanted to discourage people from talking or pursuing what they

thought that they should. I just needed them to understand that at a certain point, I would have to be putting on my partner hat and that they needed to be aware of that. I always thought that was kind of unfortunate. We had a very savvy HR director, Terri Carnahan, who had started out as a messenger. She was really something and just did a terrific job, educating herself and being someone who could spot personnel issues and work things out. That was one of the additional misfortunes when we merged with Troutman Sanders, there was a question about an overlap in D.C. of administrative staff, and Troutman tried to figure out how to work people in, but it ended up that I think five of our administrative staff, including the person who had been our COO, five of them got picked up and hired by another law firm here in the city as a group, and they're still working together. One of them has retired. The rest of them are chugging along. That firm doesn't realize, or maybe they do by now, it was quite a few years ago, but what a good deal they got. They were consummate professionals. It was a loss for us. The people at Troutman were good, but they weren't my Ross Dixon colleagues. I don't mean to say it that way, but they weren't people I had grown up with and helped form and understood how they thought and always knew I could trust and rely on. It wasn't that I couldn't trust or rely on the people from Troutman.

MS. KAGAN: It takes a while. Well, good. So is this a point that you think makes sense to break?

MS. GERE: Yes. I think so.

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 by Zoom on Thursday, August 27, 2020. This is the sixth interview.

MS. KAGAN: Good afternoon, Sally. We’re here for another installment of your interviews.

MS. GERE: Good afternoon, Barbara.

MS. KAGAN: Do you want to do the recap that you had suggested on where we left off?

MS. GERE: Sure. I believe when we last left off in this story, I had, through serendipity, been given an opportunity to give back to the city and go to work for Irv Nathan, who had been named as the city’s new Attorney General by then-Mayor Gray. I jumped at the chance. First of all, Irv Nathan is a lawyer who is unparalleled in terms of intellect and public service, so the opportunity to work for him was very attractive. Second, I wanted to close my career in public service. The time was getting near.

MS. KAGAN: How well had you known Mr. Nathan before?

MS. GERE: I knew Irv professionally. Not a close friendship, but professionally. I also knew his wife professionally. She and I were, and still are, very active in the Girl Scouts, and we worked together on a board. So I knew both of them and was very impressed. Judy Walter, Irv’s wife, is a force of nature herself in her own field and is a truly remarkable woman. So, Irv made me an offer. I, as I said, was very excited about the opportunity. I was not particularly excited about the pay cut, which was enormous, but it was an opportunity that I really did not want to forgo, and I guess maybe the luxury of having

reached a point in my career where I was at the twilight zone, money was not the paramount interest.

MS. KAGAN: How old were you when you made the switch?

MS. GERE: Let's see. I left the firm in 2011, so I was 64, almost 65, when I left. I'll tell you the other thing, and it may sound a little strange, and I hope that I mentioned it earlier on in my conversation with you, Barbara, but my very first job in the law while I was still in law school was at what was then called the D.C. Corporation Counsel's Office. So the D.C. Attorney General's Office was in fact just a new name for the former D.C. Corporation Counsel's Office. To me there was something, I don't know, poetic might be the wrong word, but something that felt right to close my career in the law where I had begun it.

MS. KAGAN: Before the opportunity arose, had you set a date for retirement?

MS. GERE: I don't know that I had set a date particularly, but as with most firms, Troutman Sanders was sort of keeping an eye on people's age and encouraging the older partners to begin transitioning clients to younger partners and start decreasing their activities in the firm. So certainly that was part of what was going on, and frankly, I had kind of done everything that I had hoped to do in a law firm, which was to establish myself as a good lawyer and one who served her clients well but also who served her firm well from the management committee, recruiting, ethics, general counsel, and my paramount interest in mentoring young lawyers, men and women. And I

thought now was the time while I still had some wits about me to go to a new position, and I thought this job at OAG was made for me.

MS. KAGAN: So, was it difficult to transition out of the firm? Did you have a lot to wrap up?

MS. GERE: I had a fair amount to wrap up, but probably unlike some people, I had always made an effort to work with other people, so there were very few of my clients that had not worked with other people in the firm, so when I left, they were able to make a transition. It was hard to transition away from the comfort of the firm, comfort both in terms of the people that I knew and worked with, not just the other lawyers, but the support staff, my secretary, paralegals, the messengers. The people who really, I worked with them as people, not as nameless, faceless co-workers. And so going to OAG was an entirely different experience. It was not different if I looked back at my days at the Department of Justice. It was just that there had been 25 years in between, and I had been much more self-reliant at Justice and then was certainly expected to be when I was at OAG. OAG was underfunded. The city was still coming out of the very grave economic problems that it had had with the oversight of Congress and the Control Board. So there were no frills at OAG. The office had gotten beyond what I had heard about as the not-too-distant horrors of lawyers being expected to buy their own copy paper and bringing toilet paper into the office because it was not being supplied. So things were pretty grim. I got there when things were beginning to right

themselves, and I give Irv Nathan credit for having a good relationship with the mayor and helping to right the office.

The work was on the one hand no different from what I had done pretty much my whole life which was to litigate. It was much more focused on litigation locally in the Superior Court and the District Court as opposed to my prior practice that had been nationwide. It was very different though in terms of the subject matter. I now was going back to my days of being a government lawyer where my client was the people. So my client was at OAG the people of the District of Columbia, which was exciting and gratifying, but it took a bit of time to transition to those being my clients. And, of course, the law had changed in the 25 years since I had been a government lawyer, so a steep learning curve. But at least I had had the fundamentals, so I understood things like sovereign immunity and qualified immunity, tort actions against the government, which is where I started out initially when I joined OAG. I started in the Civil Litigation Division, which was responsible for defending all of the civil litigation filed against the District of Columbia that was a tort action or a government contract, essentially those. It was a pretty broad spectrum.

MS. KAGAN: Wasn't that a lot of your caseload at the firm?

MS. GERE: It was a lot. The other Division in the office which was newly created shortly after I started was called the Public Interest Division, and that was created, or reconfigured, by Irv Nathan, and essentially that Division was responsible for the consumer protection actions, the affirmative litigation,

and defense of the litigation that involved class actions. So it was more programmatic challenges to the District's actions as opposed to individual actions, which were being handled in the Civil Litigation Division.

It was a transition for me honestly to go to the Civil Litigation Division because I went in as an assistant deputy to George Valentine, who was the Deputy of the Division.

MS. KAGAN: He had been there a long time?

MS. GERE: He was an institution in the office and frankly in city government. But for me, I had been my own independent agent pretty much for 25 years, and now I was officially somebody's assistant deputy. That took a bit of adjustment. George, and I'm sorry. This is a little difficult. George was brilliant. I learned a lot from George. I think I helped him become a better manager. He gave his heart and soul to the office and to the District of Columbia, and he was, of course, one of the first people who died of COVID here in the city. It was a blow to me because, although I had retired several years earlier, and George had gone on to be the right-hand lawyer to the Mayor, so we weren't working together any longer, but we remained friends, and we would get together regularly for brunch and to chat. I was texting with him the night that he was admitted to the hospital, and he died the next day. It was very shocking and a great loss for the city because George had been there so long, and he knew everyone, and he knew everything about the law. He graduated from Harvard Law School, so he was definitely no intellectual

slouch and kept everybody else who worked for him jumping. He did not let things slide.

MS. KAGAN: He had been working for the District government for his entire career?

MS. GERE: Ironically, he had started out as an associate at Troutman Sanders in Atlanta. He and I never overlapped, but it was sort of like one of those strange coincidences. George was a very private person, but he chose to leave Atlanta and come to D.C. and was interested in public service, as I understand it, and began his D.C. career in public service, which is where he remained. He had multiple people who tried to get him to come to their firms. I know Judge Sullivan tried for years to get George to apply for a judgeship, and George always said I'm doing what I like to do, and I'm going to continue to do it.

MS. KAGAN: Did he have a connection to D.C. before moving here?

MS. GERE: Not that I know of. He ended up having nephews here. He had some relatives. I don't know, they probably came here after George did, given their age, but I'm not sure about that.

So anyway, I spent probably about three or three-and-a-half years working with George in the Civil Litigation Division under Irv Nathan, who was then the Attorney General.

MS. KAGAN: Did you handle any individual cases yourself?

MS. GERE: Well, I did. Because that was one of the requirements that Irv gave me when he made the offer to me. There was, and still is, it's probably now I guess the oldest, because I think one of the older cases just got resolved, but it's one of

the cases that has been pending for the longest time in the District of Columbia. The case is *Salazar v. District of Columbia*. It was, and still is, a case that was brought against the District of Columbia in the 1990s and related primarily to the provision of Medicaid services to children, the EPSDT program. The District at the beginning of time was not handling the program as it should have. A suit was filed, and the case went through a couple of judges and ultimately ended up before Judge Gladys Kessler. Judge Kessler kept a close eye on the case and was always very concerned about the welfare of the children of the District of Columbia. Irv wanted me to be lead counsel on the case, so I was for years, until I left OAG.

At about the same time that I came to OAG and became responsible for the litigation, the Department of Healthcare Finance in the District of Columbia, which was where DC government involvement in the EPSDT program oversight resided, had identified a remarkable woman, Colleen Sonosky, to be the contact person and oversee the administration of the program. She and a couple of her staff members really just made remarkable strides, remarkable, in getting the program to where admittedly it should have been.

MS. KAGAN: So she wasn't an independent monitor?

MS. GERE: No.

MS. KAGAN: There was a settlement, I assume?

MS. GERE: There was a consent decree that was entered many years before. Well, without talking out of school, was one that was written in a time where

everything had been very different, everything from what was computerized, what there were statistics about, what other states, what other jurisdictions were doing. And Judge Kessler, I think in one opinion, acknowledged that it no longer was serving the purpose because it no longer spoke to the world as it was, particularly after the Affordable Care Act was passed. After that was passed, we were able to get some parts of the consent decree removed because they simply were no longer applicable. But the case remains. It was open, despite Judge Kessler's best efforts as she too retired with the case unfinished. As she frequently told us, she had an unusual way of handling the case. Nothing was ever done in open court. Everything was always done in the jury conference room. No members of the public were permitted even to observe the proceedings. She thought that it facilitated more civil conversation between the parties. It, though, kept a lot of stakeholders out of the process, and I think that was unfortunate. Some of them asked to have everything heard in open court, and the Judge never ruled on the motions. The District government firmly supported the motion because we thought more heads are better, and more ideas and more thoughts and more involvement might produce more solutions.

MS. KAGAN: They're part of The District's constituency.

MS. GERE: Yes. So Judge Kessler's was a less formal process. The judge would tell us when we met with her that this case was the most important case that she had while she was on the bench. She handled the tobacco litigation, so I think that's quite a statement about how strongly she felt about the *Salazar*

litigation. It unfortunately took on a life of its own because what started to drive the litigation was the issue of attorneys' fees and how much the lawyers were charging the District to advance the case.

MS. KAGAN: Who was it that brought the suit?

MS. GERE: It was a law firm, a boutique firm called Terris, Pravlik and Millian, and they made millions from the District of Columbia, and I'm sure still are. It was from my perspective not a good use of money. The money could have much better gone to the programs about which the complaints were being made, particularly when there were processes and people in place at that time by 2011, 2012, to assure that problems were being addressed. So that part was very unfortunate. We ended up in fee litigation, went to the D.C. Circuit, and it was not a good chapter in the litigation or, I think, on the issue of attorney's fees that the District of Columbia citizens have to pay. I could talk for hours on that.

MS. KAGAN: The unfortunate thing is that it's not that dissimilar from a lot of other class actions that were brought against the city.

MS. GERE: Yes. And at some point, it becomes counterproductive, and you're paying more for someone to "monitor" than to actually staff the programs that need to be run.

In any event, that took up, leading that case, took up a significant amount of my time. It was a very steep learning curve for me about how the Medicaid program worked, the various D.C. agencies that were involved, because there were a host of agencies that had their fingers in things. But it

was a big piece of litigation. It was not unlike things that I had done at the Justice Department, and I sort of felt like I was back in the U.S. Attorney's Office. Part of my life then also was doing fast-paced litigation because George and I supervised all the lawyers in the Civil Division, and they were the ones who would go to court on a daily basis. If a case went to trial, that's the Division where the trial was going to be coming from. The Public Interest Division, because of the types of cases they did, tended to handle more summary judgment, large summary judgment motions, and very few trials.

So I spent time watching people in court, trying to advise people, moot them before they went to trial, debrief after they went to trial.

MS. KAGAN: Were the two of you the only supervisors in the section?

MS. GERE: No. There was a deputy, an assistant deputy, and then there were, at the time I was there, four sections, and each one of those had a section chief. So that was the first-level supervisor, and then me and then George.

MS. KAGAN: So did your group handle appellate matters as well?

MS. GERE: No. The D.C. Attorney General's Office has, I want to say, an award-winning Solicitor General's Office with very, very savvy appellate lawyers. So everything that went up on appeal would be handled by the SG's Office, and they would work with the trial divisions in discussing whether OAG was going to affirmatively appeal a case, and the SG's office would make the final decision. Obviously if the other side appealed, then it was kind of off to the races.

When I started at OAG, a fellow by the name of Todd Kim was the Solicitor General. Todd is a remarkable, and I keep using the word remarkable, but in my life, I think I've had the good fortune of working with a lot of remarkable people, but Todd was very, very bright. He had clerked for Judge Judy Rogers on the D.C. Court of Appeals when she was there. He was unflappable, creative, thoughtful, very quiet, and when he spoke, the room would go to a hush, and you would say wow, why didn't I think of that. But in any event, Todd was Solicitor General when I started. I can't remember how long after, it might have even been a year later, Todd hired an assistant deputy or a deputy solicitor general, a woman by the name of Loren AliKhan, who came out of private practice. She is another truly remarkable, brilliant lawyer, who, upon Todd's departure, and this goes fast-forward, but Todd left the office to go into private practice. After a long process, Karl Racine made Loren AliKhan the Solicitor General. She has done a terrific job, both internally in terms of marshalling and really professionalizing the entirety of her staff and achieving some excellent outcomes in litigation, and, I think, improved perception by the courts and what they expect of the Attorney General's Office.

MS. KAGAN: Yes. I have seen that. So how many attorneys were there in the office when you joined?

MS. GERE: In all of OAG? There were probably several hundred, probably close to 300 maybe. It was a big office, and, of course, the office had not only civil

litigation but was responsible for criminal work, juvenile, and certain other designated local agency enforcement activities.

MS. KAGAN: Right. And then the maximum sentence was changed for certain misdemeanors and those cases were transferred from the U.S. Attorney's Office to OAG. So that upped their caseload significantly.

MS. GERE: That's a perennial issue, and I am confident the current Attorney General still is trying to wrest local control over local crimes, but so far, Congress has not seen fit to do that.

But OAG also had not only criminal and commercial work, it had child support, a whole group of lawyers that ensured payment and collection of child support orders, responsibility for the welfare of children. It had a labor and employment section that handled internal employment issues. It was a busy office and one that Irv, through dint of his reputation and his work, elevated the office.

OAG has been exceedingly lucky to have had in leadership people like Chuck Ruff, Judge John Ferren, Judge Judy Rogers, Judge Inez Smith Reid, Judge Vanessa Ruiz, some of the really outstanding lawyers of the city who agreed as public service to go in and run the office. Bob Spagnoletti came in from the U.S. Attorney's Office more recently and really reorganized the office to elevate its own self-image. He's the one who decided we're going to be called, as other states are, an attorney general's office, and we're going to act like one and start teaming up with other state AGs and forming teams to take advantage of assistance from other jurisdictions. So I think Irv was

one more in that category of people who was giving it his all, and he too, just as I was, was close to the end of his active legal career and had been a partner at Arnold and Porter, had been very high up in the Justice Department, had been the General Counsel of the U.S. House of Representatives and had done a lot of significant legal work, but I think he too came to the conclusion he wanted to close out in public service.

MS. KAGAN: When did he join the office?

MS. GERE: He would have started in January of 2011, and I joined the office in May of 2011. He was still assembling people and trying to snag people from other parts of his life to come in and work at OAG.

MS. KAGAN: Did he increase the management team?

MS. GERE: I believe he did, probably more in some reorganization ways because I think he recognized the volume of work. He did not have enough money to take people out of doing on-the-ground work and make them managers or supervisors. I think he tried to look at the office and make some changes that made sense without taking away from the people who were actually on the ground doing the work.

MS. KAGAN: But it sounds like he brought in a good number of people.

MS. GERE: Yes. As many as he could in the Civil Litigation Division. He was able to bring in, I don't know if you ever knew him, Jon Pittman, who was a partner at Crowell and Moring. Jon's younger, but he hadn't been in public service, and he was looking for an opportunity and somehow Irv prevailed upon him to apply, and he did. I worked in a supervisory position with Jon for a year

or so, and he then became George's Assistant Deputy when I moved. Jon now is a judge on Superior Court, which I think speaks well of him and OAG. There was another lawyer that I worked very closely with in the Civil Litigation Division, Shana Frost Matini, who also now is a judge on Superior Court. So I think the office has done very well for itself, and I think the community is the luckier for it.

It was very interesting work. As I said, I loved the hustle and the bustle, and all these different teams of lawyers going to trial and preparing. As a trial lawyer, you prepare, prepare, prepare, but there's always something that happens that makes you go oh my gosh, now I've got to pivot and do something else. So, it was pretty much day-by-day doing that, which was exciting, and the people who work in the office are very dedicated. They, almost all of them, could have gone out anywhere and made a lot more money, but they couldn't have been in court as much, and they couldn't have been in public service.

MS. KAGAN: The office also became more attractive once they set the salary to be on par with the Public Defender's Office, which is based on a federal salary.

MS. GERE: Yes. I think that's very true, and that was something that Irv started and Karl Racine when he became Attorney General was very successful in getting more money for the office overall to hire staff. For example, there was no one to work with Karl and the Chief Deputy as Senior Counsel. If there was research to be done or work to be done, you needed a more junior lawyer to do something like that to ensure that the groundwork is done. Karl and Chief

Deputy Natalie Ludaway were able to hire two outstanding women to serve as Senior Counsel, Stephanie Litos and Elizabeth Wilkins. So Karl was able to get a lot more of that type of support once OAG became independent of the Mayor's office and could go to the City Council for its own budget.

MS. KAGAN: Was there an increase in sub-dividing within the Civil Litigation Division of OAG?

MS. GERE: No. There are sections within the Civil Litigation Division, but there have always been sections. To kind of fast forward, but I don't want to leave this phase of my OAG days without talking for a couple of minutes about something that I felt very proud to be a part of at OAG. That was when Irv Nathan had somehow, somewhere, sometime had a conversation with Dean Treanor at the Georgetown Law School and they were talking about some other program, and I don't even remember which one it was, where a local law school teamed up with a local DA's office or Attorney General's Office to have a fellowship program, to bring in law school graduates and then have them work for a year as lawyers in the Attorney General's Office. So Irv was so taken with the idea that he basically said to me, Sally this is a great idea, and I would like to put you in charge of this. So by the time we finished I think the first year, maybe the second year, we had every local law school except Catholic in the program. Catholic was at that time having some serious financial issues because the way the program operated was that the law schools contributed half the salary of the fellows, and our office contributed the other half, so it meant that the law schools had to have

enough money or come up with the money to pay the young lawyers. They didn't get benefits, health benefits, but they got jobs. The fellowship program was named in memory and recognition of the extraordinary legacy of Chuck Ruff who also led the Corporation Counsel Office, OAG's predecessor.

MS. KAGAN: How many slots were there?

MS. GERE: It kind of varied, but it was between ten and fifteen over time, and so essentially each one of the divisions in the office got either one or two Ruff Fellows for the year. It was, and still is going strong. Loren AliKhan, the Solicitor General, took the program over when I left. She and I worked on it together for the last year I was there. The program has been extremely successful, and I mark the success by the number up young lawyers who've remained in public service, many of them in OAG, and many of them in the D.C. government, several of them in the U.S. Attorney's Office, and several more at Main Justice. It really was great for the Office because these were bright, fresh, newly minted attorneys saying to some of these older lawyers who'd been around for a while, well why do you do it that way. The answer could not be because that's the way I've always done it. That's really not a satisfactory answer because the new lawyers would push back and ask why. So it really was a terrific program. It was a fine linkage also for keeping the law school part of the local community, and part of the way to do that was to act through our Attorney General who served the local community. That was and is a terrific program.

MS. KAGAN: When did it start?

MS. GERE: It started in 2012. We did a lot of the groundwork and Tarifah Coaxum, OAG's CAO, worked on a whole lot of financial issues. Fortunately there were a couple of very good people at OAG who figured out a way to make the money work. Tarifah Coaxum was all onboard with it, and she was the person that I relied upon to figure out which pocket and page the dollars came from. I think I may have mentioned that in the sort of the small world way of things in Washington that two of the students that I taught at Georgetown became Ruff Fellows and joined OAG through the program. And I supervised each of them during my time and theirs at OAG.

MS. KAGAN: When did you start teaching at Georgetown?

MS. GERE: I started teaching in 1994. I taught from 1994 to 2015.

MS. KAGAN: Maybe we can talk more about that later.

MS. GERE: So that was a good overview of my work at OAG. Obviously, even though I lived in the District for thirty years, it really gave me new insights into how the city operated, how the Mayor's office operated, how City Council operated, how local law got made, how we dealt with Congress, which really has a thumb on us. It was a very educational time, not just from a legal perspective but from a legislative perspective—how do things really run in the District. But what happened then was of course the District ended up having its very first elected Attorney General, which was either going to be a disaster for OAG, a disaster meaning someone would run or be elected who really was not equipped to run an office and to establish autonomy and independence from a mayor to make the whole process work.

MS. KAGAN: That was under Fenty?

MS. GERE: No. This was, I can't remember when the vote was taken because the people in the District of Columbia voted for an independent Attorney General, but it then did not come to pass until the next election, so it was several years later. Mayor Bowser was the mayor, so it was the end of Mayor Gray's term. Irv left a little bit before the end of Mayor Gray's time in part to allow the person who was elected to be the next OAG to get started and get things organized.

The city was extremely lucky to have Karl Racine step up and run for Attorney General. Karl had been the managing partner at Venable, had been at PDS, and had been in the White House Counsel's Office. He was a real lawyer, and still is.

MS. KAGAN: A lot of candidates threw their hat in the ring, and it was unclear where they even got their hat.

MS. GERE: Right. But fortunately for all of us who live in the District, Karl was successful in being elected Attorney General. That brought more changes to the Office. For me, I was very excited. I knew Karl just a very little bit, not well at all. I was high enough up in the office that I wondered whether Karl would come in and essentially ask for resignation or reassignment by all the deputies and assistant deputies so he could kind of restock the shelves with his own folks, and I thought I would be one of the first to go given that I was identified as being an Irv Nathan person. Fortunately for me that did not happen, nor honestly did it happen generally. Karl, to his credit, did not do anything precipitous. He kept people in place until he really had an

opportunity to see how the office operated, how the Deputies operated, and the very first order of business honestly was establishing our independence from the Mayor's office. That took great focus by everyone, but particularly by Karl, and Natalie Ludaway who was hired as his Chief Deputy. Natalie was a partner in a local law firm that has very strong local roots, and she was very, still is, very well connected, and knew her way around the city and around litigation. She and I had served on the Committee on Admissions as Bar Examiners many years earlier but had remained friends. She too was a real lawyer, so we were lucky to have two real lawyers running the office.

The changes that Karl made, after he stepped back, and once we got through the issues with the Mayor's office and came out intact with our independence in place, Karl very much wanted to bring the office up to speed in the affirmative litigation realm, which in the past had been ably handled by an Assistant Deputy by the name of Bennett Rushkoff, who now is an ALJ. But there was never enough money, and with Irv, Bennett's Section identified the big things and addressed those. Karl wanted to be more active, particularly in the realm of working with other AGs, the Maryland AG, the California AG's office, New York, Delaware, Washington State. Everywhere. But that took money and that took staff, so Karl wanted to beef up, if you will, that part of the office. Obviously, that was going to take some time, and the person, Ellen Efros, who had been the Deputy of the Public Interest Division under which that work had been placed, left the office and went to become General Counsel to the City Council, so there was

no Deputy in place. Karl and Natalie prevailed upon me to move, and they lured me, saying you can just be “Acting” Deputy for a while. You don’t have to give up your other position of Assistant Deputy. We just need somebody to fill in for a while. So I agreed to do that, and it took a bit of time after they got to see who was where. I ultimately was named, after going through a competitive hiring process, I was named Deputy of the Public Interest Division. So now my work had a feel much more as it did when I was at Main Justice. Huge cases, things that made the headlines. Not necessarily things that went to trial but that caused a lot of public interest. There was the sale of PEPCO, which was a big administrative process and hearings before the Public Service Commission. Again, all the class actions, and at that point, we were doing gun litigation, trying to have upheld the revisions that had been made to the District’s gun laws in the wake of the *Heller* decision. We had issues with Congress on budget autonomy, who was writing our budget and who was approving our budget. So there were some major pieces of litigation that were going on in that Division. I was not able to leave *Salazar*, which was the Medicaid case, behind with George. I took that with me. So I continued to be responsible for that and was lucky then to have one of the younger lawyers in the Public Interest Division, Brad Patrick, assigned to the case to work with me who did just a terrific job. He’s now with the U.S. Attorney’s Office in Georgia. So I started out then too overseeing some of the new affirmative cases that Karl wanted to bring.

MS. KAGAN: How many attorneys were in that division?

MS. GERE: Not enough. Maybe thirty-ish. I can't even remember because there were some rejiggering of folks, and that Division also was responsible for the part of the office that oversaw licensure of nurses, doctors, housing permits and a diverse amount of administrative and regulatory work. It was a whole different world, mostly that was in the administrative OAH realm. So that was part of my oversight too, which was, again, some disparate parts that were put together. Ultimately, Karl took the affirmative action folks and had some housing folks from another division, put them together, and started the Public Advocacy Division, which made sense. Who was doing affirmative work and who was doing defensive work, and kind of keeping all those lanes in some organized order. And I stayed very active in the Public Interest Division.

Again, I also was basically in charge of the Ruff Fellowship Program during my time in the Public Interest Division. There was an Assistant Deputy slot that was assigned to me, and a terrific guy was picked for that, Chad Copeland, who had been in the Division for many years and was a bit of an institutional knowledge person. That was terrific. And then I had Section Chiefs in charge of various parts of the layers of management. A lot of very talented lawyers, some of whom had been there many years and many brand-new lawyers. So it was a good mix of folks. It was hard to decide to leave. There wasn't a day that I was unhappy to get up and go to work, which certainly counseled for staying on as long as I could keep my fingernails gripping the ledge. But at the same time, I saw that there were

limited opportunities for managerial promotions in the office, and I felt as though I had been there long enough. I'd made my mark. I had done a lot of the things that I wanted to do, and so I decided it was time for me to move on and move on as in retire from the active practice of law. I can't say that after I did it I didn't regret it. But sort of fleetingly because Karl did come to me afterwards, after I had told him that I wanted to retire, he came to me and said can we come up with something that's part-time? Can we come up with something where you're a consultant? Something to make sure that we can take advantage of you and what you've learned and what you've done. But I knew myself too well to know that I wouldn't have been able to put guardrails around myself, and it would have been right back in the thick of things. And again, it was an exciting place to work and good that its reputation had improved, the salaries had improved, and the Ruff Fellows introduced a whole cohort of new lawyers to the work, but we all have to recognize there's a time for us, and I felt that I had made the most of my time and now it was someone else's time.

MS. KAGAN: How long did it take you to make the decision once you first started thinking about it?

MS. GERE: Probably not that long. But I knew that if I fretted over it too long, I would just be fretting forever, and I needed to make a decision, and I need to say it out loud and actually tell somebody that I was going to do it. Obviously, I talked to my husband about it.

MS. KAGAN: Was he retired at the time?

MS. GERE: He was retired at the time. He had retired a full year before I did, more than a year before I did, because his goal was to write this book that he had been working on forever. I finally said to him the time is now. If you're going to write it, you need to write it. You can't write it and be a full-time litigator. It just doesn't work, so you need to retire. So he retired, and the last thing that he wanted was for me to be retired at the same time that he was at home writing. I would have been nothing but a distraction, and I did not want to take my first year of retirement to watch him sit at the computer writing a book. He had finished his first draft of the book, *John Houbolt: The Unsung Hero of the Apollo Moon Landings*, and so the coast was clear, we thought. Of course, who knew that the editor had different ideas about how much a first draft needed to be a fifth or sixth draft.

So I retired in February of 2018. Every year, Bill and I, for the last decade, have gone to a little inn in Vermont for a long weekend. I had never been at the inn but that I didn't have a work crisis to interfere with my little vacation. So looking at retirement, I thought, you know, if I'm going to do this, I need to do it before February so I can feel what it's like to go to this wonderful place and actually enjoy it. So that's what I did.

MS. KAGAN: Then you could stay for a week if you wanted.

MS. GERE: Actually, in celebration, we did stay an extra night, so that was good. In any event, that's what I did to retire. They wanted to have a farewell party for me at OAG and all that, and I said no, I really don't want anything. I left my firm and told them no farewell parties. It feels like a wake or a funeral. I

don't want that. It would make me feel like I'm dead already, so my firm was very gracious in my exit and honored my request. They gave me a lovely gift but did not put me through a farewell thing. OAG did not listen to me quite as well. The staff put together something lovely, and it was all really just the people that I'd worked with most closely. It was just perfect.

MS. KAGAN: Was it a surprise?

MS. GERE: Yes. It was a surprise because I had really expected them to follow my instructions better. But it was very nice, and it was a good way to end. I got to say goodbye to people that I might not otherwise have seen from outside the OAG building.

So then we went on vacation February. Then I came back in March, and I thought I wonder what's going to happen now. All of a sudden, I got a phone call from Darrin Sobin, who works for the D.C. Bar and who had clerked for the judge that I had clerked for, who was way younger than I am. He said, I want to take you out for a retirement lunch, and I said oh, that's very nice, that's lovely, let's do it. And so we set up a date, and then the next thing I know, he said to me Bob Spagnoletti wants to come too. Okay, well I know who Bob Spagnoletti is. But I have no idea why he wants to come to a lunch to celebrate my retirement. I should have been more astute because at that time, Bob was the new Chief Executive Officer of the D.C. Bar. So we went to lunch, the three of us, and I pretty much sat down and had taken my coat off, and Bob and Darren said, we want you to run for the Board of Governors of the D.C. Bar. I said what? No. That's crazy. Why would you want

somebody who's retired from the active practice of law being on the board. They clearly had given thought to it and said, we would like people with a lot of different kinds of experience, people with other kinds of board experience, people with government experience, people who have also private practice background. We think that you should run.

MS. KAGAN: You had it all.

MS. GERE: I thought well that's all a very interesting idea, but I haven't run for office since I was in grade school and that didn't work out well. I didn't get elected president of my 6th grade class. So in any event, they said just go through your contacts, and you'll be able to figure it out. That was way easier for them to say than for me to do. I then ended up getting on a track of trying to very quickly put together the forms to be nominated. Just because they urged me, there's a whole formal nomination process. I had to be reviewed and vetted by those people, and then I needed to figure out how to run a campaign without an office, without a staff. I wouldn't have been able to do it at OAG on government time. Anyway I had the good fortune to have my friend Loren AliKhan, the Solicitor General of the District of Columbia, who, in her spare time, is a super-duper tech guru, and she helped me organize my contacts and figure out how to send out emails asking for people's votes. So I did, and I ran, and I won, much to my shock and amazement.

The other thing that Bob and Darrin said to me, you've given back to the profession your whole career, why are you stopping now? So that was another way of looking at service on the Board of Governors as it's really

supporting our profession. So now I am in my third year of a three-year term. In June of this year, I will be finished with my term.

MS. KAGAN: You're not going to run again?

MS. GERE: I don't think so. I've done my thing. One of the big issues for me as part of the Board of Governors. Well, two things. One, to help with the transition from the stranglehold that the prior executive director had had for thirty years on the Board of Governors and assist the new executive director, his team, and the new Board of Governors with assuring transparency, diversity of staff, understanding of the roles of board members and executive directors and staff. One of the most important things was I truly believed that the bar, with 109,000 members, and now a property owner because it owns its own building, needed a general counsel. To me, that was a very important thing for the bar to focus on and to accomplish. We recently have hired the very first general counsel of the bar, and she started probably not even a month ago.

MS. KAGAN: Who is it?

MS. GERE: It's a woman by the name of Erum Mirza. She had worked for several years in her career in private practice at Arnold and Porter and then had worked for a nonprofit trade association. So really understanding how boards work, what an executive director does, what the role of a general counsel is, and she just seemed to be the perfect person for our inaugural general counsel. We had terrific people who applied, which was also gratifying that people thought that it was a challenge that they wanted to take.

MS. KAGAN: Were you on the selection committee?

MS. GERE: The executive committee of the Board of Governors acted as kind of an advisory committee, but as with all nonprofits, the hiring of staff, and general counsel is considered to be staff, the final decision is made by the executive director. It's standard practice. So we spent a lot of time interviewing people, looking at papers and so forth to give advice. It was a very thorough and very open process, which I think also was important.

MS. KAGAN: That's great. So were you a big part of the process?

MS. GERE: Well I'm on the executive committee and was part of the movement within the Board of Governors to assure that it came to fruition. When I first was on the board, the idea was floated. It was not embraced by all, so it meant kind of going back at it and bringing it forward.

The current bar president Susie Hoffman, well, she's not current now. She has already finished her term as President, but it was under her administration, shall we say, that this got passed and then passed on to the new folks to implement.

MS. KAGAN: Have you played any role in bar president transition since you've been on the board?

MS. GERE: Yes. We have had, and not to disclose too many things, but we had some issues that faced the new bar president who came in and had to hit the ground running, obviously with COVID, with a lot of the issues related to Black Lives Matter demonstrations, and what the bar could or could not say publicly. It was very much a swift transition that Geoff Klineberg had to step

into, and he's been fabulous, another good, steady, practical, objective voice in some tumultuous times.

MS. KAGAN: That's fortunate.

MS. GERE: Yes. Very fortunate. And I think the people who are serving on the Board of Governors at the moment are really solid and very much dedicated to the profession and to the Bar and to its members, which you want to have in your board that's governing you. So that has taken up probably more time than I thought it would. On the other hand, I think it's been very important work, and I'm glad that I've had a little extra time to devote to some of the work that I might not otherwise have had.

But in framing my retirement, I also have had to kind of step back and decide what of my volunteer work I was going to continue with.

MS. KAGAN: What activities had you had going on?

MS. GERE: I had been and have been for many years involved, and a board member for quite a few years now, in the Frederick B. Abramson Scholarship Foundation, which gives scholarships to disadvantaged D.C. high school graduates from public schools. More important than the money that we give, we have very targeted mentorship that goes through four years of college. We give scholarships for the entire four years of a student's time in college, unlike a lot of organizations that give one year and then you're on your own. We actually identify our scholars and increase their scholarship money the longer they stay in school. We pair them with a mentor. Our mentorship program is very active. We have a lot of resources. The organization is

about to celebrate its 30th anniversary. Fred Abramson was a past president of the D.C. Bar. He was also Bar Counsel heading up the disciplinary system, a lawyer in private practice, and again, serendipity in life, was someone who was a mentor to me. So I've been very supportive, as has Bill, my husband, of the organization for the past thirty years. I now am Vice President of the organization. The organization has grown, has evolved, has grown up. We have a terrific young man who is our President, who started out many years ago as one of our scholars. He graduated from Dunbar High School, went to Williams College for his college years. His mentor was Irv Nathan, so Irv too is involved in the Abramson Foundation, another way that I had known Irv. But it's a terrific organization. Bill and I are currently mentoring a young woman who is at Cornell. There's no end of work. There's no end of time that could be spent helping students, polishing our programs, figuring out operationally from a governance perspective how we're going to operate, where we find dedicated board members, how we train them. There's a lot to do.

MS. KAGAN: How did the foundation come to be?

MS. GERE: When Fred passed away, and he was very young, I think he was about 55, he had touched the lives of a number of people, many of whom got to know Fred because he was involved in the Judicial Nomination Commission for the District of Columbia. He made it his goal to encourage women and lawyers of color to apply for judgeships, and there are many judges on Superior Court, some of them now retired, who will tell you that it was because of

Fred Abramson that they became judges. Paul Friedman was the Bar President following Fred, so he worked very closely with Fred. And Paul and his wife Liz became close friends with Fred. There's a whole host of people who admired Fred, and when Fred passed away, everyone decided okay well what can we do to carry on Fred's legacy, most of which was mentoring and encouraging young people educationally and then professionally. So they decided to start this scholarship organization, and it started in the living room of Liz and Paul Friedman's home thirty years ago and so we're still going.

MS. KAGAN: That's great.

MS. GERE: We've had some terrific young people who are now much more grown up come through our program. One of our scholars recently won the primary for Ward Four, for the seat on City Council, so she likely will be elected to serve on the City Council. We have another young woman who was just named one of 40 Hispanic Nurses Under 40 to watch in the future. These young people with the organization with our mentorship behind them have just done remarkable things. We have another young woman whose father was incarcerated, and she's my double success story because I got to know her through Girl Scouts and her Gold Award project, and then she applied and became an Abramson Scholar, but her Gold Award project was to start a non-profit organization to help kids who wanted to go to college but whose parents were incarcerated so had a real uphill battle. Our Gold Award/Abramson Scholar, Yasmine Arrington, went to Elon for college.

She graduated from college, got her divinity degree from Howard University and now has this nonprofit that she essentially runs and has given out scholarships and figured out ways to identify and help kids whose parents are incarcerated. So I mean it's really, especially somebody as I am who doesn't have children of my own, you may recognize a theme through here, recognizing and doing what I can to support other young people who clearly can use a hand. But boy are they going to go someplace and do something positive with it, and that's very satisfying.

MS. KAGAN: Is your mentorship term the four years of college?

MS. GERE: Yes. So we are in year three with our mentee, and she has been trying to figure out school and her life in this COVID environment. She has made the decision to take her classes virtually, even though Cornell has attempted to offer some courses in person, but I think between her and her mom, they have decided what's best for her is to be here at home.

MS. KAGAN: So she's going to stay here?

MS. GERE: Yes. And do her classes online. So that takes up some of my retirement time. The other thing, as I mentioned, is my work with the Girl Scouts, which mostly involves working with the girls who get their Gold Award, which is the highest award that one can get in Girl Scouting, and much harder to get than what the Eagle Scouts tout.

MS. KAGAN: What does it take?

MS. GERE: It takes a lot of work and a lot of gumption. There's a very rigorous process of applying. A young woman identifies a project that has to have a lasting

impact on her community. She has to identify how it is going to be run, planned, what's going to be involved, how she's going to get volunteers to work on it, how she's going to get funding, how she is going to attempt to assure that it is successful and continues once she goes off to college.

MS. KAGAN: That's a tall order.

MS. GERE: It's a tall order. And there are review processes in place every step of the way. It's a very hard award to attain. It's the kind of thing where at least my understanding is that a lot of admissions officers, if they see that you're a Gold Award recipient, put you in a separate pile, a to be considered more closely file. In the, again, kind of small world happening, unfortunately not with a happy ending, there was a young woman who got her Gold Award that I met. She, in college, even high school and then certainly in college, had decided she wanted to be a lawyer. So I said to her, why don't you apply to be an intern at OAG, and you'll see what it's like to be a lawyer. She did, and she got hired, and she worked for me. She was fabulous. She went to UVA undergrad. She then went to Georgetown for law school and graduated. She became a Ruff Fellow at OAG, did a spectacular job, and was hired in a full-time position in the Civil Litigation Division. She just wowed everybody with her work. She was so happy, loved every minute of it. I got a call, unfortunately, six months after she had started, and she had a brain aneurysm and died. A very young woman who clearly had the world ahead of her and had already made a mark at a young age. So that was very sad.

In any event, I've made some, as I said, terrific contacts through the Girl Scouts, and done more mentoring.

MS. KAGAN: Have you stayed in touch with your mentees?

MS. GERE: I have stayed in touch with several of them. I have another one that was a young woman who worked at OAG as an intern and was an Abramson Scholar. She graduated in May from Notre Dame law school and is looking for a job, so I've done mock interviews with her. I stay in touch as best I can with many of these people, and then I still have my professional mentees, but they're my people that I worked with, younger lawyers who are now in private practice that I stay in touch with, and I talk to about the rigors of being in a law firm. What did you do when this happened? What advice do you have in this or that situation? People in government, the same thing. Should I leave the government, should I stay here? So I've stayed in touch with lots of people.

MS. KAGAN: That's terrific. Any other extracurriculars? Not that you have excess time for anything else.

MS. GERE: I did, through the Bar, have my one remaining extracurricular activity to tell you about. Susie Hoffman had asked me last year to be the planning chair for the Bar Conference to mark the 100th anniversary of the passage of the 19th Amendment. I spent months with a planning committee and right down to the wire. The conference was going to be held at the Omni Shoreham, but COVID came, and the Omni Shoreham cancelled. Obviously, we could not have a thousand people coming into the District in June, which is when the

conference was scheduled. So we now have reimagined the conference and it will be offered virtually. We still have a star-studded cast. It's changed a little bit as people's schedules have changed. Our focus remains on the history of the 19th Amendment and the importance of voting rights, obviously becoming even more important now. Our conference has been rescheduled for October 20 and 21, 2020, so very close to election time. A lot of the issues on our program have to do with voting rights. So that has resurfaced, and I don't have time for anything else. I'm working on that at the moment double time.

MS. KAGAN: I can imagine. Well good for you. How long did you teach at Georgetown?

MS. GERE: I taught at Georgetown for about twenty years, I would say.

MS. KAGAN: So you started when you were at the law firm?

MS. GERE: Yes. When I was at the law firm and really had to figure out ways to do that on my own time, so I taught only at night, after hours, so would have to figure everything out not to interfere with my client work. I always co-taught so that in the event I had to travel for work, it wouldn't be that the class had to be cancelled. There would be another professor who would be there to cover.

MS. KAGAN: Who was your co-teacher?

MS. GERE: Well, it depended on what time. I started out teaching with my, he wasn't even my husband then, but I started out teaching with the man who now is my husband.

MS. KAGAN: How did you meet?

MS. GERE: We met through something called the Inns of Court, a lawyers organization. And Bill actually fixed me up with somebody else because he was married, and so he fixed me up with somebody else. That didn't work out, and eventually his marriage didn't work out either, having nothing to do with me. I didn't really know him well, but we got to the point where we were both then single and so we started out as friends and kind of went from there. But the teaching part of it, he already had been teaching at Georgetown for a few years, and he would tell me about the women that he had in his class, and I said you need another role model there. What are the women in the class going to learn from you. So long story short, I interviewed with the dean and was hired as an adjunct professor for the wonderful sum of it might have been \$500 a semester or something. I'm not sure. So Bill and I taught together for a while.

MS. KAGAN: What class did you teach?

MS. GERE: We taught at that time a trial advocacy class.

MS. KAGAN: Was it a clinical course?

MS. GERE: Clinical. It was more of a practicum, I would say. How to write an interrogatory, how to cross examine somebody, that kind of thing. At one point, Georgetown decided that it wanted, as were many other law schools, to start shifting toward practical education, and we talked with the dean. There was a course on civil discovery, there was a course on trial advocacy, but nobody who had put those pieces together for a student to see how the litigation process actually worked, the writing an interrogatory is not an end

in itself. It is a steppingstone for how to go to trial in the event you're not able to settle your case. So we put together a proposal to the dean for a two-semester course that would run for the entire year and start with interviewing a client and ending with an actual trial before a real judge. So Bill and I did that for several years together. It became somewhat of a strain on our relationship.

MS. KAGAN: Were you married by that point?

MS. GERE: No. The school then was looking for somebody to teach an evidence course, and somehow, they roped Bill into doing that. But that was, again, a very intense course to be teaching so he couldn't teach all of that and then have a full-time job and write a book in spare time, which there wasn't much spare. Anyway, so then I for a number of years taught with one of my former partners at Ross Dixon, and then he retired, and then I taught with another of my Ross Dixon partners and then another, and then finally the last person that I taught with was my associate at Ross Dixon, but by the time I was teaching, he was running one of the offices at OAG, and so it seemed to us that it was good for students to have not only the defensive perspective, which was more my perspective, but someone with an affirmative litigation perspective, which he introduced.

MS. KAGAN: When did you stop teaching?

MS. GERE: In 2015. He, Jimmy Rock, continued to teach, and he brought on a woman from OAG, with whom I also had worked. She and he taught for a couple of

years and then she had a child, and she ran out of time to be doing too many extracurricular things.

MS. KAGAN: Is the course still being taught?

MS. GERE: No. Jimmy then continued his advancement in the office and again, just simply didn't have the time to devote to teaching, which I was sorry about that, but we had a good run.

MS. KAGAN: What made you decide to step down from that?

MS. GERE: As I think about it, it was the amount of time that I was spending at work, particularly transitioning to being the Deputy of the new Public Interest Division. It was one thing to be somebody's assistant deputy, George Valentine, who is ultimately in charge, to being the person in charge myself as AG Racine was reimagining what he wanted this Division to do and what work individuals were assigned to do and who should be in which slot. It just ended up being more time than I felt that I had and could still give my all to teaching. Even though I didn't get paid a lot, next to nothing, the students were paying, and they deserved a truly engaged professor.

MS. KAGAN: Had you always or for a long time been interested in teaching, or was that something that just sounded good when the opportunity came about?

MS. GERE: I believe that I talked about, and this is now ancient history between you and me, but I think I talked about the year that I was at Justice where I ran and taught the civil litigation courses for the Attorney General's Advocacy Institute. That was my first formal teaching, and then in private practice, I did a lot of presentations, teaching of a sort, to a number of my clients about

Insurance coverage issues, employment issues, sexual harassment issues, sexual harassment policy, investigations. And talking to a jury or talking to judge is a form of teaching, so I think a good litigator never ever stops teaching. Bill and I had thought well when we retire, we'll both retire and teach, and that would be a good way to close out our legal careers, but Bill has been caught up in his book, I got caught up in work, and now we're retired, and I don't really see us going back to any kind of formal teaching.

MS. KAGAN: Are you enjoying your retirement and the little bit of spare time you have from all your obligations?

MS. GERE: Yes. I'm over now the two-year mark, but I think that COVID has altered time, so I probably have had more time to devote to my volunteer work without sacrificing my personal life, and part of that is because before the pandemic, I would go out for lunch, I'd go out for drinks, and I'd go out for dinner, and I would play with people's kids and all that that. I no longer am able to do that, but what I can do is get on a Zoom call with my mentee or a phone call with another mentee or draft some governance policy for somebody. So in some ways I don't think that I have had a full impact of actually being retired. I believe that stepping off the D.C. Board of Governors in June will make a big difference in my time. I am serving one year as the Vice President of Abramson, and then I'm termed out under our bylaws.

MS. KAGAN: And no longer on the board?

MS. GERE: And no longer on the board. And the Girl Scouts is a well-oiled machine, so it can consume as much or as little time as I have. My Abramson term will be up in June as well. Maybe COVID will have relieved us a little bit more maybe by June of 2021. So that's when I'll really feel what retirement is like.

MS. KAGAN: And no thoughts about what other things you might get involved with?

MS. GERE: No. I really hope to have more time and the ability post-COVID to spend time with my friends and with my family. It's been very sobering to have lost George Valentine to COVID. It's another one of those times when you say we are not immortal or eternal. Once I am out of lockdown, I want to go back and do what I liked to do just as much for me, which is to spend time with friends.

MS. KAGAN: More than fair. So we periodically touched on what it was like to be a young woman attorney back in the day when you were a young woman attorney, the particular challenges that you faced, how your personal life was affected, and the like. Do you have anything to add about that?

MS. GERE: I believe that I mentioned the book that I was reading in my little bit of extra spare time recently, a book called *Shortlisted*, about the women who were put on a shortlist for consideration for the Supreme Court starting decades ago, even before I went to law school, and the book's lessons are taught through the life stories of the women who were pioneer lawyers and a few of them judges and a few of them who got shortlisted for the Supreme Court. Finally, we get to Sandra Day O'Connor who actually gets on the Supreme

Court. But I read about their lives and think about my own. None of them had an easy time, and in retrospect, I don't think I had an easy time. Some of the women affirmatively chose a career. Some of the women thought they could balance work and family and do both. Most of them had varying ways to cope, some of them more successful than others. A lot of it was dependent on the support of their partners, whether they were married, officially or not. I have been, I guess to that extent, lucky in my career that at least I was married to two lawyers who understood the pressures of being in practice. Neither of them understood the pressures of being a woman in practice though. I believe for my first husband I made more concessions to his career than in retrospect maybe I should have, but I can't look back now, and I certainly have had a terrific career.

MS. KAGAN: You ended up in a good spot.

MS. GERE: I ended up in a good spot. Not having children has been difficult, but I have tried to supplement that with family members, nieces and nephews, and with the people that I have worked with and mentored. In one way or another that hole in my life kind of got, I won't say "filled" but satisfied with what life had presented me. And someone else may look at my life and say, well, better off for you. You never would have gotten where you got had you been tasked to juggle more than you did. You might not have been able to do it.

MS. KAGAN: Do you think that's true?

MS. GERE: I have two younger sisters who were single moms, and I think maybe in retrospect, that's what I should have done. But I looked at them and knew

myself, and I did not have the strength of either of them. Did that affect my career? It allowed me to be the person to volunteer and say I'll go to Muskogee, Oklahoma, or I'll stay late and write that brief, or I'll take X client to dinner and hope he doesn't make some lewd suggestion at the end of dinner. And all those things probably helped propel me in practice, to become a successful partner and to be successful lawyer generally. The other fact, if I'm going to be candid talk about all of this, and I guess that's the point of it. One of the other things, you asked me about was whether I had ever wanted to be a judge. And I guess reading this book again has kind of brought my own history back to me. I was shortlisted several times, for trial court judgeships but I was not selected, which has been a disappointment. I was disappointed because I so admired the judge that I worked for that I wanted to be as she was. I wanted to be a judge that could treat people with dignity and respect regardless of who they were and feel as though I could be a just decider. But again, it wasn't meant to be. My last effort was probably doomed from the beginning because I really was too old. I think that the more recent Presidents have been much more focused on putting people, even on Superior Court, who could be there for two or three decades. I can't look back and focus on that because that was a door that closed but it opened the door to going to OAG, frankly.

MS. KAGAN: Right.

MS. GERE: Because if I couldn't do public service as a judge, I was darn well going to figure out another way, and I did. One door closed, and another one opens.

MS. KAGAN: Well no one could deny that you've had a really fulfilling life with adventures yet to come.

MS. GERE: We kind of laugh about that, but there was a point early on in COVID where Bill and I sat down because everyone said you need to have your affairs in order, you two don't have children, what would happen if something happened to both of you, and all I can think is I don't want my family to have to try to figure too much out, so we spent several weeks kind of getting everything organized and delivered to one of my nieces. It did allow me to sit back and say if COVID takes me in the next few weeks, I've had a good life, and that makes me feel very good.

MS. KAGAN: It doesn't sound like you made bad choices made along the way or have feelings of regret about anything.

MS. GERE: No. I can't regret much. There are maybe some choices I could or should have made differently. My mother would always say to me things happen for a reason. I would never know what the reason was, but somehow that stuck with me, and so you kind of pull up your big girl pants and go on.

MS. KAGAN: It doesn't seem like any of the less-than-perfect choices or situations derailed any of your goals.

MS. GERE: No I don't think so.

MS. KAGAN: Or even curbed your enthusiasm for your career. Nothing really had a negative impact on you.

MS. GERE: Right. And I was really incredibly lucky to work with people who made my professional life exciting and interesting, and my personal life, I'm married

to a wonderful person. I have still all my sisters and their children with me. I consider myself fortunate.

MS. KAGAN: And for good reason.

MS. GERE: And to circle back to why we're here which is the D.C. Circuit Historical Society oral history project. I am eternally grateful that I have that thread that started with my clerkship in that courthouse and has been frankly a lifeline for me all that way to now. I've seen changes in that court. I've seen changes in the physical plant. I've seen changes in the judges. I've seen changes in the case types that they get. That's been a unique perspective to have had. "It" being the District Court, of which I know better than the D.C. Circuit, but together, it's an incomparable court. It's easy to understand why it is a steppingstone to the Supreme Court. It's a place of intellectual challenge and real-world problems for resolution. I've been lucky to be a part of that. It's also something that not everybody else has done. My real dream would have been to be a judge on that court, and I did get shortlisted for that. I got to the White House, I got interviewed, but I was not the one selected. But I continued to advance my career and work with the court through a variety of committees and work with the judges and cases in the court so that I was able to stay connected.

MS. KAGAN: I venture to say that you wouldn't have had the same breadth of impact in your life had you been a judge. I understand that judges have a tremendous effect on the lives of individual litigants who appear before them, but the totality of your work has been remarkably far-reaching.

MS. GERE: That's a good way to look at it, Barbara. I appreciate that. Thank you.

MS. KAGAN: It certainly seems like that to me. As a citizen of the District of Columbia and as a fellow attorney, I'm glad you had your hands in so many things in such positive ways.

MS. GERE: Thank you. This has been terrific. I'm wondering if there's anything else that I should be thinking about telling you or whether we have come to a conclusion. Or should we take a break and make a decision?

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 by Zoom on Wednesday, September 16, 2020. This is the seventh and final interview.

MS. KAGAN: Hi Sally.

MS. GERE: Hi Barbara.

MS. KAGAN: We’re here for our final wrap-up session. This is where we put a nice little bow on Sally’s professional life.

MS. GERE: I am happy that we’ve come to a conclusion, but I must say I’m going to very much miss our conversations, and I hope we continue them without having to record them.

MS. KAGAN: Me too. It’s been a long time.

MS. GERE: It has. Pre-pandemic, even.

MS. KAGAN: Yes.

MS. GERE: Well, I do thank you, and I appreciate this opportunity to wrap things up, as you say, and put a bow on it. I have given some further thought to how to wrap this up and further reflections on my professional life, which, of course, comes along with my personal life. For me, this year, which is the 100th anniversary of the passage of the 19th Amendment whereby women won the right to vote, is a significant time, as it is for all women. It is an historic landmark that is the product of the hard work and sacrifice of a lot of women.

As part of my D.C. Bar responsibilities, I’ve been the planning chair for our conference this year that is to commemorate the 100th anniversary of the 19th Amendment. And in preparation for that, I’ve done a lot of reading

about women's suffrage and about the women who led the movement over many decades because it took many decades to secure the vote for us. And even after the 19th Amendment was passed, it took many more years for all of us who are women to be able to vote. It reminded me that there are many women whose stories have not been properly told, people history has overlooked. So I appreciate the chance to be here and give my little share of history.

It also made me reflect and think more about the women in my life who have had a tremendous impact on me, obviously starting with my own mother who was forced to drop out of college because of the Depression and her widowed 279 simply did not have enough money for her to finish college. But nonetheless she was one of my biggest, most vocal, and most supportive cheerleaders throughout her life and always encouraged me to reach for the heights even when she had been unable to reach them. My three younger sisters have been very supportive of me for many years. I'm lucky to have a continuing cheerleading squad among my family, which has been very important for me through a lot of ups and downs.

Of course the connection I have to the District of Columbia Court, to the District of Columbia District Court in particular, is through Judge June Green, for whom I clerked and who was my role model of how to be a successful woman lawyer and not to lose my humanity. My humanity and my empathy I definitely got from my mother, but I received from Judge Green direction and instruction on how being a lawyer was not mutually

exclusive with being a caring human being, that indeed the best lawyers were able to have both or should demonstrate both.

So I'm very lucky to have had that kind of women as my role model because, as we've discussed, there were very few women in the courtroom at the time I was a law clerk. And so I'm happy to tell my story about my professional life in the District of Columbia District Court from when the doors were just beginning to open in the early 1970s to women in the court, in practice and on the bench. I have been lucky during my professional life to have been mentored by other women for whom I worked and with whom I worked and to be able to pay that forward and mentor young women with whom I worked over the many years. All of which has made me recognize the importance of women in my personal life and women in my professional life and women in my life in this court where, when I was a law clerk, there were very few female law clerks at that time. There obviously was only one female District Court judge, and yet here we are, many years later, and now we have our second woman, Chief Judge Beryl Howell, serving as the chief judge of the District Court for the District of Columbia. So I think the court has come a great distance, and a lot of it has been through the hard work of the women who have practiced there, frankly, including me, and being involved in committees and helping the court do the tasks that the court was responsible for doing and having the pleasure as a lawyer of appearing before many of the judges on the District Court.

So I think to tie all this together has been a real gift to me as well as I hope helpful to anyone who may listen to this or read it in the future to understand what being a woman lawyer was like through the 1970s, 1980s, 1990s, 2000s and 2010s, a time of change for women in the law. It's been a journey, and I have been very fortunate to have had good strong women in my life. I hope to have passed some of their strength through me to the next several generations of women practicing law in this court and elsewhere. And thank you, Barbara. It's been wonderful to get to know you. Obviously, you're an icon in your own right. It's been an honor for me to be interviewed by you.

MS. KAGAN: Well thank you for that, but I am not icon material, but I've learned a lot from you. It's been really wonderful. You really do embody all that you wanted to be in your professional life. I think that part of the reason your professional life has been successful and has been so important to you is because there is no demarcation between who you are as a person and who you are as a professional. So it's been easy for you to be a good lawyer because you're a good person, and you came to the law with a certain set of approaches, a certain set of values, and you've been able to stay true to them. I think you have a strong will and a strong personality in all the best senses of the words. Not everybody would have been able to pull it off like you did. You didn't really quite know what a pioneer you were at the time, which is probably a good thing. Otherwise you might have been looking over your shoulder too much and not just forging ahead. So it's been great, I admire you so much. It's been terrific getting to hear about your life and your career

and I appreciate your candor, which I think is very important, and will be very valuable for the people who get to listen to this.

MS. GERE: Thank you again, and we'll stay in touch for sure.

MS. KAGAN: Take care.